

ORISSA HIGH COURT: CUTTACK

W.P.(C) No. 1245 of 2017

W.P.(C) No. 893 of 2017

W.P.(C) No. 895 of 2017

W.P.(C) No. 896 of 2017

And

W.P.(C) No. 1080 of 2017

In the matter of applications under Articles 226 and 227
of the Constitution of India.

AFR

W.P.(C) No. 1245 of 2017

Rusav Kumar Sahoo

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Petitioner

-Versus-

State of Odisha and Others

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Opp. Parties

For Petitioner : M/s D.K. Panda, G. Sinha and
A. Mishra, Advocates

For Opp. Parties : Mr. S. Nayak,
Addl. Standing Counsel
[O.P. Nos. 1 to 3]

W.P.(C) No. 893 of 2017

Sagarika Das

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Petitioner

-Versus-

State of Odisha and Others Opp. Parties

For Petitioner : Mr. J.K. Rath, Sr. Counsel
appearing along with
Mr. A.K. Saa, Advocate

For Opp. Parties : Mr. S. Nayak,
Addl. Standing Counsel
[O.P. Nos. 1 to 3]

W.P.(C) No. 895 of 2017

Ratnamanjari Tripathy Petitioner

-Versus-

State of Odisha and Others Opp. Parties

For Petitioner : Mr. J.K. Rath, Sr. Counsel
appearing along with
Mr. A.K. Saa, Advocate

For Opp. Parties : Mr. S. Nayak,
Addl. Standing Counsel
[O.P. Nos. 1 to 3]

W.P.(C) No. 896 of 2017

Pradyumna Kumar Sethi Petitioner

-Versus-

State of Odisha and Others Opp. Parties

For Petitioner : Mr. J.K. Rath, Sr. Counsel
appearing along with
Mr. A.K. Saa, Advocate

For Opp. Parties : Mr. S. Nayak,
Addl. Standing Counsel
[O.P. Nos. 1 to 3]

W.P.(C) No. 1080 of 2017

Deepak Kumar Pradhan Petitioner

-Versus-

State of Odisha and Others Opp. Parties

For Petitioner : Mr. P.K. Mohapatra and
S.C. Sahoo, Advocate

For Opp. Parties : Mr. S. Nayak,
Addl. Standing Counsel
[O.P. Nos. 1 to 3]

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
HONOURABLE MR. JUSTICE SANJAY KUMAR MISHRA**

Date of hearing and judgment: 27.07.2022

DR. B.R. SARANGI, J.

The Petitioners, by means of these Writ Petitions, seek to quash the common Order dated 07.12.2016 passed in O.A. Nos.1407, 1403, 1406, 1408 and 1405, all of 2011, passed by the State Administrative Tribunal, Cuttack Bench, Cuttack, as well as the Order dated 03.05.2010 issued by the Chief District Medical Officer (CDMO), Angul, and to issue direction to the Opposite Parties to regularize their services as Pharmacists. Therefore, they are heard together and disposed of by this common judgment, which will govern all the cases.

2. The factual matrix of the cases, in brief, is that an Advertisement was issued by the Opposite Party No.3 for filling up of several Paramedical posts, including three posts of Pharmacists, on consolidated salary, out of which one post was reserved for ST, one for SEBC and one for UR. Accordingly, the Selection Committee, which was duly constituted, prepared a select list of 11 candidates of

Pharmacists on 19.09.2015, on the basis of mark secured by them in the examination of Diploma in Pharmacy. Out of the said select list, appointment Order was issued to first three candidates, namely, Harapriya Sahoo, Chinmaya Pattnaik and Ajit Kumar Saho. Even though such appointment Orders were issued in favour of the candidates, the same were kept in abeyance, in view of the Interim Order of the Tribunal. Subsequently, after the Interim Order was vacated, appointment Orders were issued in favour of first three selected candidates on 30.06.2006. But, thereafter, Opposite Party No.1 permitted Opposite Party No.3 to fill up another two posts of Pharmacists from the waiting list. Accordingly, the candidates at Serial Nos. 4 and 5 were appointed. Again Opposite Party No.1 directed Opposite Party No.3 to take steps at his level for filling up of required number of posts, which were lying vacant. In compliance of the Order of Opposite Party No.1, the Petitioners were appointed against the vacant posts. But one Tapan

Kumar Behera, who was not applicant for the post of Pharmacist, alleged violation of ORV Act and irregular appointment of Pharmacist in Angul District. Subsequently, the ADM, Angul, issued letter to the C.D.M.O., Angul, and directed to furnish a report regarding appointment of all Pharmacists. On 14.05.2009, the CDMO, Angul, submitted his report stating that appointments were made with the approval of the Selection Committee and as per the policy of the State Government. Consequentially, the allegation of Tapan Kumar Behera was dropped.

2.1 Against such action of the Opposite Parties, Tapan Kumar Behera again filed a complaint before the State Government on 09.01.2010, on the basis of which, the Addl. Director of Health Service, Odisha, caused inquiry and furnished a report on 31.03.2010 pointing out that the appointments of Sl Nos. 1 to 3 were made as per Advertisement, Sl Nos. 4 and 5 were made as per the Government Order, Sl Nos. 6, 10 and 11 by approval of

Collector, Angul, and Sl Nos. 7 to 9 were made in pursuance of the Government letters dated 09.06.2005 and 02.11.2006. It was further pointed out that on scrutiny of list of these candidates for engagement in 2005, Tapan Kumar Behera was not found to be an applicant for the post of Pharmacist and suggested that the case of Behera may be considered in future if he becomes an applicant for the post of Pharmacist and qualifies as per Rule. Thereafter, the ADM, Angul, on his own, enquired into the matter on 06.04.2010 and sent a report to the State Government stating the appointments made to the candidates stood at Sl. Nos.5, 7, 8, 9, 10 and 11 are irregular and appointment Orders issued by the CDMO, Angul, to the six candidates, as contractual Pharmacists, was without any authority of Government and suggested that the six candidates, being contractual employees, may be terminated from service, as their appointment was made without any authority. Thereafter, on 03.07.2010, Opposite Party No.1 directed the Opposite

Party No.3 to take appropriate action against the persons, who were responsible for such irregularities. Subsequently, on 03.05.2010, the CDMO, Angul, cancelled the appointment of the present Petitioners due to irregular appointment w.e.f. the date of service of the Order.

2.2 Being aggrieved by the Order of cancellation of appointment dated 03.05.2010, the Petitioners approached the Tribunal by filing respective Original Applications and all the Original Applications were heard together and disposed of by a common judgment.

3. Learned Counsel appearing for the Petitioners, in respective Writ Petitions, unequivocally contended that the Petitioners have not committed any mistake. Rather, as because their names were reflected in the merit list, they have been appointed as per the requirement of the Government and, as such, they are continuing by virtue of the Interim Order passed by this Court. In the event their appointments are cancelled, they may be out of

employment and the period of service they spent for the Government, will be rendered fruitless.

3.1 It is also admitted that pursuant to the advertisement issued, three posts were advertised, but six posts were filled up and the Petitioners are rest of the candidates in the merit list and on the basis of requirement of the State, they were given appointment. Thereby, if any illegality or irregularity was committed by the State, for that the Petitioners should not be penalized, rather they should be allowed to continue as it is. It is contended that while considering the case of the Petitioners, the Tribunal had come to a definite finding that since the appointment of the Petitioners was in excess of the post advertised, the cancellation is justified, and accordingly, dismissed the Original Applications. Hence, this application.

3.2 Learned Counsel for the Petitioners admitting the positions in which the Petitioners were appointed is in excess of the post advertised, contended that since they

have served for more than 10 years continuously and, thereby, a right has been accrued in their favour. In the event their appointments are cancelled, they may lose their livelihood.

4. Per contra, Mr. S.N. Nayak, learned Addl. Standing Counsel, contended that since advertisement was issued for three posts and all the three candidates have already been appointed, the appointment of rest of the persons has been cancelled and, thereby, no illegality or irregularity has been committed by the Authority in cancelling the appointments made in favour of the present Petitioners, those who have been appointed irregularly by the concerned Authority.

5. This Court heard Mr. D.K. Panda, learned Counsel appearing for Petitioner in W.P.(C) No. 1245 of 2017; Mr. J.K. Rath, learned Senior Counsel appearing along with Mr. A.K. Saa, learned Counsel for the Petitioners in W.P.(C) Nos. 893, 895 and 896 of 2017; Mr. P.K. Mohapatra, learned Counsel appearing for the

Petitioner in W.P.(C) No. 1080 of 2017; and Mr. S.N. Nayak, learned Addl. Standing Counsel appearing for the State-Opposite Parties by virtual mode and perused the records. Pleadings having been exchanged between the parties and the matter being of the year 2017, with the consent of learned counsel for the parties, this Writ Petition is being disposed of finally at the stage of admission.

6. Undisputedly, the Petitioners were appointed in excess of the post advertised on the requirement of the State Authority. Their appointments having been cancelled, the same was challenged before the Tribunal. The Tribunal, while considering the case of the present Petitioners, formulated two questions, namely, (i) whether the appointments of the Petitioners are illegal being in excess of the post advertised? and (ii) whether cancellation of the appointment Orders without giving due opportunity, is violative of the Principles of Natural Justice and liable to be quashed? Ultimately, considering the judgment of the

apex Court in ***State of Bihar v. Secretariat Assistance Successful Examinees Union***, AIR (1994) SC 736 and ***State of U.P. v. Rajkumar Sharma***, (2006) SCC (L&S) 565, the Tribunal came to a definite finding that on the basis of the principles laid down by the apex Court, no appointment can be made over and above the posts advertised and as the Petitioners admittedly have been appointed against the posts, which were not advertised, their appointment can be termed as backdoor entry and no illegality has been committed, when appointments have been cancelled, and accordingly the Tribunal answered the question No.(i). So far as answering question No.2, the Tribunal, referred to the judgment in ***Dharampal Satyapal Ltd. v. Deputy Commissioner of Central Excise Gauhati***, (2015) 8 SCC 519, where the apex Court held that even if notice was issued, if there is no chance of change in the factual aspect, merely on the ground of not following the Principles of Natural Justice, the Order cannot be said to be illegal. The Tribunal has also made

reference to the case of ***Escorts Farm Limited v. Commissioner, Kumaon Division, Nainital U.P. & others***, (2004) SCC 281, wherein the apex Court held that it would be of no use, if it amounts to completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. By holding so, the Tribunal answered issue No.(ii), which goes against the Petitioner and accordingly, the Tribunal dismissed the Original Applications filed by the Petitioners.

7. In the above view of the matter, we do not find any merit in these Writ Petitions, which are accordingly dismissed. Consequentially, the Order of the Tribunal is upheld. However, there shall be no order to costs.

8. Before parting with the case, we observe that since the Petitioners have rendered services for more than 12 years by virtue of the Interim Orders passed by this Court and as per the requirement on the part of the State Authority they have been allowed to work for so many years, for any illegality or irregularity committed by the

State Authority, the Petitioners should not have been put to difficulties. As such, now at this stage, after lapse of 12 years, if appointment of the Petitioners is cancelled, they will lose their livelihood and their economic condition will be deteriorated, which will cause irreparable rejudice to them. Therefore, the State being a Model Employer, should take a pragmatic view in the issue and reconsider the case of the Petitioners by adjusting them in any post of Pharmacist. The entire exercise shall be completed within a period of four weeks from the date of production/communication of certified copy of this order.

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DR. B.R. SARANGI,
JUDGE

S.K. MISHRA, J. I agree.

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S. K. MISHRA,
JUDGE

Orissa High Court, Cuttack
The 27th July, 2022, Ashok/Padma/GDS