

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 1330 of 2012

Bipin Bihari Panda

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Petitioner

Mr. S.K. Swain, Advocate

Vs.

State of Odisha & Others

.....

Opposite parties

Mr. P.K. Panda,

S.C., S&ME Deptt.

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

21.03.2022

Order No.

09.

This matter is taken up through hybrid mode.

2. Heard Mr. S.K. Swain, learned counsel for the petitioner and Mr. P.K. Panda, learned Standing Counsel for School and Mass Education Department.

3. The petitioner has filed this writ petition challenging the order dated 07.12.2011 passed by the State Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.1122(C) of 2010 at Annexure-10, whereby the original application filed by the petitioner has been dismissed by holding that the termination of the petitioner is valid in the eye of law.

4. Mr. S.K. Swain, learned counsel for the petitioner vehemently contended before this Court that though the petitioner was appointed as a peon in the scale of pay of Rs.2550-55-2660-60-3200 with admissible D.A. in Brahmapura High School, Brahmapura, Banki on ad hoc

basis for a period of 44 days with one day gap in between each term till the post is filled up on regular basis in accordance with the rules, but his appointment was terminated vide Annexure-4 dated 16.05.2001 on the grounds mentioned therein. Such action of the authority being arbitrary, unreasonable and contrary to the provision of law, the petitioner approached the State Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.1122(C) of 2010, but the Tribunal, without understanding the facts in proper prospective, dismissed the original application vide order dated 07.12.2011. Therefore, the petitioner has approached this Court by filing the present writ petition.

5. Mr. P.K. Panda, learned Standing Counsel for School and Mass Education Department contended that the petitioner was appointed, vide order dated 05.11.1999 at Annexure-1, in which it was specifically mentioned that the ad hoc appointment of the petitioner shall be terminated at any time without assigning any reason. Therefore, before regular appointment is made, the authority has got every power to terminate the ad hoc services of the petitioner. Thereby, no illegality or irregularity has been committed by the authority in terminating his service. More so, the petitioner was well aware of the conditional order of appointment dated 05.11.1999, which clearly indicates that his service is terminable one. Even though the petitioner was allowed certain service benefits by opening service book, that ipso facto cannot disentitle the authority to terminate the service of the petitioner, as the same cannot accrue any right in favour of the petitioner. Taking into consideration all

aspects, the Tribunal has dismissed the original application filed by the petitioner and, as such, no illegality or irregularity has been committed by the Tribunal so as to warrant interference by this Court.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that the petitioner was appointed as a peon in the school in question on ad hoc basis, pursuant to letter dated 05.11.1999, in periodical terms of 44 days with one day gap in between each term till the post is filled up on regular basis in accordance with the Rules, with the condition that the ad hoc appointment of the petitioner can be terminated at any time without assigning any reason. In pursuance of such order of appointment, the petitioner joined in the school on 05.01.2000 and, thereafter, the Headmaster issued letter dated 21.01.2000 for sanction of an amount Rs.1500/- towards one time refundable deposit to GIS in favour of the petitioner. Thereafter, his ad hoc appointment for periodical terms of 44 days with one day gap in between each term made vide office order dated 05.11.1999 was revoked vide order dated 16.05.2001. As such, the said order of revocation was challenged before the Tribunal by filing O.A. No. 1122(C) of 2010, which was dismissed by the Tribunal, vide judgment and order dated 07.12.2011, after considering the facts in proper prospective and also elaborately discussing the judgments cited by the petitioner in paragraphs-7 and 8, which are extracted hereunder:-

“7. Considering the submission made by the learned counsel for both the parties and after going through the averments made in the O.A., as it appears, vide order dated 5.11.1999 (Annexure-1)

the applicant, being an outsider, was engaged as a peon in Brahmapur High School, Brahmapura on ad hoc basis for periodical terms of 44 days with one day gap in between each term till the post is filled up on regular basis in accordance with rules and with the further term that the appointment of the applicant can be terminated at any time without assigning any reason and accepting such terms/ conditions the applicant had joined the post, without raising any objection. When it was found that such appointment of the applicant was de hors the Rules and as such not made following regular selection process, the adhoc appointment of the applicant was revoked vide order dated 16.5.2001 (Annexure -1) on the ground as has been mentioned in the said order of revocation/termination, so also the applicant filed this O.A. nearly 9 years after the impugned order of revocation was passed and as such the relief sought for by the applicant in this O.A. is hopelessly barred by limitation. Further more in the very appointment order of the applicant itself, it has been categorically mentioned that the applicant being an outsider has been appointed as a peon, which clearly indicates that the appointment of the applicant was made without following regular selection process, as such de hors the Rules. In the application for condonation of delay, the period of delay has not been explained properly by the applicant except making a bald averment in the petition that the applicant had made several representations to the authority concerned with few years gap in filling of each representation and he was not well aware of the law of limitation. Both the above pleas are not sustainable/acceptable in the eye of law keeping in view the settled principle in this regard to the effect that repeated representation shall not save the limitation nor ignorance of law shall be an acceptable proposition for condonation of delay. The Hon'ble Supreme Court in a good number of cases has also arrived at a conclusion that if an employee has been engaged without following proper selection procedure for such appointment and as such he has entered into service through back door, it will not be unjust and illegal to send him back to his former place through the same back door and such action legal procedure issuance of notice to show cause and affording reasonable opportunity to defend himself for his

removal from service need not be followed .

8. *In view of the above, keeping in view the decisions of the Hon'ble Supreme Court in the case of State of Orissa and another – Versus – Mamata Mohanty, C.jacob – Versus – Director of Geology and Mining and Union of India – Versus – M.K.Sarkar (supra) , which were cited by the learned counsel for the respondents so also the ratio of the decisions which has been relied upon by the learned counsel for the applicants as discussed/noted above, I do not find any illegality or irregularity in the impugned order of revocation of the appointment of the applicant (Annexure Nos. 4 & 5) which would call for any interference by this Tribunal, nor inclined to entertain the relief has been sought for by the applicant in this O.A. condoning such inordinate delay of nine years.”*

7. In that view of the matter, this Court does not find any illegality or irregularity in the judgment and order dated 07.12.2011 passed by the Tribunal in O.A. No.1122(C) of 2010 so as to cause interference. Accordingly, the writ petition merits no consideration and the same is hereby dismissed.

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(DR. B.R. SARANGI)
JUDGE

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(SAVITRI RATHO)
JUDGE