

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.11082 of 2020

Sanjeeb Kumar Nayak *Petitioner*
Ms. Deepali Mahapatra, Advocate
-versus-
State of Odisha and others *Opposite Parties*
Mr. Y.S.P.Babu, A.G.A.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER
17.05.2022

Order No.

I.A. No.6295 of 2022

05. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioner as well as learned counsel for the State.
3. In view of the submissions made, the order dated 25.04.2022 is hereby recalled. Accordingly, the I.A. stands allowed.

(A.K. Mohapatra)
Judge

W.P.(C) No.11085 of 2020

06. 4. Heard.
5. The present writ application has been filed by the Petitioner for a direction to the Opposite parties to regularize the services of the Petitioner with all consequential service benefits.

6. The case of the Petitioner, bereft of all unnecessary details, is that the Government of Odisha has created the cadre of Public Prosecutor and Additional Public Prosecutor post in the year 1997 under the provisions of Orissa State Prosecution Service Rules, 1997. Further, to facilitate smooth functioning in the Office of the Public Prosecutors and Additional Prosecutors 17 posts of senior Stenographers and 12 posts of Junior Stenographers were also created with the concurrence of the Finance Department. The order under which the aforesaid posts were created also contains the terms and conditions for recruitment to the post of Senior as well as Junior stenographers. It is also indicated in the said order that the post is purely contractual in nature and a further stipulation was made in the said office order whereby it has been stipulated that a person shall not be given more than three consecutive contracts.

7. It is further stated in the writ Petition that to fill up the post of Senior Stenographers, an advertisement was published in the notice Board of the Office of the District Judge Office, Dhenkanal. Pursuant to the said advertisement, the present Petitioner along with many similarly situated persons had applied. Eventually the Petitioner was selected to be appointed as Senior Stenographer in the Office of the Public Prosecutor, Cuttack which is a cadre post created by the Government. Therefore, the order of appointment was issued by the Public Prosecutor, Dhenkanal vide its letter dated 30.10.2006 in favour of the Petitioner with a consolidated remuneration of Rs.5,000/- per month. Thereafter, the engagement of the Petitioner was being renewed every year.

8. The stipulation in the order issued by the Finance Department to the effect that a person can only be appointed as a Senior Stenographer or Junior Stenographer for three successive tenure of one year each was challenged by some of the Stenographers before the State

Administrative Tribunal in O.A.No.1097 of 2006 along with batch of other cases. The Orissa Administrative Tribunal vide order dated 23.08.2007 has set aside the aforesaid stipulation i.e. a person recruited shall not be given more than three successive contracts. After disposal of the aforesaid original application by the Tribunal, the Opposite Party No.1 issued a letter on 20.05.2008 to Opposite Party No.2 intimating him that the aforesaid stipulation in the Office Order is deleted. Hence there is no restriction with regard to period of engagement on contractual basis so far as Stenographers are concerned.

9. It is submitted by the learned counsel for the Petitioner that the Petitioner is continuing in service till date as a Senior Stenographer since the date of his initial appointment in the year 2003. It is further contended by her that the Opposite Party No.2 in its letter dated 20.05.2008 has requested the Opposite Party No.1 to regularize the service of the Stenographers, however, no decision has been taken by Opposite Party No.1 on such recommendation made by Opposite Party No.2.

10. It is further submitted by the learned counsel for the Petitioner that the nature of work that is being performed by the Petitioner and similarly situated other Stenographers are essential and regular in nature for smooth functioning of Public Prosecutor Office in Dhenkanal. In other words, the Stenographers are a part of the Office of the Public Prosecutor. In their absence, it is difficult to conceive of a scenario of smooth functioning of the Office of the Public Prosecutor. Therefore, the nature of work the Stenographers have been performing since the date of their initial appointment are essential for performance of the duty by the Public Prosecutors as well as Additional Public Prosecutors. The Opposite Party No.1 while creating the cadre P.P. & A.P.Ps should have also made adequate arrangement for appointment of Stenographers on regular basis by sanctioning and creating regular

stenographer post in the Office of the Public Prosecutor.

11. She further submits that unless the Public Prosecutors and Additional Public Prosecutors are provided with regular Stenographers the functioning of the courts work at the grass root level will be affected adversely. It is further submitted by her that unless the Public Prosecutor are provided with all the facilities and the services of the Stenographers dispensation of justice at the district level is likely to be affected adversely which will ultimately affects the constitutional goal of expeditious dispensation of justice to the citizens of the country.

12. Learned counsel for the Petitioner further submits that the present Petitioner along with many other similarly situated Stenographers who have been engaged in the Office of P.P and APP of Cuttack have been engaged since 2006. It is only on their satisfactory performance of their duty, their contractual services are being extended from time to time as of now. In the process, the Petitioner as well as similarly situated other Stenographers have rendered a continuous service over a period of almost 18 years. However, due to slackness or callous approach by the Opposite Party No.1 neither regular posts of Stenographers have been created nor the Petitioner has been regularized in service. It is further submitted by her that the Petitioner and similarly situated other persons are getting a lesser remuneration than the market rate of persons discharging similar nature of work in the judicial system. Therefore, she submits that the Petitioner and similarly placed other Stenographers are being exploited by paying them a lesser amount than the amount they deserve in lieu of their work they are performing.

13. Finally by letter dated 24.01.2020 the Deputy Secretary to Government has written a letter to the Special Officer, Directorate of Public Prosecution, Orissa, Bhubaneswar whereunder he has advised for deployment of contractual Stenographers to the cadre of Public

Prosecutor/Additional Public Prosecutor. Further, the said letter reveals that the Directorate of Public Prosecution has been advised to engage Stenographers on outsourcing basis for a period of one year in terms of G.A. department Resolution dated 27.08.2014 with monthly consolidated remuneration as per Finance Department O.M.No.7022/F dated 17.03.2018.

14. A counter affidavit has been filed on behalf of Opposite Party No.2 in the present writ application, by the Special Officer, Office of the Director of Public prosecution, Odisha. In the counter affidavit most of the factual aspects as pleaded by the Petitioner in the writ petition has not been disputed by the Special Officer, Office of the Director, Pubic Prosecution. However, the Opposite Party No.2 has reiterated that the conditions of service of the Stenographers are governed by Home Department Letter No.46258 dated 28.10.2002 and that their engagements are purely contractual in nature. In reply to the letter dated 29.06.2018 Annexure-5 the Opposite Party No.2 has stated that the same was a proposal made by Opposite party no.2, Director of Public Prosecution to Opposite party No.1, the Government in Home Department and the same may or may not be considered by the Opposite Party No.1.

15. It is further stated in the counter affidavit that the appointment of Stenographer in the Office of the P.P. and APPs who had engaged the Stenographers, on a bare reading of the counter affidavit, that the Opposite Party No.2 has laid much emphasis on Clause-iv which provides each Public Prosecutor and Additional Public Prosecutor shall engage his own stenographer so that they shall not have any complaint on their competence and conduct. It is also stated that the Government has not stipulated any modalities/selection procedure to be followed while selecting the Stenographers.

16. Further, in the counter affidavit, Opposite Party No.2 has clearly

admitted that the Stenographers were being appointed on contractual basis for one year on each count with a gap of five days intervening two successive contracts. The Opposite party No.2 has also laid emphasis on the fact that at the time of engagement the Stenographers are required to furnish an undertaking that they shall not claim for permanency or absorption in Government service with a particular scale of pay. It has also been stated by the Opposite Party No.2 that the post of Stenographers are tenure based post. Therefore, the claim of regularization/absorption is not at all maintainable in law.

17. Having heard learned counsel for the parties and considering their rival contentions, this Court has absolutely no doubt that the nature of work that is being performed by the Petitioner along with similar situated other persons as Stenographers in the Office of the P.P./APPs in Cuttack are regular and perennial in nature. Rather, the duties performed by the Stenographers are essential for sufficient functioning of the Office of the P.O./A.P.P. Therefore, this Court is of the considered view that the posts of Stenographers are regular in nature. Moreover, the Petitioner as well as similarly situated other Stenographers who were appointed since 2012 have been discharging their duties to the satisfaction of one and all are continuing in service since the date of their initial appointment. The five days break period in between two contractual period are artificial in nature and the same as it appears, has been designed to negative the claim of regularization/absorption of the service of the Stenographers like the present Petitioner. Moreover, on examination it is found that the remuneration that is being paid to the contractual Stenographers like the Petitioner are much less than the Stenographers functioning on regular basis against several posts in Government establishment.

18. Contractual appointment or tenure based appointments are a solution for short term problem or to manage a temporary or ad hoc

kind of situation. However, when the nature of work is continuous and regular, regular post should have been created to absorb the Stenographers who have been serving with lots of difficulties and for a meager consolidated remuneration. On a perusal of the counter affidavit filed by Opposite Party No.2, it appears that the Opposite Party No.2 has taken inconsistent stand and probably the Special Officer, who had been engaged to file the counter lacks clarity of mind and thought. While admitting the proposal dated 29.06.2018 under Annexur-5, the Opposite Party No.2 has gone on to state in the counter affidavit that it is for the convenience of the P.Ps and APPs the Stenographers are being appointed on contractual basis so that concerned PP/APPs cannot shift the blame by saying that their work was affected due to either bad or under performance of the Stenographers. Such a lame excuse is unsustainable in law and it definitely causes discrimination among the Stenographer working in Government establishment

19. It is clear from letter dated 29.06.2018 under Annexure-5 that the Director, Public Prosecution, had recommended to the Additional Secretary to Government of Odisha, Home (Prosecution) Department to regularize the Stenographers who have been continuously serving for a particular length of time. Further, in letter dated 29.06.2018 the Director, Public Prosecution has also referred to the observation of the Orissa Administrative Tribunal dated 27.07.2016 passed in O.A.No.2790 of 2015 to the effect that:

“However, the fact remains that the applicant as well as similarly placed Junior/Senior Stenographers in the Directorate of Prosecutions are continuing since 2006 and have rendered about 10 years of service. Since the posts continue in foreseeable future, the respondents may consider framing a policy for their regularization within a reasonable period of time.”

20. So far the letter dated 24.01.2020 under Annexure-6 is

concerned, wherein the Deputy Secretary to Government has written to the Special Officer, Directorate of Public Prosecution intimating him the approval of the Government for filling up of 15 number of Stenographers on outsourcing basis, learned counsel for the Petitioner expressed her apprehension that the Petitioner and similarly placed other persons might be thrown out of service after rendering 18 years of long period of continuous service and in their place Stenographers may be engaged through outsourcing agency. In the said context, this Court is of the considered view that in view of the settled position of law that a set of contractual employees cannot be substituted by another set of contractual employees as has been held by the Hon'ble Supreme Court in the case of *State of Hariyana v. Piara Singh & others* reported in AIR 1992 SC 2130 and a Division Bench of this Court in *Dillip Kumar Baral v. BPUT* reported in 2013(II) OLR 210. Thus, such apprehension of the learned counsel for the Petitioner is baseless and the authorities are bound to reengage the Petitioner and similarly placed other Stenographers in view of the settled position of law till regular appointment is made against the sanctioned post, otherwise, the conduct of the Opposite Parties in replacing the Petitioner with another set of contractual employees would be highly illegal and as such would be unsustainable in the eye of law.

21. Finally after taking into consideration the facts and circumstances of the present case and keeping in view the aforesaid analysis of law, this Court is of the considered view that the case of regularization/absorption of service of the Petitioner and similarly other persons needs to be reconsidered by the State Government as has been recommended by the Opposite Party No.2 in its letter dated 29.06.2018 under Annexure-5 and keeping in view the direction of the Orissa Administrative Tribunal in O.A.No.2790 of 2015 dated 22.07.2016. Accordingly, this Court directs the Opposite Party No.1 to consider the

case of regularization of service of the Petitioner and if necessary regular post of Junior/Senior Stenographers be created in the Office of the cadre P.P./A.P.P. with the concurrence of the Finance Department in accordance with law within a period of four months from today. It is further directed that the service of the Petitioner shall not be substituted by another set of contractual employee by whatever means including outsourcing basis till such regular posts are created and a policy be framed and adopted for appointment of regular Stenographers in the Office of the cadre P.P./A.P.Ps.

22. With the aforesaid direction, the writ application stands disposed of.

Urgent certified copy of this order be granted on proper application.

(*A.K. Mohapatra*)
Judge



Jagabandhu