

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 22393 of 2012

Rameswar Behera

....

Petitioner

Mr. A.K. Hota, Advocate

-versus-

State of Orissa and others

....

Opposite Parties

Mr. Debashis Nayak

Additional Government Advocate

CORAM:

THE CHIEF JUSTICE

JUSTICE CHITTARANJAN DASH

ORDER

16.08.2022

Order No.

08. 1. Aggrieved by an order dated 3rd September 2012/ 25th September 2012, passed by the Orissa Administrative Tribunal (OAT) in O.A. No.959(C) of 2011, the Petitioner has filed this present petition.
2. The background facts are that the Petitioner was appointed as Amin Grade-III in the Job Contract Establishment of the Settlement Officer, Sambalpur with effect from 16th March, 1964. Pursuant to an order of the Supreme Court, a scheme was framed to regularize the services of Job Contract (J.C.) employees and to grant them Government and Pensionary benefits. By this time, the Petitioner was in the rank of Munsarim Grade-III at Serial No.6 in the list published by the Settlement Officer, which was submitted to the Director, LRS, Orissa on 10th November, 1994.
3. On 2nd August 1996, the Petitioner was promoted as Peskar Grade-III. He then learnt that the employees junior to him, namely,

Ramesh Chandra Naik, Jogendra Bagarty and certain others have been brought into the Regular Establishment by an order dated 9th May, 1997. He came to know of the aforementioned order only more than a year later and started making representations to the authorities at the Board of Revenue, Odisha.

4. With his grievance not addressed and with his retirement imminent, the Petitioner filed O.A. No.15(S) of 2000 in the OAT. An order was passed therein by the OAT on 28th February, 2000 directing the Opposite Parties to pass appropriate orders on the Petitioner's representation.

5. It then transpired from the letter sent by the Settlement Office that the non-inclusion of the Petitioner's name in the second gradation list was due to the Board of Revenue awaiting his absorption and regularization, the Petitioner superannuated with effect from 30th September, 2001.

6. For the second time, after waiting a number of years, the Petitioner filed a second petition being O.A. No.959(C) of 2011 in the OAT. This time, the OAT by the impugned order declined to entertain the application on the ground of limitation.

7. In the present petition, the following orders were passed by this Court on 4th October, 2016 and subsequently on 1st November, 2016:

“04.10.2016

Heard learned counsel for the petitioner and Mr. Pattnaik, learned Additional Government Advocate for the State in part.

Learned counsel for the State submits that in the last instruction received by the Office of the Advocate General in the year 2014, it was indicated that the decision of the State would be taken at the Core Committee Meeting scheduled to be held on 20.05.2014 and seeks some time to obtain further instruction as to the result of the said Meeting.

The petitioner has superannuated since 2001. In the meantime, 15 years have been elapsed. Therefore, learned Additional Government Advocate for the State is directed to obtain necessary instruction positively by 21st October, 2016.

List this matter on 24.10.2016 at 2.00 P.M. It is made clear that no further time shall be granted to the State to obtain instruction or to file any response and if no such response is received, this Court will proceed basing on the records.

Free copy of this order be handed over to the learned counsel for the State for necessary communication.”

“01.11.2016

Heard Mr. A.K. Hota, learned counsel for the petitioner and Ms. S. Ratho, learned Addl. Government Advocate on behalf of the State.

A communication dated 28.10.2016 addressed by the Board of Revenue to the office of the Advocate General is produced before this Court which indicates that the Board of Revenue has passed orders on 21.11.2014 directing the Settlement Officer, Sambalpur to regularize the service of the applicant w.e.f. 30.09.2001 retrospectively i.e. the date of retirement of the applicant in compliance of the order dated 28.02.2000 passed by the Odisha Administrative Tribunal, Bhubaneswar in O.A. No.15(S) of 2000.

Mr. Hota, learned counsel for the petitioner submits that the employer did not send the name of the petitioner for consideration by the DPC which was held on 7.5.1997. As a consequence of which, various persons, namely,

Durga Charan Mishra, Ramesh Chandra Naik, Jogendra Bagarty and Sahadev Naik, who are junior to the petitioner were regularized. Therefore, he submits that regularizing the service of the petitioner w.e.f. 30.09.2001 i.e. the date of retirement of the applicant, is not in consonance with the relief sought for by the petitioner and he ought to have been regularized from the date on which his juniors were regularized i.e. 7.5.1997.

Ms. Ratho, learned Addl. Government Advocate seeks further time to take instruction and file affidavit, if any, in this matter.

Heard in part. List this matter on 22.11.2016 at 2.00 P.M.

Urgent certified copy of this order be granted on proper application. Free copy of this order be handed over to the learned counsel for the State.”

8. Learned counsel for the Opposite Parties states that he has no instructions despite the above orders. In other words, the claim of the Petitioner has gone unchallenged before this Court. If admittedly the juniors to the Petitioner Sagadev Naik, Ramesh Chandra Naik and Jogendra Bagarty were brought into the Regular Establishment earlier than the present Petitioner, then obviously his claim that he should have been given absorption and regularization with effect from 7th May, 1997 the date is the juniors were regularized, cannot be denied.

9. For the aforementioned reasons, the impugned order of the OAT is hereby set aside. A direction is issued to the Opposite Parties to issue orders within a period of four weeks from today, regularizing the services of the Petitioner with effect from 7th May, 1997 and

consequently re-fixing his pension. The arrears of pension should be paid within a period eight weeks thereafter.

10. The writ petition is disposed of in the above terms.

11. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge

S. Behera

