

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.12688 of 2013

Damodar Sahu & Others

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Petitioners
Mr. S.K. Dalei, Adv.

-Versus-

State of Odisha & Another

.....

Opp. Parties
Mr. D. Nayak, AGA

CORAM:
JUSTICE S. TALAPATRA
JUSTICE SAVITRI RATHO
ORDER
16.12.2022

Order No.

- 07.
1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
 2. Heard Mr. S.K. Dalei, learned counsel appearing for the petitioners as well as Mr. D. Nayak, learned Addl. Government Advocate appearing for the Opposite Parties.
 3. Admittedly, the petitioners are Gram Rozgar Sevaks (GRS) under the scheme of Mahatma Gandhi National Rural Employment Guarantee Act, in short MGNREGA. There is no dispute that GRSs are appointed purely on contractual basis for implementation of the said scheme.

4. Department of Rural Development, Government of India by their Operational Guidelines, 2013 (4th Edition) has clearly stipulated that Gram Rozgar Seveks (GRS) will assist the Gram Panchayat (GP) in executing MGNREGA works at GP level. It has further stipulated that GRS should be engaged exclusively ***“For MGNREGA and shall not be assigned any other work.”*** For the further guidance, it has been observed that the function of the GRS and the Panchayat Secretary should be distinctly outlined. Even though the said programme is a Central Government Programme but its operation has been substantially assigned to the State Government through the Collector-cum-District Programme Coordinator.

5. As it is apparent from the communication dated 25.08.2006 that the State Government has adopted a policy that one multi-purpose assistant (GRS) will be engaged on contractual basis only in that gram panchayat which does not have a Gram Panchayat Secretary. It has been also observed in the said communication dated 25.08.2006, which has not been annexed with the writ petition but placed for our perusal in the course of hearing that GP will have a secretary who will perform the works of Gram Rozgar Sevak and will be responsible for proper management of account, database in the computer and to discharge the duties and responsibilities under MGNREGA. The petitioners fall in that category of employees.

6. The Government of Odisha in the Panchayati Raj Department has framed the Rules called Orissa Village Level

Workers (Recruitment and Conditions of Service) Rules, 2008. Rule 4 of the said Rules provides as follows:

“4. Recruitment of village level worker- (1) The vacancies in the post of Village Level Worker shall be filled up by means of selection from amongst the Gram Panchayat Secretaries of the District in accordance with rule 8.”

Rule 8 of the said Rules provides the eligibility criteria and procedure of filling up of vacancies. In the writ petition in hand, there is no challenge in respect of eligibility criteria and the procedure of filling up the vacancies but the challenge is against the amendment as carried out in the Principal Rules i.e. Orissa Village Level Workers (Recruitment and Conditions of Service) Rules, 2008. The said amendment has been brought into force by the notification dated 26.03.2013 as published on 08.04.2013 in the Odisha Extraordinary Gazette.

7. The following sub-Rule has been incorporated by way of substitution of Rule 4, sub-rule 2 of the Principal Rules:

“In case of non-availability of eligible Gram Panchayat Secretaries, the post remaining unfilled, shall be filled up in the following manner;

(i) seventy per cent of vacancies shall be filled up by direct recruitment in accordance with Rule 9; and

(ii) thirty per cent of the vacancies shall be filled up by way of selection from among the Gram Rojgar Sevaks (GRS).”

8. The petitioner is aggrieved by allocation of percentage for GRS in the Amendment Rules by incorporating the sub-rule 2 of Rule 4 of the said Principal Rules.

9. According to Mr. Dalei, learned counsel, the said sub-Rule has the effect of exclusion as the majority of GRS cannot be considered under 30% quota. There are large number of eligible GRSs to be considered for the post of the Village Level Workers, but the percentage as allotted is grossly inadequate.

10. Mr. D. Nayak, learned Addl. Government Advocate appearing for the State has submitted that the petitioners are all contractual workers, they cannot claim any right for appointment. But the Government as a welfare measure has opened up a window for bringing the GRS, subject to their eligibility, into the regular establishment by appointing them as Village Level Worker (VLW).

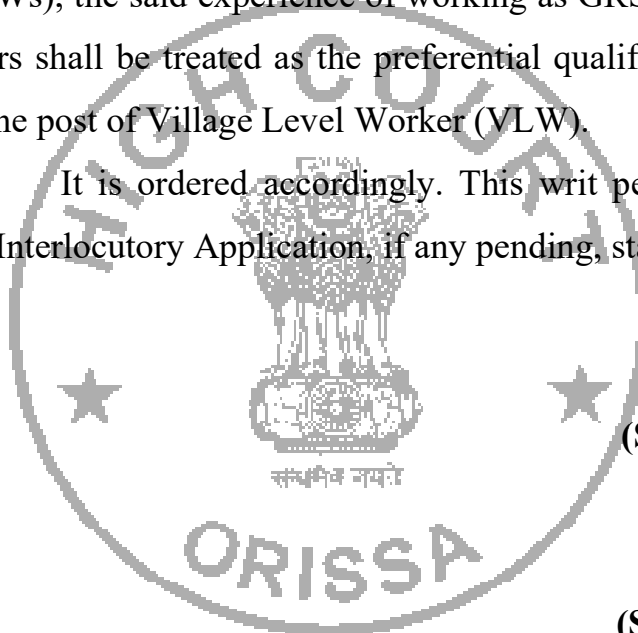
11. That apart, the rule making power of the State cannot be questioned unless it is demonstrated that those rules are untenable for being unconstitutional. Rule-making power which emanates from Proviso to article 309 of the Constitution is well-guarded from casual interference. True it is that for those who are occupying the position of GRS by contractual appointment, there is no avenue for their regularization, under any establishment, either of the Central Government or of the State Government.

12. According to us, the amendment is a progressive step taken by the State Government to ameliorate the hardship of the GRS by opening a window for regularization on earmarking 30% of the total vacancies in the cadre of the Village Level Workers. It is not an

exclusionary clause as alleged. The eligible GRS will be considered for regularization and in a phased manner, a good number of GRS have the prospect of being regularized in the post of VLWs.

13. Having noted thus, we do not find any merit in the challenge, but considering the fact that the huge number of GRS are in the waiting, we would direct the State Government to treat the experience of the GRS as distinctive qualification. While making the appointment in the direct recruitment quota (70% of the cadre of the VLWs), the said experience of working as GRS for minimum 5 (five) years shall be treated as the preferential qualification for recruitment to the post of Village Level Worker (VLW).

14. It is ordered accordingly. This writ petition stands disposed of. Interlocutory Application, if any pending, stands disposed of.



(S. Talapatra)
Judge

(Savitri Ratho)
Judge

