

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No. 5595 of 2016

Chandan Kumar Bag

....

Petitioner

Mr. Sukumar Ghosh, Advocate

-versus-

***Managing Director, Orissa
Lift Irrigation Corporation,
Bhubaneswar and another***

....

Opp. Parties

Mr. Bigyan Kumar Sharma, Advocate

(O.P. No. 1)

Mr. S. Mohanty, Advocate

(O.P. No.2)

CORAM:

JUSTICE SANJAY KUMAR MISHRA

ORDER

24.08.2022

Order No.

07.

1. This matter is taken up through hybrid mode.

2. Heard Mr. Sukumar Ghosh, learned Counsel for the Petitioner, Mr. Bigyan Kumar Sharma, learned Counsel for the Opposite Party No.1, so also Mr. S. Mohanty, learned Counsel for the Opposite Party No.2.

3. The present Writ Petition has been filed by the Petitioner with a prayer to direct the Opposite Party No. 1 to allow financial benefits to the Petitioner by re-fixing his scale of pay by granting the incremental benefit w.e.f. 29.07.2000 to 11.01.2008 as has been done in case of similarly placed persons.

4. The factual matrix of the case is that the father of the Petitioner, who was serving under the Executive Engineer, L.I. Division, O.L.I.C., Balasore, had to take voluntary retirement from service on 09.04.1997 due to his permanent incapacitation to continue in the service. Because of his prolonged illness, he was directed to appear before the Chief District Medical Officer Balasore, who after through check up and medical examination, opined that the father of the Petitioner Shri Gagan Bihari Bag is suffering from DIABETES MELLITUS and IHD. The father of the Petitioner became completely incapacitated to continue in service. Basing on the said report, a post-facto sanction was given to the retirement of Shri Gagan Bihari Bag, the father of the Petitioner, by Opposite Party No. 1. As no vacant post was available, the Opposite Party No.1 had ordered that no appointment under Rehabilitation Assistance Scheme would be given to the legal heirs of Shri Gagan Bihari Bag at that point of time. However, the present Petitioner, being the eldest son of Shri Gagan Bihari Bag, made an application in the prescribed format for appointment under Rehabilitation Assistance Scheme. But, the Petitioner had to wait for three years till a vacant post became available. According to his qualification and after through verification, the Opposite Party No.1 was pleased to appoint the Petitioner as a Junior Typist under Rehabilitation Assistance Scheme against an existing vacancy vide Office Order dated 18.07.2000, from the panel prepared by the Opposite Party No. 1.

Pursuant to such Order, the Petitioner joined in the post of Junior Typist under the Opposite Party No. 2 along with documents/information on 22.07.2000 and continued his duty without any complaint or objection from any corner.

When the matter stood thus, the Petitioner learnt from reliable source that his appointment Order, as at Annexure-1, has been cancelled by the Opposite Party No. 1 without any reason and steps are being taken to dispense with his service vide Order dated 29.07.2000. It also came to the notice of the Petitioner that similar Orders of cancellation of appointment were also passed in respect of three other similarly placed persons on the very date, who were also given appointment under the Rehabilitation Assistance Scheme like the Petitioner.

Being aggrieved by the said Order of cancellation of their appointments under the Rehabilitation Assistance Scheme, the Petitioner as well as other similarly placed persons filed OJCs, which were registered as OJC No. 7338 of 2000, OJC No. 7662 of 2000, OJC No. 7369 of 2000 and OJC No. 9026 of 2000. This Court, while entertaining the aforesaid OJCs, as interim, stayed the operation of the said impugned Orders of cancellation of the Petitioner as well as other Writ Petitioners.

Ultimately, all the OJCs, as mentioned above, were heard analogously and, vide common judgment dated 05.12.2000, as at Annexure-4, this Court quashed all the

Orders of cancellation of appointment including of the present Petitioner. Consequently, the Petitioner as well as other Writ Petitioners became entitled to restoration of their services and other consequential benefits.

Though the Opposite Party No.1-Corporation preferred an Appeal, registered as A.H.O. No. 136 of 2001, to avoid compliance of the judgment, as at Annexure-4, passed in OJC No. 7338 of 2000 and other OJCs, disposed of on 05.12.2000, but the said A.H.O. was dismissed being barred by limitation. Thereafter, because of non-compliance of the said judgment dated 05.12.2000, the Petitioner was being constrained to initiate a Contempt Proceeding, which was registered as CONTC No. 14 of 2006.

It is the further case of the Petitioner that though a similarly placed person, who was the Petitioner in OJC No. 9026 of 2000, namely Shri Sameer Kumar Rout, was extended with the benefit of restoration in service with consequential benefit w.e.f. the date of his actual joining, vide Order dated 22.01.2005, as at Annexure-5, indicating therein that Shri Sameer Kumar Rout, Junior Clerk, will get financial benefit w.e.f. the date he actually joined in the post, subsequently, as per the Order dated 09.11.2009, as at Annexure-8, which was issued in terms of the Order passed by this Court in W.P.(C) No. 1335 of 2006, the Opposite Party had ordered allowing Shri Sameer Kumar Rout to draw his salary for the period from 29.07.2000 to 23.01.2005 instead of stipulation made in the Office Order dated 22.01.2005, which reads as follows:-

“Pursuant to Order No. 21 dt. 3.8.2007 of the Hon’ble High Court, Orissa, Cuttack passed in WP(C) No. 1335/06, Sri Sameer Ku. Rout, Jr. Clerk of S.E.L.I., Dolangir is allowed to draw his salary for the period from 29.7.2000 to 23.1.2005 instead of the stipulation made in this office Order No. 2221 dt. 22.1.05 that “Sri Rout, Jr. Clerk will get financial benefit with effect from the date he actually joins in the post as per the above Court Order.”

5. During pendency of the Contempt Proceeding, the Opposite Party No. 1 issued fresh appointment Order dated 11.01.2008 in favour of the Petitioner instead of restoring his Service Book to his initial date of joining i.e. with effect from 22.07.2000, and the said fact was brought to the notice of this Court and such conduct of Opposite Party No. 1 was deprecated by this Court in clear terms, vide Order dated 25.01.2008 passed in CONTC No. 14 of 2006, as at Annexure-A/1.

When the matter stood thus, the Opposite Party No. 1, in compliance of the Order passed in Contempt Proceeding, issued a fresh Order on 04.11.2009 by fixing the seniority of the Petitioner w.e.f. 22.01.2005 i.e. the date on which Shri Sameer Kumar Rout was issued with appointment Order vide Annexure-5. However, the financial benefits were not granted to the Petitioner from the said date, as has been done in case of Shri Sameer Kumar Rout, who is the Writ Petitioner in OJC No. 9026 of 2000 as well as in W.P.(C) No. 1335 of 2006.

The further case of the Petitioner is that after disposal of the Contempt Proceeding, though Order dated 04.11.2009, as at Annexure-7, was issued by the Opposite

Party No. 1, the interse-seniority of the Petitioner was fixed w.e.f. 22.01.2005 and surprisingly, he was debarred from the benefit of back wages. Apart from the same, only after five days of issuance of the said Order dated 04.11.2009, as at Annexure-7, the same Authority, vide Order dated 09.11.2009, as at Annexure-8, extended the financial benefits in favour of Shri Sameer Kumar Rout w.e.f. the date he actually joined in the post in terms of the Order passed by this Court in W.P.(C) No. 1335 of 2006. But most unfortunately, the Opposite Parties deliberately discriminated the Petitioner by not allowing him the same benefits as has been done in case of Shri Sameer Kumar Rout and Shri B. C. Jena, though the Petitioner is similarly placed at par with the said two employees of the Corporation and all of them were appointed under the Rehabilitation Assistance Scheme. However, their appointments were cancelled subsequently on 29.07.2000 i.e. after their respective date of joining and the Orders of cancellation of appointment were quashed vide common judgment.

It is the further case of the Petitioner that though he approached this Court earlier in W.P.(C) No. 11178 of 2012 with a prayer to treat him to be in service w.e.f. 22.07.2000 and allow him the financial benefits by re-fixing his scale of pay by allowing the incremental benefit w.e.f. 29.07.2000 to 11.01.2008 as has been done in case of similarly placed persons, the same was disposed of at the stage of admission directing the Authority to consider his Representation. On being so directed, the Authority

concerned passed the impugned Order dated 06.11.2015, as at Annexure-10, indicating therein as follows:-

“After careful consideration of the representation dt. 14.09.15 of Sri Chandan Kumar Bag, Jr. Typist of L.I. Division, Balasore filed as per direction of the Hon’ble High Court passed vide its order No. 3 dt. 05.05.2015 in W.P.(C) No. 11178 of 2012, the interse-seniority of Sri Bag is allowed with effect from his initial joining i.e. dt. 22.07.2000 in supersession of this office Order No. 19937 dt. 04.11.09 where in he had been allowed interse-seniority with effect from 22.01.05 and also he will be allowed incremental benefits for every 365 days of working actually and paid for that work.”

6. On being noticed, the Opposite Party No.1-Corporation appeared and has filed its Counter Affidavit and the sole contention of the Corporation in the said Counter is that, in view of the Order dated 25.01.2008 passed by this Court in CONTC No. 14 of 2006, the Authority concerned has acted in terms of the direction given by this Court without extending the benefit of back wages in favour of the present Petitioner.

7. The learned Counsel for the Petitioner submitted that the Order in CONTC No. 14 of 2006 was passed on 25.01.2008, whereas the Order dated 09.11.2009, as at Annexure-8, was issued in favour of Shri Sameer Kumar Rout much after the said Order thereby, discriminating the Petitioner with regard to back wages as was extended to similarly placed employees, who were also the Writ Petitioners in OJCs, which were disposed of vide common Judgment, as at Annexure-4, and the Authority concerned should not have debarred the Petitioner from incremental benefits, as was extended to his counterparts, even though

he approached this Court in CONTC No. 14 of 2006 and under compelling circumstances confined his grievances with regard to interse-seniority and this Court in CONTC No. 14 of 2006, vide Order dated 25.01.2008, gave certain direction with regard to his seniority.

8. Learned Counsel for the Opposite Party No.1-Corporation vehemently contended that in view of the Order passed in CONTC No. 14 of 2006 dated 25.01.2008, the prayer made in the present Writ Petition, does not warrant any consideration and the Writ Petition is liable to be dismissed.

9. Admittedly, the Order dated 09.11.2009, as at Annexure-8, was issued in favour of Shri Sameer Kumar Rout, Jr. Clerk, pursuant to Order passed by this Court in W.P.(C) No. 1335 of 2006, in supersession of the Order No. 2221 dated 22.01.2005, as at Annexure-5.

10. Mr. B. K. Sharma, learned Counsel for the Opposite Party No.1-Corporation fairly concedes that the Petitioner's case is similar to that of Shri Sameer Kumar Rout, Jr. Clerk and he should have also been equally treated as was being done in case of Shri Sameer Kumar Rout and others. But, the Corporation acted in terms of the direction given by this Court, as per the Order dated 25.01.2008 in CONTC No. 14 of 2006 as at Annexure-A/1.

11. In view of the above contentions of the parties, the present Writ Petition stands disposed of giving liberty to the

Petitioner to file fresh Representation before the Authority concerned to extend the benefits, as was being extended in favour of Shri Sameer Kumar Rout, Jr. Clerk and others vide Order dated 09.11.2009, as at Annexure-8, the Petitioner is being similarly placed as that of Shri Sameer Kumar Rout and others. The said Representation be filed by the Petitioner before the Opposite Party No. 1-Corporation within 15 days hence along with the certified copy of this Order. This Court is hopeful that the Authority concerned would do well to dispose of the said Representation of the Petitioner, keeping in mind the Order dated 09.11.2009 passed in favour of Shri Sameer Kumar Rout, Jr. Clerk, as at Annexure-8, which was issued in supersession of the earlier Order, as at Annexure-5, as per the Order dated 03.08.2007 passed by this Court in W.P.(C) No. 1335 of 2006.

12. Opposite Party No. 1 is directed to dispose of the Representation of the Petitioner within four weeks from the date of receipt of the same by passing a reasoned and speaking Order in terms of the observations made by this Court.

(S. K. MISHRA)
JUDGE