

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.6101 of 2022

Satyabrata Behera

..... Petitioner
Mr. Gyanaranjan Sethi, Advocate

-versus-

State of Odisha and others

..... Opposite Parties
Mr. YSP Babu, AGA for State

CORAM:
JUSTICE A.K.MOHAPATRA

ORDER
25.04.2022

Order No.

04. 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. Heard learned counsel for the Petitioner and learned counsel for the State.
3. The writ petition involves the following relief:
- “It is therefore prayed that the Hon’ble Court may graciously be pleased to admit the case, call for the records and after hearing both the parties pass the following reliefs:
- i) To quash the order dtd.24.1.2022 under Annexure-9.
 - ii) To direct the Opposite Parties to sanction/release the remuneration/salary of the petitioner from February, 2021 to onwards.
 - iii) To direct the Opposite Parties to release the current salary/remuneration of the petitioner.
 - iv) To Direct the Opposite Parties to release the arrear salary of the petitioner.

- v) And pass such other order/orders as maybe deemed fit and proper for the interest of justice.

And for this act of kindness, the petitioner as in duty bound shall ever pray.”

4. The case of the Petitioner is that he was appointed as a Senior Stenographer in the office of Public Prosecutor, Balasore, on contractual basis upon advertisement published in the year 1997. Initially Petitioner along with others were appointed for a period of 360 days as per the terms of the advertisement. Thereafter, it was extended for another one year and further such reengagement continued till 27.12.2019, as the engagement was being extended from time to time. As it appears from Annexure-4 series, at Page-20, pursuant to direction of the Odisha Administrative Tribunal, Bhubaneswar in O.A. No.1097 of 2006 along with batch of similar cases, the Government in Home Department have been pleased to set aside the portion of conditions, i.e. *“a person recruited shall not be given more than 3 successive contracts”* appearing in the first sentence of Paragraph No.2 of Home Department order No.46258 dated 28.10.2002 and the other terms and conditions in the said letter remained unchanged. It is stated that Petitioner was allowed to continue to work as Senior Stenographer in the office of Public Prosecutor, Balasore. The letter of engagement of the Petitioner under Annexure-2 issued by the Public Prosecutor on 31.03.2003 reveals that Petitioner was engaged as Senior Stenographer on contractual basis for a temporary period of one year w.e.f. 2.4.2003 to 1.4.2004 with a consolidated remuneration of Rs.5,000/- only per month. Thereafter, his service was continued from time to time till the year 2019. On 27.12.2019, the Public Prosecutor, Balasore, wrote a letter to the Director of Public Prosecution, Odisha, Bhubaneswar for approval of contractual appointment of Sri Satyabrata Behera, Senior Stenographer working in his office. As per the said request, Petitioner’s appointment was further extended for a period of 360

days. Further on 8.2.2021 (Annexure-5), the Public Prosecutor, I/C, Balasore wrote a letter to the Director of Public Prosecution, Odisha, Bhubaneswar, for approval of contractual appointment of the Petitioner, wherein he has categorically stated that the present Petitioner has been working in the Office of Public Prosecutor, Balasore, as Senior Stenographer w.e.f. 10.03.2003, who has been continued as such till date. Pursuant to letter dated 8.2.2021 (Annexure-5), the service of Petitioner was again renewed for a period of 360 days with consolidated pay of Rs.16,880/- per month.

5. Learned counsel for the Petitioner contended that the Petitioner was working as Senior Stenographer since the year 2003, i.e. the date of his initial appointment till date. His appointment was renewed from time to time. Since Petitioner was not getting the remuneration as per the order under Annexure-6, the present Petitioner filed a representation dated 6.9.2021 (Annexure-8) claiming his arrear salary from 2021 onwards as Senior Stenographer, i.e. in terms of letter dated 8.2.2021 wherein it has been specifically mentioned that Petitioner has been appointed on contractual basis for a period of 360 days with consolidated remuneration of Rs.16,880/- per month as Senior Stenographer. The said representation of the Petitioner has been rejected by the Director, Public Prosecution, Odisha, Bhubaneswar dated 24.1.2022 (Annexure-9), stating therein that the Petitioner was not working as Senior Stenographer. Therefore, he is not entitled for remuneration for the period attached to the post of Senior Stenographer. Challenging the rejection order dated 24.1.2022, the petitioner has filed the present writ petition.

6. It is further contended by learned counsel for the Petitioner that the ground which was raised to the effect that the In-charge, Public Prosecutor, Balasore to engage Senior Stenographer in the office of Public Prosecutor, Balasore by the Opposite Parties, learned counsel for the Petitioner relied upon the letter of the Home Department No.21383

dated 25.5.2021 (Annexure-10), whereunder, it has been categorically mentioned that the Public Prosecutor, I/C, Balasore is allowed to engage Senior Stenographer for his office as per the previous terms and conditions. In such view of the matter, the ground taken above is unsustainable in law.

7. Learned counsel for the State, on the other hand, submits that the Petitioner was engaged on contractual basis. After conclusion of his term, the Petitioner was being given a break for 5 to 7 days. Thereafter, he was again being engaged in service. It is further submitted that Petitioner has been paid the remuneration due to him as such there is no arrear outstanding which is payable to him. In such view of the matter, learned counsel for the State submits that the writ petition is devoid of any merit and the same may be dismissed.

8. Considering the rival contentions and taking into consideration the materials available on record, this Court is of the considered view that Petitioner was initially appointed as Senior Stenographer which fact is evident from letter under Annexure-2. Further, the Public Prosecutor I/C, Balasore was directed by the Director, Public Prosecution to engage Senior Stenographer on contractual basis and his service will be extended from time to time. On a perusal of the various communications vide letters filed before this Court clearly indicting that the Petitioner was initially appointed in the year 2003 and continuing as Senior Stenographer in the office of Public Prosecutor, Balasore till date with some artificial breaks at the end of each contractual period of one year. Further the communications establishes that the Petitioner is continuing in the post of Senior Stenographer. In such view of the matter, this Court is of the considered opinion that Petitioner was in fact continuing on contractual basis as Senior Stenographer. Therefore he is entitled to get the benefits attached to the said post in view of the terms and conditions contained in the letter of engagement. Further learned counsel for the Petitioner relied

upon the judgment of the Supreme Court in the case of ***Man Singh vs. The State of Uttar Pradesh through Secretary & Ors. in Civil Appeal No(s).7841 of 2011, decided on 31.03.2022***, wherein the Hon'ble Supreme Court has held that even if the appointment was irregular, the appellant had discharged the duties and in lieu of duties, he had to be paid. The State cannot take any work from any employee without payment of any salary. Considering the aforesaid submission and keeping in view the law laid down by the Hon'ble Supreme Court cited supra, the order of the Director, Public Prosecution, Odisha, under Annexure-9 is hereby set aside and the matter is remanded back to the Director, Public Prosecution, Odisha, Opposite Party No.2 to reconsider the representation of the Petitioner in the light of the analysis made hereinabove and to take a decision in the matter within a period of six weeks from today by passing a speaking and reasoned order. The decision so taken be communicated to the Petitioner within a period of two weeks thereafter.

9. With the aforesaid observation, the writ petition stands disposed of.
10. Issue urgent certified copy as per rules.

(A.K. Mohapatra)
Judge