

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P. (C) No. 11966 OF 2017

Girish Chandra Biswal

..... Petitioner
Mr. Nira Sundar Panda, Advocate

-versus-

State of Orissa & Others

..... Opposite Parties
Mr. J.P. Pattnaik, GA.

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE V.NARASINGH

ORDER
11.07.2022

Order No.

33.

This matter is taken up through hybrid mode.

2. Heard Mr. N.S. Panda, learned counsel for the petitioner and Mr. J.P. Pattnaik, learned Government Advocate appearing for the State-Opposite Parties.

3. The petitioner has filed this writ petition seeking to quash the order dated 16.03.2017 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 914 (C) of 2013 under Annexure-20.

4. Mr. N.S. Panda, learned counsel for the petitioner contended that the petitioner, who is working as a DLR, filed O.A. No. 914(C) of 2013 before the tribunal seeking direction to the opposite parties to bring over him to the work charged establishment from the date his juniors have been brought over,

but the same was denied by the tribunal, vide impugned order dated 16.03.2017, without considering the factual matrix in proper perspective and, as such, the order so passed by the tribunal cannot sustain in the eye of law.

5. Mr. J.P. Pattnaik, learned Government Advocate contended that since the name of the petitioner, who was working on DLR basis, was not recommended for adjustment in the work charged establishment, his case has not been considered by the tribunal. Consequentially, the order so passed by the tribunal is well justified, which does not require any interference by this Court.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that the petitioner was appointed as DLR with effect from 01.03.1993. Though in the meantime he has completed more than 10 years of service and fulfilled all the eligibility criteria, as per the Resolution dated 15.05.1997 of the Government in Finance Department, yet he has not been regularized. Engagement of the petitioner was reported by opposite party no.5 to opposite party no.4 vide letters under Annexures-1 and 3. The Government, vide letter dated 27.05.2000, asked the Chief Engineer and also the S.E. (ND), Keonjhar to examine the cases of NMR/DLR/Job Contract Workers, who had been engaged prior to 12.04.1993, and also of those employees, who were engaged through the contractor and have completed 10 years of service, to regularize their services, but no action has been taken. Therefore, the petitioner approached the tribunal by filing O.A. No. 2409 of 2007, which was disposed of vide order dated 16.11.2010 with the direction to the opposite

parties consider the claim of the petitioner. As the said order was not complied with, the petitioner filed contempt petition. While matter stood thus, the Government, vide letter dated 06.01.2011 directed for absorption of 2605 NMR/DLRs employees engaged prior to 12.04.1993 under work-charged establishment. Though the petitioner fulfilled all the criteria, but his case was not considered. The case of the petitioner is that DLR/NMR workers, who were initially appointed through contractor, were brought over to the work-charged establishment, but his case was not considered by the authority. Therefore, he approached the tribunal by filing O.A. No. 914 (C) of 2013. Pursuant to notice, the opposite parties filed counter affidavit stating inter alia that the petitioner is not entitled to be brought over to the regular establishment and, as such, the letters dated 01.03.1993 and 02.01.1997 are not genuine documents. It was also contended that those documents have been manipulated in connivance with the then Assistant Engineer. It was further stated that in O.A.No. 2409 of 2007, the tribunal had earlier rejected the selfsame claim of the petitioner, for which the grievance of the petitioner is not entertainable any further. As such, the petitioner was never engaged prior to 12.04.1993 and that the gradation list was also not an authenticated document, as it was not signed by the concerned Jr. Engineer or Assistant Engineer. It was further stated that the name of the petitioner does not appear in the gradation list, which was sent by opposite party no.5 to opposite party no.4, thereby, the petitioner is not entitled to the benefit of Government resolution, as referred to above. Thereby, his claim for regularization in service does not arise. The tribunal, after due

adjudication, has come to a conclusion in paragraph-7 of its order to the following effect:

“7. It may be noted that the applicant has mainly relied on the documents vide Annexures-1 and 2 to show that he has been engaged prior to 12.04.1993. The Executive Engineer, Rural Work Division is the competent authority to say as to the genuineness of those documents. In the counter, he has stated that those documents were never issued by the Assistant Engineer, which is clear from the issue number which has been manipulated. There is no provision for issuance of such certificate by the Assistant Engineer. The information submitted vide Annexure- 2 have also not been signed by the concerned Executive Engineer. The applicant has relied on another document which is a gradation list, where the name of the applicant appears at Srl. No. 98. The genuine of the documents is very much doubtful, as below Srl. No. 98, Srl. No. 90 has been mentioned. The document has not been authenticated by any officer to accept it as a genuine document or to show that the gradation list has been published by the competent authority. Since the documents vide Annexures 1, 2 and 4 are not genuine documents and relying on such documents, the applicant has claimed benefit of the 1997 resolution of the Finance Department, such action of the applicant amounts to fraud. Law is well settled in the case of Debendra Kumar Vrs. State of Uttaranchal reported in (2014) 1 SCC (L & S) 270 where it is observed that when an applicant gets an order by misrepresenting the facts or by playing fraud upon the competent authority such an order can not be sustained in the eye of law. “Fraud avoids all judicial acts, ecclesiastical or temporal.”

7. As it appears, the tribunal has come to a definite findings, on the basis of the materials available on record relating to the claim of the petitioner being engaged prior to 12.04.1993. The Executive Engineer, Rural Works Division is the competent authority to say as to the genuineness of the documents at

Annexures-1 and 2. Since there is dispute with regard to genuineness of the documents at Annexures-1 and 2, it is not practicable on the part of this Court to adjudicate the issue involved in this case in exercise of the power conferred under writ jurisdiction. More so, an affidavit has been filed by opposite parties no.1, 2 and 4 on 13.03.2018, which is annexed as Flag-C to this writ petition, paragraphs-3 and 4 of which read thus:

“3. That, it may be seen from the contents of the forwarding letter No. 188 dtd. 20.04.1998 issued by the Asst. Engineer, R.W. Sub-Divn. Betnoti enclosed as Annexure-4 of the writ petition that the concerned workers have signed in Col-10 of the gradation list duly verified and signed by the concerned JE and the Assistant Engineer himself. It may be closely seen and verified that the gradation list attached to said Annexures-4 has neither been verified by the concerned JE/Assistant Engineer, R.W. Sub-Divn. Betnoti nor signed by the concerned workers including the petitioner. It, thus, appears from the said record that the gradation list attached to Annexure-4 of the writ petition is not the authentic list of 16 pages that was submitted by the Asst. Engineer, R.W. Sub-Division Betnoti letter No.188 dtd. 20.04.1998. It may not be out of place to mention here that the original letter No. 188 dtd. 20.04.1998 issued by the Asst. Engineer, R.W. Sub-Divn. Betnoti has been taken away by the petitioner as disclosed from the FIR lodged by the then Asst. Engineer, R.W. Sub-Divn. Betnoti vide letter No.381 dtd. 20.05.2008. The police investigation report however says that there is no such case registered on letter No.381 dtd. 20.05.2008 dtd. 20.05.2008.

*The copy of FIR dated lodged by the then Assistant Engineer, R.W. Sub-Divn. Betnoti & copy of the Police Investigation report is enclosed herewith and marked as **Annexure-L/1 & M/1 respectively** for kind perusal of the Hon’ble Court.*

4. That the Executive Engineer, Rural Works Division, Baripada has sent letter No.755(6) dt.

7.4.1998 to A.E.E/All A.Es to submit verification report of the gradation list of NMR/DLR/Job contract workers duly signed by the concerned J.E/A.Es. The issue Register of the Executive Engineer, R.W. Division, Baripada showing issue of letter No.755(6) dtd. 7.4.1998 is enclosed herewith and marked as Annexure-N/1 for kind perusal of the Hon'ble Court."

8. In the above view of the matter, since there is dispute with regard to genuineness of the documents, which have been annexed as Annexures-1 and 2, this Court is not inclined to entertain this writ petition and, as such, declines to issue any direction to the authority to grant relief to the petitioner with regard to regularization of his service.

9. Accordingly, the writ petition merits no consideration and the same is hereby dismissed.

(Dr. B.R. SARANGI)
Judge

(V.NARASINGH)
Judge