

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 21045 of 2014

State of Odisha & Ors.

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Petitioners

Mr. B.P. Tripathy, AGA

Vs.

Susanta Behera & Anr.

.....

Opposite parties

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

05.05.2022

Order No.

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This matter is taken up through hybrid mode.

2. Heard Mr. B.P. Tripathy, learned Additional Government Advocate for the State petitioners.

3. Though A.D. has returned after valid service of notice against opposite party no.1, none has entered appearance. Since it is an old case of the year 2014, this Court is not inclined to grant adjournment and proceeded to decide the matter as per the materials available on record.

4. Opposite party no.1 was initially appointed as Safei Moharir under Rehabilitation Assistance Scheme as Job-Contract Class-IV in C.O. Circle Jajpur, vide letter dated 12.03.1999 of DDCH, Jajpur, after the death of his father late Bidyadhar Behera on 11.01.1998.

5. Opposite party no.1 filed O.A. No.3265(C) of 2011 seeking direction to the petitioners herein to consider his case for appointment on regular Class-III post under R.A. Scheme as per resolution dated 05.02.2010. The petitioners filed counter affidavit refuting the claim of opposite party no.1. The tribunal, vide order dated 03.04.2012, disposed of O.A. No.3265(C) of 2011 directing the petitioners in accordance

with their counter that, as the service of Mayadhar Khillar was regularized against class-III post and working as bench clerk, they may consider the case of opposite party no.1 in bringing him to any regular establishment preferably in a class-III post against any available vacancy, as done in the case of Mayadhar Khillar.

6. Being aggrieved by the order dated 03.04.2012 passed in O.A. No.3265(C) of 2011, the petitioners have approached this Court by filing this writ petition.

7. Mr. B.P. Tripathy, learned Additional Government Advocate for the State petitioners contended that the tribunal has committed gross error apparent on the face of the record considering the case of opposite party no.1 at par with Mayadhar Khillar, as nowhere in the counter affidavit they have stated that the case of opposite party no.1 may be considered along with Mayadhar Khillar, who is similarly situated. Therefore, the order so passed by the tribunal should be set aside.

8. Perused the records. It appears that the contention raised by learned Additional Government Advocate for the petitioners has ample force. A counter affidavit was filed by the petitioners in O.A. No.3265(C) of 2011, paragraph-3 whereof reads as follows:

“3. That, It is humbly submitted that, the case of Mayadhar Khillar is different from the applicant. Sri Khillar was appointed as J.C. Chain Man under Rehabilitation Assistance Scheme vide order dated 22.11.96 of Settlement Office, Balasore- Mayurbhanj Major Settlement, Baripada. His name is found at Sl. No. 541 of the District gradation List of Balasore. The applicant was discharged from J.C service vide letter No. 3373 dated 13.08.98 of Settlement Office, Balasore-Mayurbhanj Major Settlement, Baripada and he was field the O.A. against such discharge order.

That in the order No. 02 dated 27.09.2005 passed in W.P.(C) 4398 OF 2002, W.P.(C) No.372 of 2003 and W.P.(C) No. 12055 of 2005, the Hon'ble High Court directed that:

The petitioner shall be reinstated forthwith, but shall not be entitled to any salary for the period he remained absent or did not discharge his duties. However, he will be treated to be in service with the benefit of seniority and other consequential benefits (minus financial benefits, as indicate above). This order will not be a bar in considering the case of the petitioner for absorption in Class –III post.

That as per the order of the Hon'ble High Court the applicant was reinstated in his former post of Job Contract Chainman w.e.f. from 02.03.2006 by the Settlement Officer, Baripada. As the High Court has ordered for restoration of his seniority, the applicant has been regularized w.e.f from 05.01.2001 i.e. the date his junior, Sri Debendranath Barik (SL. No. 543 of the District gradation List of Balasore) regularized in the post of Amin. Subsequently Sri Khillar was appointed/regularized in the post of Bench Clerk vide Memo no. 1807 dated 10.07.2009 to Board of Revenue by the Settlement Officer, Balasore- Mayurbhanj Major Settlement, Baripada."

As opposite party no.1 has been regularized on 05.01.2001, i.e. the date his junior, Debendranath Barik (Sl. No.543 of the District gradation list of Balasore) was regularized in the post of Amin, direction issued by the tribunal bringing opposite party no.1 to any regular class-III post at par with Mayadhar Khillar does not arise. Law is well settled that for compassionate appointment, opposite party no.1 cannot claim as a matter of right, as he has no choice for appointment in a particular post. Therefore, whatever post was available, opposite party no.1, having accepted the same without any objection and continued in the said post, question of giving higher post does not arise. The observation made by the tribunal in paragraph-6 that it is an admitted fact that opposite party no.1 is similarly situated with Mayadhar Khilar is not correct.

9. On perusal of the counter affidavit, it is seen that no such admission has been made by the petitioners. Therefore,

the tribunal has committed gross error in the order dated 03.04.2012 passed in O.A. No.3265(C) of 2011 directing the petitioners that in accordance with the counter and as the service of Mayadhar Khillar had been regularized against class-III post and working as bench clerk, consider the case of opposite party no.1 in bringing him to any regular establishment preferably in a Class-III post against any available vacancy, as done in the case of Mayadhar Khillar.

10. While entertaining the writ petition, this Court on 07.11.2014 passed order staying operation of the impugned order dated 03.04.2012 passed by the Orissa Administrative Tribunal in O.A. No.3265 (C) of 2011 till 05.01.2015 and the said order has been extended from time to time.

11. In view of such position, since opposite party no.1 has been appointed in Class-IV post and is continuing under the Rehabilitation Assistance Scheme, grant of Class-III post at par with Mayadhar Khillar does not arise. Therefore, the order dated 03.04.2012 passed by the Orissa Administrative Tribunal in O.A. No.3265 (C) of 2011 is not justified and accordingly, the same is hereby quashed.

12. The Writ petition is accordingly allowed.

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(DR. B.R. SARANGI)
JUDGE

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(SAVITRI RATHO)
JUDGE