

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 3394 of 2015

State of Odisha & Ors.

.....

Petitioner

Mr. S. Rath, ASC

Vs.

Jatindra Sahu and anr.

.....

Opposite Parties

Mr. S.K. Mishra, Advocate

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE GOURI SHANKAR SATAPATHY

ORDER

24.08.2022

Order No.

03.

This matter is taken up through hybrid mode.

2. Heard Mr. S. Rath, learned Additional Standing Counsel appearing for the State-petitioners and Mr. S.K. Mishra, learned counsel appearing for opposite party no.1.

3. The State and its functionaries have filed this writ petition seeking to quash the order dated 02.07.2014 passed in O.A. No.1312(C) of 2013, by which the Orissa Administrative Tribunal, Cuttack Bench, Cuttack has quashed the order dated 18.03.2013 under Annexure-13 to the said O.A. and directed the State-petitioners to issue appointment order in favour of opposite party no.1 against the next vacancy arising in the district, by providing him age relaxation commensurate with number of year of service he had put in before retrenchment, within a period of four months from the date of receipt of the order.

4. Mr. S. Rath, learned Additional Standing Counsel appearing for the State-petitioners contended that admittedly the services of opposite party no.1 was regularized vide order dated 30.10.2000 on consideration of the reports of the B.D.O., Bhatli and Gaisilet for smooth functioning of the Election works in the Blocks. As such, the

terms and conditions have been stipulated in clause-3 of the said order that the regularization is purely temporary and terminated at any time without any notice, assigning any reason thereof and terminated subject to sub-judice. Invoking such clause of the regularization order dated 30.10.2000, steps have been taken after one year for termination of services of opposite party no.1. Therefore, the authorities are not required to give any reason while terminating the services of opposite party no.1.

5. Mr. S.K. Mishra, learned counsel appearing for opposite party no.1 specifically contended that once the services of opposite party no.1 has been regularized, he acquired right to continue in the post and any action taken terminating his services, that should be done in compliance of the principles of natural justice. More so, there is non-compliance of the principles of natural justice while terminating the services of opposite party no.1. Therefore, it is contended that the order of termination/retrenchment of services of opposite party no.1 cannot be sustained in the eye of law and the same has to be quashed. Hence, no fault can be found with the Tribunal in passing the order impugned.

6. Having heard learned counsel for the parties and after going through the records, it appears that opposite party no.1, being duly selected, was appointed as G.P. peon temporarily on adhoc basis for a period of 44 days with effect from 01.05.99 to 13.06.1999 vide order dated 01.05.1999 and posted to Bhatli Block. Since his performance was found satisfactory, his service was extended from time to time. While continuing as such, petitioner no.2 by an order dated 30.10.2000 regularized the services of opposite party no.1. Subsequently, he was deputed to Dist. Panchayat Office, Baragarh, vide order dated 30.12.2000, and thereafter, he was transferred and posted to Dist. Panchayat Office, Baragarh, vide order dated

31.10.2001. When his salary bill for the month of March, 2001 was submitted in the Treasury, the Treasury Officer raised objection that since no clearance from the Finance Department has been obtained, the salary cannot be disbursed. Thereafter, the Dist. Panchayat Officer, Baragarh sought for clarification from the Director, Panchayatraj Department to obtain clearance from the Finance Department for the purpose. Since no action was taken in the matter, another communication was made on 28.04.2001. Petitioner no.1 directed BDO, Bhatli to furnish required information. Accordingly, the B.D.O. Bhatli Block submitted all the documents before petitioner no.1 vide letter dated 09.07.2001. While the matter stood thus, opposite party no.1 was retrenched from service by an order dated 05.12.2001.

7. Being aggrieved by the said order, opposite party no.1 filed O.A.No.1873/2011 and the Tribunal, vide order dated 10.01.2003 directed that whenever a regular selection is held for filling up Class-IV posts in Baragarh District, opposite party no.1 should be allowed to take part in the same, if he possesses minimum qualification for entry into service by relaxing the upper age limit, if necessary. Further, in the meantime if any class-IV vacancy will occur in the Block in which he was working which is required to be manned and for which the budget provision is available, then he may be given temporary engagement against such vacancy in spells not exceeding 45 days. In spite of such direction, no action was taken for engagement of opposite party no.1. Though some freshers were given appointments and the case of opposite party no.1 was not considered for his re-engagement, he made a representation before the Sub-Collector, Bargarh on 27.12.2011. Since no action was taken on his representation, again he filed O.A.No.135(C)/2013 and the Tribunal, vide order dated 31.03.2013 disposed of the said O.A. with a

direction to the authority to pass appropriate order on the representation of opposite party no.1 within a period of 45 days from the date of receipt of the order. In compliance of the said order of the Tribunal, petitioner no.2, vide order dated 18.03.2013, rejected the representation of opposite party no.1 on the ground that he had not entered into service following the recruitment procedure, therefore his claim is devoid of merit.

8. As a matter of fact, one Nakula Muna, who was appointed on 14.11.2003 on DLR basis, was regularized by an order dated 13.10.2004, but the case of opposite party no.1 was ignored. Therefore, aggrieved by such action, opposite party no.1 filed O.A. No.1312(C) of 2013 before the Tribunal. The State-petitioners took a specific stand before the Tribunal that opposite party no.1 was regularized as orderly peon of GPEO and posted to Bhatli Block with condition that the regularization is purely temporary and can be terminated at any time without any notice and assigning any reason thereof. Applying the said clause of the order of regularization, retrenchment of opposite party no.1 has been done. Therefore, opposite party no.1 cannot claim for continuance of his service in the post.

9. The Tribunal, after due adjudication giving opportunity of hearing, came to a finding that when Nakula Muna got appointment on daily wage basis in Gaisilat Block, the case of opposite party no.1 should have been considered, as he had joined earlier to Nakula Muna in a Class-IV post and regularized later. Therefore, the Tribunal came to a conclusion that while retrenching opposite party no.1 from service, there was non-compliance of the principles of natural justice, as he was not given show-cause notice. Accordingly, opposite party no.1 should not have been retrenched from service relying upon the conditions stipulated in the regularization order. Thereby, the

Tribunal held that opposite party no.1 though initially an irregular appointee was subsequently regularized, but later on retrenched and State-petitioners have given appointments to persons, who were appointed later than opposite party no.1 in other Blocks, the order of rejection dated 18.03.2013, as at Annexure-13 to the O.A., is quashed and directed the State-petitioners to consider the issue of appointment order of opposite party no.1 against the next vacancy arising in the District by providing him age relaxation commensurate with number of year of service he had put in before retrenchment and issue appropriate orders in the matter, within a period of four months from the date of receipt of a copy of that order.

10. In that view of the matter, this Court is of the considered view that the Tribunal has not committed any error apparent on the face of the record so as to warrant interference at this stage. More so, the order of retrenchment having been passed without complying the principles of natural justice, the same cannot be sustained in the eye of law. Thereby, the same has been rightly quashed by the Tribunal. Therefore, this Court directs the State-petitioners to take necessary steps in compliance of the direction given by the Tribunal.

11. Accordingly, the writ petition merits no consideration and the same is hereby dismissed.

(DR. B.R. SARANGI)
JUDGE

ALOK

(G.S.SATAPATHY)
JUDGE