

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 2933 of 2012

Biswajit Das

.....

Petitioner

Mr. G.R. Sethi, Advocate

Vs.

State of Orissa and others

.....

Opposite Parties

*Mr. S. Rath, ASC &
Mr. B.P. Tripathy, Advocate*

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE SANJAY KUMAR MISHRA

ORDER

23.06.2022

Order No.

09.

This matter is taken up through hybrid mode.

2. Heard Mr. G.R. Sethi, learned counsel for the petitioner, Mr. S. Rath, learned Additional Standing Counsel for the State and Mr. B.P. Tripathy, learned counsel for opposite party no.4.

3. The petitioner has filed this writ petition seeking to quash the order dated 29.11.2011 passed by opposite party no.1 in directing the opposite party no.2 to cancel the order of appointment of the petitioner. The petitioner has further prayed for quashing of the order dated 23.12.2011 passed by the Orissa Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 4269 (C) of 2011, by which the tribunal permitted the petitioner to withdraw the writ petition, however, observed that if the petitioner has already discharged his duty as against the post of Statistical Assistant from the date of his appointment till the date of termination of his service, he is entitled to get the salary as due and admissible to him.

4. Mr. Sethi, learned counsel for the petitioner contended that pursuant to the interim order passed by this Court on 11.12.2012, the

petitioner has discharged the duties and responsibilities in the post of Block Programme Organizer and in the event of dismissal of the writ petition, it may so happen that he may be placed out of employment.

5. Mr. B.P. Tripathy, learned counsel for opposite party no.4 brings to the notice of this Court that the petitioner has availed the benefit without following due procedure. The petitioner was initially engaged as ZSS Accountant, but thereafter he has been absorbed on regular basis as Statistical Assistant without following due procedure, which has been objected to by the State. A letter being issued by the State to the ADMO, the services of the petitioner was terminated, but since he has been discharging the duties as Block Programme Organizer, he was allowed to continue against the said post by virtue of the interim order passed by this court and as such, he is continuing in service.

6. Having heard learned counsel for the parties and after going through the records, on perusal of the order dated 23.12.2011, it appears that the petitioner has withdrawn the Original Application bearing O.A. No. 4269 (C) of 2011 and while withdrawing the Original Application, the tribunal observed that if the petitioner has already discharged his duty as against the post of Statistical Assistant from the date of his appointment till the date of termination of his service, he is entitled to get the salary. After termination, the petitioner was allowed to continue as Block Programme Organizer and is discharging his duty by virtue of the interim order passed by this Court.

7. In that view of the matter and since in the meantime 20 years have been passed, this Court of the opinion that it is not equitable to

pass an order of disengagement. If the post is available and the petitioner is discharging the duty, let the petitioner continue till the programme exists.

8. In that view of the matter, this Court is not inclined to interfere with the impugned order passed by the tribunal. However, in the peculiar facts and circumstances of the case, disposes of the writ petition with the observation made in the foregoing paragraphs.

(DR. B.R. SARANGI)
JUDGE

Arun/Banita

(S.K. MISHRA)
JUDGE

