

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C). No4012 of 2010

Hemalata Sahu

....

Petitioner(s)

Mr.S.K.Dash, Adv.

-versus-

State of Orissa & Ors.

....

Opp.Party(s)

Mr.R.K.Samal, Standing
Counsel, S & M.E. Deptt.

CORAM:

JUSTICE BISWANATH RATH

ORDER

14.12.2022

Order

No.

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1. Heard learned counsel appearing for the parties.
2. This writ petition involves a challenge to the impugned order at Annexure-9 in rejection of claim of the petitioner to give required benefits from the date of initial appointment of the petitioner as per Annexure-4 i.e. from 03.12.2004.
3. For there is no supply of copy of the additional affidavit to the petitioner, this Court ignores the additional affidavit of the opposite party nos.2 and 3 and the case is taken up considering the material involved by way of writ petition as well as the counter.
4. Taking this Court to the development taking place in between, for not getting the appropriate relief and on the premises of pendency of a representation being considered by the competent authority, it appears the petitioner came to this Court in the earlier round of litigation by filing W.P.(C).No.10473 of 2008, which writ petition claimed to have been disposed of by order dated 31.07.2008 directing the competent authority for considering the representation of the petitioner dated 23.09.2008. This application having been considered and rejected declining to entertain the relief claimed by the petitioner giving rise to file the writ petition at hand.
5. Taking this Court to the plea and the document appended herein even in the enclosing of grant of certificate of the

Headmaster showing petitioner continuing till 26.06.2008, learned counsel for the petitioner further also on the allegation that the establishment remained busy in issuing engagement orders after engagement orders with one day break creating an embargo in the continuation of service of the petitioner since 2003. Involving the challenge to Anenxure-4, learned counsel for the petitioner alleges that there is no consideration of the factual position involving the petitioner being appointed vide Anenxue-4. It is in the above background, learned counsel for the petitioner seeks intervention of this Court in the impugned order.

6. Mr.Samal, learned Standing Counsel for the School & Mass Education Department on the other hand reading through the impugned order as well as the counter affidavit at paragraph-7 contends that undisputedly petitioner was an employee in the establishment involved on 03.12.2003. But such engagement was a periodic engagement as clearly disclosed in the engagement order. While also admitting that the petitioner is continuing all through but however taking to the development taking place in the meantime, Mr.Samal contended that the petitioner following a direction of the Court in W.P.(C).No.11748 of 2003 applied afresh in the year, 2004-2005 and was engaged by way of fresh engagement order being issued in the year 2005. In the circumstance, Mr.Samal, learned Standing Counsel submits that there has been right consideration on the claim of the petitioner and in denying the claim of the petitioner to be benefitted from 2003 in spite of 2005.

7. Considering the rival contentions of the parties, this Court firstly finds the engagement order vide Anenxure-4 has a clear stipulation disclosing engagement for the period mentioned in the agreement. In the first paragraph of the engagement order, petitioner even though claimed to be continuing on the basis of such order but unable to produce the copy of the agreement to at

best satisfy that the petitioner continuance is dependent on the engagement order involved herein dated 3.12.2003.

8. Coming to the petitioner taking support through the certificate of Headmaster at Anenxue-5, considering the submission of both the counsels there appears there is no dispute that petitioner was continuing in service but however for the disclosure through Paragraph-7 of the counter and no denial to the fact that the petitioner was reengaged on providing a fresh appointment order pursuant to her selection in the year 2004-05. This Court finds the certificate given by the Headmaster vide Annexure-5 has no attachment to the case except establishing that petitioner was engaged for the period mentioned therein with no clear disclosure as to if such continuance was continuous and uninterrupted. It is for clear statement of the petitioner that there is existence of further appointment order involving the petitioner pursuant to second advertisement involved herein, counter also establishing such case, this Court observes there is no scope for considering the petitioner to be an employee undisputedly continuing since 2003. At this stage of the matter, Mr. Dash, learned counsel for the petitioner attempted to challenge the fresh engagement becoming a cover of attempt of the employer to deprive the petitioner from the continuity in service since 2003. This Court finds in absence of challenge to the subsequent offer of appointment since 2005, there is no scope for taking into consideration of such aspect.

9. In the circumstance, this Court finds there is no infirmity in the impugned order required to be entertained. Consequently, the writ petition stands dismissed.

(Biswanath Rath)
Judge