

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 21998 of 2014

State of Orissa and others

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Petitioners

Mr. S.N. Nayak, ASC

Vs.

J. Urmila Devi

.....

Opposite Party

Mr. S. Mohanty, Advocate

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

11.05.2022

Order No.

04.

This matter is taken up through hybrid mode.

2. Heard Mr. S.N. Nayak, learned Additional Standing Counsel appearing for the State-petitioners and Mr. S. Mohanty, learned counsel appearing for the opposite party.

3. The State functionaries have filed this writ application challenging the order dated 08.04.2013 passed by the Orissa Administrative Tribunal, Bhubaneswar Bench, Bhubaneswar in O.A. No. 920 of 2001, by which the tribunal quashed the order of termination of the opposite party, since the same was violative of the principle of natural justice, inasmuch as no notice or opportunity of hearing was given to the opposite party before issuance of such order of termination.

4. Mr. S.N. Nayak, learned Additional Standing Counsel contended that the tribunal has committed error apparent on the face of record by quashing the order of termination issued against the opposite party. According to him, since the appointment of the opposite party was made irregularly, thereby the services of

opposite party was terminated. The tribunal without considering the same passed the impugned order, which is liable to be set aside.

5. Mr. S. Mohanty, learned counsel for the opposite party contended that one similarly situated person, namely Hrudananda Panda had approached the tribunal challenging his order of termination in O.A. No. 439 of 2002 and the tribunal allowed the benefit vide order dated 18.07.2007, which was reported in (2007) 2 ATT (OAT) 158. The said order was challenged by the State-functionaries in W.P.(C) No. 14678 of 2008. This Court disposed of the said writ petition vide order dated 19.05.2010 by not inclining to interfere with the order dated 18.07.2007 passed by the tribunal in O.A. No. 439 of 2002. According to him, opposite party no.1 since stands in the same footing, the benefit should have been extended in his favour in terms of the direction of the tribunal. Therefore, the order of the tribunal need not be interfered with.

6. Having heard learned counsel for the parties and after going through the record, it appears that the service of opposite party was terminated and challenging such termination, he approached the tribunal in O.A. No. 920 of 2001. The tribunal adjudicated the said O.A. with the following observation/direction:-

After a careful scrutiny of the facts mentioned here above, it is sufficiently clear that against a vacancy the present applicant was given appointment on ad hoc basis and such appointment continued for six spells. Subsequently the applicant along with other FMDS were sent for training and thereafter they were promoted to the post of Jr. Soil Conservation Assistant by the Director, Soil Conservation on completion of five years of regular service. Thus the promotion was given by the higher authority of the Soil Conservation Department, being

satisfied about their eligibility and suitability for promotion. It is needless to mention that at the relevant time there was no rule for recruitment of FMD or JSCA and accordingly the authority took into consideration all these aspects and thereafter issued the order of promotion on 10.09.97 (Anx -4). That being the position, it is quite absurd to state after ten years that the initial appointment of the applicant was irregular. When the higher authority, i.e. the Director, Soil Conservation considered the applicant fit for a promotion, it is beyond the scope of the Soil Conservation Officer to assess his initial appointment after ten years and to state that it was irregular. The appointment was not illegal but if there was any irregularity, it was the laches of the appointing authority for which the applicant should not suffer. Therefore, Anx-10 is liable to be set aside being violative of the principles of natural justice, inasmuch as, no notice or opportunity of hearing was given to the applicant before issue of the order of terminator.

7. As it appears, one similarly situated person, namely Hrudananda Panda had approached the tribunal challenging his order of termination in O.A. No. 439 of 2002 and the tribunal allowed the benefit vide order dated 18.07.2007, which was reported in (2007) 2 ATT (OAT) 158 and placed on record under Annexure-4. The tribunal in the said order directed as follows:-

“After a careful scrutiny of the facts mentioned here above, it is sufficiently clear that against a vacancy the present applicant was given appointment on ad hoc basis and such appointment continued for six spells. Subsequently the applicant along with other FMDs were sent for training and thereafter they were promoted to the post of Jr. Soil Conservation Assistant by the Director, Soil Conservation on completion of five years of regular service. Thus the promotion was given by the higher authority of the Soil Conservation Department, being satisfied about their eligibility and suitability for promotion. It is needless to mention that at the relevant time there was no rule for recruitment of FMD or JSCA and accordingly the authority took into consideration all these aspects and thereafter issued the order of promotion on 10.9.97 (Anx-4). That being the position, it is quite absurd to state after ten years that the initial appointment of the applicant was irregular. When the higher authority, i.e. the Director, Soil Conservation considered the applicant fit for a promotion, it is beyond the scope of the Soil Conservation Officer to assess his initial appointment after ten

years and to state that it was irregular. The appointment was not illegal but if there was any irregularity, it was the laches of the appointing authority for which the applicant should not suffer. Therefore, Anx.10 is liable to be set aside being violative of the principles of natural justice, inasmuch as , no notice or opportunity of hearing was given to the applicant before issue of the order of termination.

As regards the order of promotion of the applicant, it is not disputed by the respondents, The learned Standing Counsel appearing for the State contended that since his initial appointment was irregular, the subsequent promotion should also be constructed to be irregular and it was an ad hoc promotion. On examination of the order of promotion (Anx-4) we find that the promotion was not ad hoc, but it was a regular promotion. Even the original appointment of the applicant was not on ad hoc basis, but on regular basis. Accordingly the order of promotion remains valid.

In the result the order of terminations (Anx.10) is hereby quashed. The applicant be reinstated in service forthwith. The period from the date of termination till, the date of joining on reinstatement be treated as duty but his pay shall be fixed notionally in accordance with rules.”

8. Against such order of the tribunal, the State preferred a writ petition bearing W.P.(C) No. 14678 of 2008. This Court while disposing of the writ petition vide order dated 19.05.2010, relied on the decision in the case of **Secretary, State of Karnataka and others v. Umadevi and Ors**, AIR 2006 SC 1806 and came to hold as follows:-

“6. Having regard to the facts and circumstances of the case and the fact that opposite party was initially appointed in the month of july,1991 and by the time the opposite party approached the Tribunal, he had completed ten years of service without any interruption and has also been given promotion, we are of the opinion that the opposite party should have been regularized in terms of the aforesaid judgment.

7. Considering the facts and circumstances of the case, we are not inclined to interfere with the order dated 18.7.2007 passed by the Orissa Administrative Tribunal in O.A. No. 439 of 2002 and the same is accordingly confirmed.”

9. Since similar benefit has already been extended to similarly situated person, there is no valid justifiable reason not to extend such benefit in favour of the opposite party, even if according to the petitioners, the appointment of the opposite party is illegal.

10. In view of the above, there is no illegality or irregularity in the order of the tribunal so as to call for interference by this Court at this stage. Consequentially, the writ petition merits no consideration and the same is accordingly dismissed.

11. Issue urgent certified copy as per rules.

Arun/Bichi



(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE