

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.9256 of 2022

Somanath Tripathy

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

12.09.2022

Order No

02. 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.

2. Heard Mr. P.K. Ray, learned counsel for the petitioner as well as learned Additional Government Advocate for the State.

3. The present writ application has been filed by the Petitioner with the following prayer:

“It is therefore prayed that in view of the aforesaid facts and circumstance the Hon'ble Court may be pleased to admit the writ petition, issue rule nisi calling upon the opposite parties to show cause as to:

i) Why the order No.3555 dated 07.03.2022 passed by the opposite party No.1, Annexure-9 to the writ petition, shall not be quashed.

ii) Why the petitioner shall not be regularized in the post of Junior Clerk-cum-Typist in District Consumer Disputes Redressal Commission, Jagatsinghpur from the date of his initial appointment with all consequential service benefits.

iii) Why the arrears of salary of the petitioner shall not be calculated and released in his favour within a stipulated period.

iv) Why any other order(s)/ direction(s) as this Hon'ble Court may deem fit and proper shall not be passed to secure the ends of justice.

If the Opposite Parties fail to show cause or show insufficient cause then the Hon'ble Court may be pleased to make the rule absolute and to pass appropriate writ(s)/direction(s) to quash the order No. 3555 dated

07.03.2022 passed by the Opposite Party No. 1, Annexure-9 to the writ Petition, and be further pleased to direct the Opposite party No. 1 to regularize the service of the Petitioner from the date of his initial appointment on dt.01.11.1996 in the post of Junior Clerk-cum-Typist in District Consumer Disputes Redressal Commission, Jagatsinghpur and to pay the arrears of his salaries along with all consequential service benefits from the said date of his initial appointment to secure the ends of justice.

And/or pass other Order(s) as the Hon'ble Court may deem fit and proper to secure the ends of justice.

And for this act of kindness the petitioner as in duty bound shall ever pray."

4. It is submitted by the learned counsel for the Petitioner that the present Petitioner along with several other persons were working in the Office of the President, District Consumer Redressal Forum, Jagatsinghpur. It is further submitted by the learned counsel for the Petitioner that the Petitioner is working as Jr. Clerk –cum-Typist in the District Consumer Forum, Jagatsinghpur since the year 1996. It is further submitted by the learned counsel for the Petitioner that similarly situated two other persons namely, Sitaram Bhoi and Debaraj Sahoo approached the erstwhile Orissa Administrative Tribunal for regularization of their service. In reply to the Original application the State Government took a stand that the said two persons Sitaram Bhoi and Debaraj Sahoo have not been appointed duly by following the proper recruitment procedure. However, after considering the facts of both the cases in the Tribunal was allowed and the same was confirmed by this Court in writ application. Thereafter the case of Sitaram Bhoi was carried to the Hon'ble Supreme Court of India at the instance of the State Government. It appears from the SLP preferred by the State bearing SLP No.11734 of 2021 has been dismissed by order dated 30.03.2021. Therefore, the order passed by the learned Tribunal in the case of Sitaram Bhoi has attained its finality. Learned

Additional Government Advocate submits that the order passed in the case of Sitaram Bhoi has given effect to by the State Government.

5. So far as the present petitioner is concerned, it is submitted by the learned counsel for the Petitioner that the authorities have again taken a stand that the Petitioner has not been duly selected by following a proper recruitment procedure. He further submits that the very same ground which was raised in the earlier two petitions have been negative by the Tribunal as well as by this Court and eventually confirmed by the Hon'ble Supreme Court of India. Therefore, he submits that this is no more res integra and not to grant benefit to the Petitioner as has been given to Umesh Chandra Panda, Sitaram Bhoi and Debaraj Sahoo. He further submits that the order in the case of Sitaram Bhoi has already been implemented by the Finance Department, Government of Odisha vide Memo No.16104 dated 29.09.2021 and the said Sitaram Bhoi has been regularized in service by the President, DCRF, Subarnapur and he has been extended with all the financial benefits. Umesh Chandra Panda has also been regularized in service vide order dtd.17.07.2017.

6. Learned counsel for the Petitioner draws the attention of this Court to the order passed by the Division Bench of this Court in W.P.(C) No.15996 of 2019 in the case of ***State of Odisha & another-v-Sitaram Bhoi*** and in case of ***Umesh Ch. Panda Vs. State of Odisha*** supported in in (2017) I ILR Cuttack 991. By order dated 30.03.2021 this Court while upholding the order passed by the Tribunal has also directed that the Petitioner is entitled to the service benefits for the entire period. Further it is directed that regularization be made immediately from the date of production of

certified copy of this order and the arrear dues be released as early as possible preferably within a period of three months from the date of communication of the order.

7. Learned Additional Government Advocate opposes the prayer of the Petitioner and prays for dismissal of the writ petition. However, he does not dispute the facts placed on record by the learned counsel for the Petitioner. It is further submitted by the learned counsel for the State that the Petitioner has not been recruited by a valid recruitment procedure and he has not faced the interview. Therefore, the Petitioner is not entitled to get the benefit as has been given to the two persons named hereinabove.

8. Considering the submissions made by the respective parties and upon perusal of the documents placed on record and after considering the facts and circumstances of the present case, this Court is of the considered view that the present Petitioner stands on a similar footing with Sitaram Bhoi and Debaraj Sahoo. Therefore, the Petitioner is entitled to the benefit as has been extended to other two persons and that the ratio decided in the case of Sitaram Bhoi and Debaraj Sahoo is also applicable to the facts of the present case. In such view of the matter, the present writ application is allowed and the Petitioner be extended with the similar benefit as has been given to Sitaram Bhoi pursuant to the order of the Tribunal confirmed by this Court as well as Hon'ble Supreme Court. The order passed by the Principal Secretary to Government, Food Supply & Consumer Welfare Department, Opposite party No.1 dated 02.01.2020 under Annexure-16 is hereby quashed.

9. Let the Petitioner approach with a certified copy of this order. In such eventuality the Petitioner shall be extended the benefit as has been extended to Sitaram Bhoi & Umesh Chandra

Panda within a period of three months from the date of production of certified copy of this order.

10. With the aforesaid observation, the writ application stands disposed of.

11. Issue urgent certified copy of this order as per Rules.

(Biraja Prasanna Satapathy)
Judge

Sneha

