

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.7363 of 2013

Anil Kumar Rana and others

.... Petitioners
Mr. K. Rath, Advocate

-Versus-

State of Orissa and others

.... Opposite Parties
Mr. Ishwar Mohanty, ASC

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K.PATTANAIAK**

**ORDER
21.06.2022**

Order No.

R.K.Pattanaik, J

04. 1. Instant writ petition under Article(s) 226 and 227 of the Constitution of India, 1950 is at the behest of the Petitioners questioning the legality and judicial propriety of the impugned decision and consequential action of the Principal, ITI, Balasore (O.P.No.4) vide Annexure-5 and for having changed the nomenclature of the post held by them as Assistant Training Officers (ATOs) to Part Time Guest Instructors (PTGIs) and further instructing to release their remuneration on hourly basis as unilateral, arbitrary and malafide and therefore, to quash it and also to direct the Opposite Parties to grant salary @ Rs.9,300/- per month as per the ORSP Rules, 2008 with consequential benefits.

2. It is claimed by the Petitioners that the Opposite Parties particularly O.P.No.4 changed the nomenclature of the post without any prior notice to them and took steps to grant remuneration on hourly basis payable to PTGIs. It is further claimed that in order to frustrate the order of status quo passed in W.P.(C) No.22267 of 2012 and future prospects of the Petitioners, such decision was taken by the Opposite Parties notwithstanding the fact that the Petitioners were engaged on contractual basis in different cadres of Industrial Training Institution, Balasore (ITI) pursuant to Annexure-1 series. It is apprised to the Court that the Petitioners were engaged under a scheme for upgradation of ITIs in the State and in that regard, necessary provision was made to appoint contractual faculty and accordingly, the Petitioners were engaged to meet the immediate necessity with a consolidated remuneration of Rs.4750/- as per the ORSP Rules, 1998 but even after the introduction of 6th Pay Commission for adopting an uniform scale of pay towards monthly remuneration payable with effect from 1st September, 2009, it was not allowed in their favour despite the guidelines issued under the centrally sponsored scheme to ensure excellence of the ITIs and notifications issued from time to time by the State Government in that regard.

3. The Petitioners have highlighted upon the fact by pleading that in the year 2010, by order No.13850 dated 10th August, 2010 of the Director, Technical Education & Training

(O.P.No.2), decision was taken to appoint contractual employees against the posts held by them which was challenged in W.P.(C) Nos.2309 and 2856 of 2011 which were disposed of with a direction to the authority to accept their applications condoning age and giving weightage on past experience by referring to Annexure-3. Further pleaded that a selection by fresh advertisement was also challenged in W.P.(C) No.22267 of 2012, wherein, as an interim measure, order of status quo was passed in favour of the Petitioners to retain them as ATOs. Again pleaded that one more writ petition in W.P.(C) No.22264 of 2012 was filed by the Petitioners for a direction to grant current and arrear salary with effect from 1st September, 2012 @ Rs.9,300/- per month at par with ORSP Rules, 2008 instead of Rs.4,750/- under ORSP Rules, 1998 and in that connection, W.P.(C) No.22264 of 2012 was filed which was disposed of with a direction to the Commissioner-Cum-Secretary, Employment, Technical Education & Training Department, Bhubaneswar (O.P.No.1) to examine their demand submitted through a representation. It is also apprised to the Court that the Petitioners had filed CONTC No.1184 of 2015 later to the disposal of W.P.(C) Nos.6888 and 7363 of 2013 for having not complied the orders dated 23rd April, 2013 passed therein and not granting regular salary indicating the change in the nomenclature from ATO to PTGI which however was dropped by order dated 30th November, 2015 for finding no justification to continue as the

direction for payment of salary to them being interim in nature. As against the above background of facts, the Petitioners approached this Court seeking the reliefs, such as, to quash the decision of O.P.No.4 dated 13th March, 2013.

4. Heard Mr. K. Rath, learned counsel for the Petitioners and Mr. Ishwar Mohanty, learned ASC for the Opposite Parties.

5. Mr. Rath, learned counsel in support of the contention of the Petitioners submitted that OP No.4 without any notice unilaterally and arbitrarily changed the nomenclature from ATO to PTGI which is outrightly illegal purpose being to defeat their claim of regularization in future on completion of six years of service as against the facts which have been pleaded. It is also contended by Mr. Rath that the Petitioners having been appointed as ATOs under Annexure-1 series, OP No.4 grossly erred in changing the nomenclature of the post to PTGI with a proposal for sanction of remuneration on hourly basis under Annexure-5. With the above submission, Mr. Rath contends that such a decision of OP No.4 being manifestly illegal cannot be sustained and therefore, deserves to be interfered with.

6. Mr. Mohanty, learned ASC, on the other hand, would submit that the appointment of the Petitioners was contractual which is evident from Annexure-1 series and that as per Clause-2 and 6 thereof, their engagement could be terminated at any time without assigning reason and they shall have no

right or claim for regular appointment to any regular post and under the above circumstances, when the contract is such, the decision of OP No.4 cannot be termed as illegal. It is further contended that the appointment to the post of ATO can only be made by a regular advertisement following due process of recruitment which cannot be bypassed and while contending so, Mr. Mohanty made a mention of the decision of the Supreme Court in *Secretary, State of Karnataka and another v. Umadevi (3) and others (2006) 4 SCC 1*. Thus, the contention of Mr. Mohanty is that the decision of OP No.4 changing nomenclature from ATO to PTGI calls for no interference and as a necessary corollary, no need for a direction vis-à-vis the consequential reliefs, as has been prayed for by the Petitioners.

7. Admittedly, the engagement of the Petitioners under Annexure-1 series to be contractual. As per the contract, the appointment of the Petitioners has been given effect to with conditions that the engagement may be terminated at any point of time without any reason being assigned and they shall have no right to claim for regular appointment either. The Petitioners were engaged as contractual ATOs in the year 2007 with the above and other conditions indicated in Annexure-1 series. No doubt, the Petitioners have been allowed to hold the posts of ATOs by virtue of the Court's order in W.P.(C) No.22267 of 2012 and are continuing till date. The real apprehension expressed by the Petitioners is that the

nomenclature was changed with an oblique motive so as to disengage them and defeat their claim of regularization on completion of six years of service which is responded back by Mr. Mohanty contending that the appointments have been contractual and any such regularization as against regular posts of ATOs shall have to be accomplished by a regular process of recruitment and therefore, the decision changing the nomenclature does not have any effect at all.

8. In *Umadevi* case (supra), the Apex Court elaborately discussed different aspects of public employment vis-a-vis absorption/ regularization or permanent continuance of temporary/contractual/ad hoc employees dehors constitutional scheme and permissible mode of recruitment. Thereafter, the Supreme Court in *State of Karnataka and others v. M.L. Kesari and others* (2010) 9 SCC 247 had the occasion to elucidate the position of law as spelt out in *Umadevi* ibid. In essence, the mode of recruitment and regularization in service vis-à-vis the rights of the contractual employees were discussed and explained by the Supreme Court in the aforesaid decisions observing that appointments shall have to be inconsonance with the scheme of public employment with reference to the rights envisaged in Articles(s) 14 and 16 of the Constitution of India, 1950. Since the present lis is confined to a limited relief, instead of venturing into the aspects of Constitutional requirements in public employment and without expressing anything final with regards to the claim of the

Petitioners vis-à-vis regularization of services which may have to be examined and dealt with in any other appropriate proceeding, the Court, in the peculiar facts and circumstances of the case, is not inclined to interfere with the decision of OP No.4 in changing the nomenclature from ATO to PTGI.

9. Accordingly, it is ordered.

10. In the result, the writ petition stands dismissed.



(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice