

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 14658 of 2020

Sk. Fayajuddin

....

Petitioner

Mr. Surendra Nath Panda, Advocate

-versus-

UCO Bank and Others

....

Opp. Parties

Mr. Subrat Mishra, Advocate
(O. P. Nos. 1 & 2)

CORAM: JUSTICE SANJAY KUMAR MISHRA

ORDER

Order No.

23.09.2022

- 07.**
- 1.** This matter is taken up through hybrid mode.
 - 2.** Heard learned Counsel for the Petitioner, so also learned Counsel for Opposite Parties-Bank.
 - 3.** In the present Writ Petition, a prayer has been made to quash the letter of appointment dated 23.03.2020, as at Annexure-15, and direct the Opposite Party-Bank to regularize the services of the Petitioner as Driver at Dhera Branch forthwith and pay him wages as per the direction of this Court within a stipulated time frame with applicable rate of interest from the date of working

as daily wager i.e. 10.07.1996 till the date of payment and to recover employee's contribution w.e.f. 10.07.1996.

4. The brief background facts leading to filing of the present Writ Petition is that the Petitioner was engaged as Personal Driver by Zonal Manager, UCO Bank, Bhubaneswar, w.e.f. 27.03.1989 to drive the Bank's car provided to the Zonal Manager for his official use by the Bank. Along with the Petitioner, others were also appointed for similar nature of jobs under the Bank. The Bank issued a Circular on 17.02.1995 inviting applications from amongs existing sub-staff members and personal drivers engaged by the Bank Authorities stipulating criterias required for the post of Driver. The Petitioner, along with others, applied for the same.

In response to the said Circular, the Petitioner was the only applicant for the said post, who satisfied all the criterias stipulated in the Notification. Being so selected, the Zonal Manager, vide letter dated 20.03.1995, sought approval for appointment of the Petitioner as permanent Driver in the vacancy of Driver for the currency chest of Dhera Branch of the Bank to drive the Bank's Cash Van. But the same was not responded to by the Head Office of the Bank.

5. Consequently, the Zonal Manager took up the appointment of the Petitioner as permanent Bank's Driver, pursuant to letter dated 23.02.1996 and also recommended the name of the Petitioner for appointment at least on daily wage basis, if there is no possibility of appointment on permanent basis, due to restrictions on recruitment. Thereby, the Competent Authority of Head Office of the Bank authorized the Zonal Manager, Bhubaneswar, to engage the Petitioner as casual daily wager to drive the vehicle for the currency chest of Dhera Branch, pursuant to letter dated 01.07.1996. Accordingly, the Petitioner was engaged as Casual Driver by the Zonal Manger vide letter dated 10.07.1996 at Dhera Branch.

6. Subsequently, the Bank came out with a Circular dated 30.05.2002 to empanel the daily wagers for regularization in Bank service. The Branch Manager, Dhera Branch submitted a statement mentioning the details of the Petitioner's engagement, wages paid, etc. as per format to the Controlling Authority. When the Petitioner was waiting to get his letter of regularization, as permanent Driver, the Bank regularized the personal Drivers as Peons, who were attached to Zonal Office, and other Branches ignoring the case of the Petitioner.

Thereafter, the Petitioner submitted his application to absorb him as a regular Peon. But the same was not acceded to, which compelled him to approach this Court in W.P.(C) No. 4147 of 2015, which was disposed of on 10.03.2015, directing the Opposite Party-Bank to consider the Representation of the Petitioner filed by the Petitioner within a period of four months.

In compliance of the said Order passed by this Court, the Representation was rejected vide Order dated 17.07.2015, *inter alia* that the services of the Petitioner do not deserve to be regularized.

7. Being aggrieved by the said rejection Order dated 17.07.2015, the Petitioner approached this Court again in W.P.(C) No. 13355 of 2015, which was decided on 20.06.2019 and the Authority concerned was directed as follows:-

“8. In the above view of the matter, this Court is of the considered opinion that the reasons stated in the Order dated 17.07.2015 passed by the Opposite Party No. 2 in Annexure-14 cannot sustain in the eye of law and the same is hereby quashed. The Opposite Parties are directed to regularize the services of the Petitioner in the post of driver in which he has been discharging his duty on being duly selected pursuant to the advertisement in Annexure-1 dated 17.02.1995. The entire exercise shall be done within a period of two months from the date of production/communication of this judgment.”

8. Being aggrieved by the said Order passed by this

Court in W.P.(C) No. 13355 of 2015, the Opposite Party-Bank preferred Writ Appeal No. 307 of 2019, which was dismissed, vide a reasoned Order on 18.12.2019 with the following observations:-

“10. In view of the forging discussions, we are of the humble view that the view taken by the learned Single Judge is reasonable and logical and there is no patent error on the face of the impugned judgment or any perversity therein and therefore, we are not inclined to interfere with the same.

Accordingly, the writ appeal stands dismissed.”

9. For non-compliance of the said direction given by the coordinate Bench, the Petitioner preferred CONTC No. 669 of 2020. Though there was a direction to regularize the services of the Petitioner in the Post of Driver, during pendency of the said Contempt Proceeding, offer of appointment was issued on 23.03.2020, vide Annexure-15, offering him the post of Housekeeper-Cum-Peon in the Subordinate Cadre at UCO Bank, Dhenkanal Branch, Dhenkanal, District-Dhenkanal indicating therein that if he agrees to the terms and conditions, as stipulated vide the said Order dated 23.03.2020 and accepts the said letter of offer, he may report to the Chief Manager, Dhenkanal (0440) Branch, within a period of 15 days from the date of receipt of the letter of appointment and return three copies of the letter to the Chief Manager, Dhenkanal duly signed by him, in token of his acceptance of the

said offer, failing which the offer of appointment would automatically be treated as lapsed.

10. Admittedly, in response to the said communication dated 23.03.2020, the Petitioner wrote to the Zonal Manager, UCO Bank, Zonal Office, Sambalpur on 27.03.2020, seeking for some time to comply with the terms and conditions and in response to the said communication of the Petitioner dated 27.03.2020, the Zonal Manager, vide letter dated 07.04.2020, advised the Petitioner to join at Dhenkanal Branch of the Bank on or before 18.04.2020 with all the testimonials as mentioned in the said appointment letter.

11. However, the Petitioner made communication to the Zonal Manager, UCO Bank, Zonal Office, Sambalpur, demonstrating therein in details as to what was the direction given by this Court vis-à-vis the offer made by the Bank vide letter dated 23.03.2020. Finally, the Petitioner prayed before the Authority concerned to be kind enough to send revised letter and regularize his service, so also pay him the salary due to a Driver w.e.f. 10.07.1996 as per the direction given by this Court.

12. Clause (1) of the said letter dated 23.03.2020, as at Annexure-15, reads as follows:-

“1. By accepting the appointment in bank’s service, you will forthwith withdraw your all cases filed against bank/Bank’s officials which are pending before any Tribunal/forum/Authority/Court of law in the matter of your service. Also, you wil not claim against Bank upon the issues connected therewith or incidental thereto, in future.”

13. Needless to mention here that CONTC No. 669 of 2020 got listed for first time on 29.05.2020, on which dated learned Counsel for Opposite Parties-Contemnors, produced the letter dated 23.03.2020, as at Annexure-15 of the Writ Petition, and submitted that in the meantime, direction of this Court in W.P.(C) No. 13355 of 2015 has already been complied with. Accordingly, the said Contempt Proceeding was dropped with the following observations:-

“This Court however observes in the event the petitioner has any further grievance, it can be agitated in appropriate forum.”

14. Though the offer of appointment was issued on 23.03.2020 to the Petitioner as Housekeeping-Cum-Peon at Dhenkanal Branch UCO Bank, Dhenkanal, but the said offer was never accepted by the Petitioner. As is indicated in the concluding Paragraph of the said offer, if the terms and conditions stipulated in the said offer is not accepted within 15 days from the date of receipt of the said communication, the said offer of appointment would automatically be treated as lapsed.

15. Being noticed, the Opposite Party-Bank filed a detailed Counter basically taking a stand therein that this Court had dropped the CONTC No. 669 of 2020 by the Order dated 29.05.2020 with a specific finding that the judgment dated 20.06.2019 in W.P.(C) No. 13355 of 2015 and Judgment dated 18.12.2019 in Writ Appeal No. 307 of 2019 having been complied with by appointment letter dated 23.03.2020 and acceptance of the same by the Petitioner vide letter dated 27.03.2020, even though the leave was granted by this Court, the Petitioner cannot agitate the selfsame issue by filing a fresh Writ Petition on same set of facts and the present Writ Petition is barred by the principles of constructive *res judicata*.

16. In response to the Counter filed by the Opposite Party, a Rejoinder has been filed by the Petitioner. Apart from stating therein that the appointment letter dated 23.03.2020 issued by the Opposite Party No. 2 is not in the line of Judgment dated 18.12.2019, it has been stated in Paragraph No. 9 of the Rejoinder that the Petitioner never gone an unauthorized leave from 18.04.2020 and he has been discharging the assigned duties as Driver at Dehra Branch and has been getting wages regularly in continuity awaiting to get a revised letter of regularization from the Bank. To substantiate the said stand taken in the Rejoinder, a photocopy of

his Bank Pass Book has been annexed to the Rejoinder, as Annexure-1, wherefrom it can be well revealed that the Petitioner is being paid wages regularly by Bank for discharging his duties as Driver as before.

17. In view of such averments made in the Rejoinder, so also submission made by the learned Counsel for the Parties, this Court vide Order dated 05.09.2020 directed the learned Counsel for the Bank to take instruction and file an Affidavit as to the correctness of the averments made in the Rejoinder.

18. In obedience to the said direction of this Court, an Affidavit has been filed by the Chief Manager, UCO Bank, Dehra on behalf of the Opposite Parties. In Paragraph No. 3 of the said Additional Affidavit, it has been stated as follows:-

“3. The Deputy General Manger (Personnel) vide letter dated 01.07.1996 approved the appointment of the Petitioner as driver for currency chest of Dhera Branch to drive the bank’s cash van on daily wage basis as driver and he was appointed on daily wage basis as driver on daily wage basis vide letter dated 10.07.1996 in which post he is continuing till date”

19. Admittedly, this Court, in W.P.(C) No. 13355 of 2015, directed the Opposite Party to regularize services of the Petitioner in the Post of “Driver”, in which he has been discharging his duty on being duly selected

pursuant an advertisement dated 17.02.1995, with a direction to complete the entire exercise within a period of two months from the date of production/communication of the said Judgment.

20. Needless to mention here that the offer of appointment letter dated 23.03.2020, as at Annexure-15, is not in consonance with the direction given by this Court in W.P.(C) No. 13355 of 2015 and though pursuant to the said offer of appointment, the Petitioner sought for some time, but instead of accepting the said offer, rather he gave a Representation to reconsider his case and issue a revised offer of appointment in the line of direction given by this Court in earlier Writ Petition, which is still pending for consideration before the concerned Authority for which he was being compelled to approach this Court in the form of present Writ Petition for redressal of his grievances.

21. Admittedly the issue as to regularization of service of the Petitioner in the post of Driver has attained finality after dismissal of Writ Appeal No. 307 of 2019, on 18.12.2019, vide which the Judgment dated 20.06.2019 passed in W.P.(C) No. 13355 of 2015 was confirmed. In view of the said Order passed by the coordinate Bench, the Petitioner is entitled to be

appointed as Driver in the regular post at Currency Chest Branch, Dhera. Needless to mention here that this Court directed to regularize the services of the Petitioner in the post of Driver and to do the needful within a period of two months from the date of production/communication of the said Judgment. There was no such direction given by the coordinate Bench to regularize the services of the Petitioner in the Post of Driver with retrospective effect i.e. the date when his counterparts got absorbed in the regular post of Peon-Cum-Farash. Hence, he ought to have been appointed as Driver in the regular post within two months from the date of production of the certified copy of the Judgment dated 20.06.2019, passed in W.P.(C) No. 1335 of 2015. The impugned communication dated 23.03.2020, being illegal and contrary to the direction given by this Court, deserves to be set aside.

22. Accordingly, the impugned Order dated 23.03.2020, as at Annexure-15, is set aside. The Opposite Parties are directed to appoint the Petitioner as a Driver in the permanent post from the date as ordered by this Court in W.P.(C) No. 13355 of 2015.

23. Admittedly, the Petitioner is continuing as a Driver in the Dehra Branch of the Opposite Party-Bank and

getting the minimum wages as he was getting earlier. Hence, this Court is of the view that the Petitioner is also entitled for the differential salary and other financial benefits, as due and admissible to him, at par with the regular Drivers of the Bank for the period from 20.06.2019 till date and is also entitled to be covered under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

24. Accordingly, the Writ Petition stands disposed of.

25. The Oder passed by this Court be complied with within 8 weeks from the date of communication of the certified copy of the Order.

26. Urgent certified copy of the Order be granted on proper application.

(S. K. MISHRA)
JUDGE