

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No. 11522 of 2012**

***Chakradhara Patnaik***

.....

***Petitioner***

*Mr. S. Mohanty, Advocate*

Vs.

***State of Orissa & Others***

.....

***Opposite parties***

*Mr. A.K. Mishra, AGA.*

**CORAM:**

**DR. JUSTICE B.R. SARANGI**

**MISS JUSTICE SAVITRI RATHO**

**ORDER**

**21.03.2022**

**Order No.**

05.

This matter is taken up through hybrid mode.

2. Heard Mr. S. Mohanty, learned counsel for the petitioner and Mr. A.K. Mishra, learned Addl. Government Advocate for the State.

3. The petitioner has filed this writ petition seeking to quash the order dated 08.09.2003 under Annexure-21, by which the petitioner has been disengaged from the post of Junior Clerk, and subsequent order dated 31.08.2007 passed by the Commissioner-cum-Secretary, Revenue and D.M. Deptt. vide Annexure-20 and the consequential order dated 16.08.2011 passed by the Orissa Administrative Tribunal, Bhubaneswar in O.A. No.1507 of 2007 under Anneuxre-14; by which the claim of the petitioner has been rejected.

4. The petitioner was initially engaged as copyist in the year 1995 and was appointed as Junior Clerk in the year 1999 in the office of opposite party no.3. But his services were terminated, vide letter dated 08.09.2003, by the authority. Therefore, he approached the tribunal by filing the original

application, which was disposed of by the tribunal, vide order dated 16.08.2011, by confirming the order of disengagement passed by the authority, as the appointment of the petitioner was de hors the rules.

5. Mr. S. Mohanty, learned counsel for the petitioner contended that the order impugned disengaging the petitioner from the service is without jurisdiction, as the same was passed by the District Registrar, Koraput, by order of the Collector, Koraput, which is contrary to Rule 7 of the Orissa Ministerial Services (Method of Recruitment and Conditions of Service of Clerks in the District Registration Offices) Rules, 1975. It is further contended that the Commissioner-cum-Secretary, Revenue and DM Department has rejected the petition filed by the petitioner for regularization, pursuant to the order dated 11.05.2007 passed by the tribunal in O.A. No.582 of 2007, relying upon the judgment of the apex Court in SLP(C) No. 16974 of 2006 (*State of Orissa Vrs. Prasanna Kumar Sahu*), stating that no regularization of service is permissible in exercise of the statutory power conferred under Article 162 of the Constitution if the appointments have been made in contradiction of the statutory rules. Against the said order the petitioner approached the tribunal by filing O.A. No. 1507 of 2007, wherein the tribunal taking note of the fact, that the petitioner was appointed as a copyist in the year 1995 and on completion of three years he was appointed as a Junior Clerk on ad hoc basis but was subsequently disengaged from service, observed that the disengagement of the petitioner, having been made because of the fact that he was not appointed in accordance with the rules, he has no legal right

to claim regularization of services.

6. The service of the petitioner is regulated by the Rules called “Orissa Ministerial Services (Method of Recruitment and Conditions of Service of Clerks in the District Registration Offices) Rules, 1975. Rule 5 thereof, according to which selection has to be made, reads as follows:-

*“5. Selection – [(1) A Copyist engaged in a registration district shall be eligible to be considered for selection to the post of Junior Clerk; provided-*

*(a) he applies to the District Registrar of the said district by the date specified by the letter in a general notice inviting such applications;*

*(b) on the first day of January of the year to which the recruitment relates-*

*(i) he has at least three years of experience as a Copyist if he has passed the High School Certificate Examination or an examination equivalent thereto ; or*

*(ii) he has at least ten years of experience as a copyist if he has not passed the High School Certificate Examination or an examination equivalent thereto;*

*(c) his overall performance as a Copyist as reflected, inter alia, in the outturn achieved, the quality of work rendered and the conduct and zeal evinced is considered satisfactory;*

*(d) he is over eighteen years and below forty-five years of age on the first day of January of the year of which the recruitment relates;*

*(e) he is of good character;*

*(f) he is of sound health;*

*(g) he has not more than one spouse living; and*

*(h) he has good handwriting and he qualifies in such written or oral tests as the Recruitment Committee may, at its discretion, conduct.]*

7. From the materials available record, it appears that the petitioner was appointed in the year 1995 and on completion of three years of service, as he had required qualification, such as, passing of High School Certificate examination, was eligible for appointment as Junior Clerk. But fact remains, selection to the post of Junior Clerk has to be made in consonance of Rule 5(3) i.e. by the Recruitment Committee and, as such, nothing has been placed on record that the petitioner was appointed as junior clerk-cum-copyist by the decision taken by the Recruitment Committee. Since the appointment of the petitioner was made de hors the Rules, the order impugned has been passed by the tribunal, from which it is evident that the tribunal, while passing such order, has taken note of all aspects of the matter. For better appreciation, the relevant part of the order is extracted hereunder:-

*“No document has been filed by the applicant showing that his appointed to the post of ad hoc junior clerk in the office of the Registrar, has been done in accordance with the rules in the field or that the usual procedure of recruitment has been adhered to. So he does not have any legal right to claim his continuance in the post. His such appointment is dehors of Rules, thus not sustainable.*

*In the circumstances we cannot interfere with the order of disengagement or termination of the applicant from the post of ad hoc junior clerk. The applicant's claim that he should have been regularized in the post, does not contain any merit. So we do not find any reason to interfere with Annexure-14 or 15.*

*Hence, it is observed that the authority while going to make any appointment to the post*

*of junior clerk in accordance with the Rules, the case of the applicant may be considered as per the said rules giving due weightage to his past experience.”*

8. In the above view of the matter, this Court does not find any illegality or irregularity committed by the tribunal while passing the order impugned, so as to warrant interference with the same. Accordingly, the writ petition merits no consideration and the same is hereby dismissed.

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(**DR. B.R. SARANGI**)  
**JUDGE**

.....  
(**SAVITRI RATHO**)  
**JUDGE**

*Ashok /Sukanta*

