

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OA) NO.506 OF 2004

Goura Gopal Kamila

....

Petitioner

Mr.R.Rath, Adv.

-versus-

State of Orissa & ors.

....

Opposite Party(s)

Mr.S.P.Panda, AGA

**CORAM:
JUSTICE BISWANATH RATH**

**Order
No.**

02.

**ORDER
14.2.2022**

1. Heard learned counsel for the Parties.
2. Initially the Original Application was filed before the Tribunal. On being abolition of the Tribunal, the matter is transferred to this Court for adjudication and disposal. Accordingly, it was re-numbered and placed for hearing.
3. Taking this Court to the plea involving the Writ Petition involved through the series of development through Annexure-3 to 6 & 7, Mr.R.Rath, learned counsel for the Petitioner urged before this Court that once there is consideration for appointment of a person under the provision of the Government Circular, vide Annexure-4 in the amendment of the Orissa Civil Services (Rehabilitation Assistance) Rules, 1990 and the appointment of the Petitioner was given by application of such Rules, there was no scope for taking out such service. Learned counsel for the Petitioner taking reference of the citation in *Ploolwati (Smt) vrs. Union of*

India & ors reported in AIR 1991 SC 469 and the direction part therein submitted that the Hon'ble apex Court even in the case of rehabilitation appointment has gone to the extent of appointing the persons in harness by creating supernumerary post. It is in the above factual background, learned counsel for the Petitioner contended that the impugned order becomes bad and ought to go.

4. Mr.Panda, learned Additional Government Advocate, however, in his opposition to the contentions raised by the learned counsel for the Petitioner taking this Court to the counter averments of Respondent No.2 submitted that for operation of a ban at the relevant point of time, there was constraint on the State Authority in holding the Petitioner's position. Further taking this Court to the counter averment in unnumbered paragraphs of Pages-29 to 31, Mr.Panda contended that counter was filed on 10.8.2004 clearly observing that there were vacancies as and when situation would improve, there will be consideration of the case of the Petitioner. It is in this view of the matter, Mr.Panda, learned Additional Government Advocate submitted that for the application being taken up after long time, there is no further instruction as to if the Petitioner has been engaged or not. At this stage, learned counsel for the Petitioner submitted that he has instruction of no engagement of the Petitioner as of now requiring final adjudication of the Writ Petition.

5. Considering the rival contentions of the Parties, this Court finds, undisputedly the father of the Petitioner being a permanent employee was made to retire on his permanent incapacitiness. Based on premature

retirement on the basis of permanent incapacitiness of the father loaded with consent of family members having no objection in favour of the Petitioner in the event is given appointment under the provision of the Rehabilitation Assistance Scheme, the Petitioner appears to have applied on 28.8.1999 for a position in the Government Establishment in lieu of premature retirement of his father, particularly a case under the Scheme indicated herein above. It reveals from Annexure-4 that Government of Orissa in General Administration Department circulated amongst all Heads of Departments of the Government and the Collectors on 30th November, 1998 bringing out an amendment to the Orissa Civil Services (Rehabilitation Assistance) Rules, 1990 by way of clarification therein providing the provision for considering the pending cases of appointment under the Orissa Civil Service (Rehabilitation Assistance) Amendment Rules, 1998 pending prior to 8.10.1998. Looking to the date of Application of the Petitioner on 28.8.1998, this Court finds, the Petitioner's case was a case pending on 8.10.1998. It is on the basis of the above relaxation and/or clarification, vide Annexure-4, the Petitioner, vide Annexure-5 was called to attend the interview by his appearing before the Additional District Magistrate, Balasore on 12.3.1999. It is made clear, the Petitioner remaining unsuccessful in the Type Test, vide Annexure-6 issued on 5.4.1999 was permitted to re-appear to clear such test in future. Pleading further discloses and there is no dispute to such aspect in the counter, vide Annexure-7 that the Petitioner being qualified in the further skill test was offered with an appointment to the post of

Junior Clerk/Peon but however till 31.5.2001 for such creation of posts in the scale mentioned therein. It is after the Petitioner was engaged pursuant to Annexure-7, the Petitioner was terminated on 24.5.2001 on the premises that his appointment was made till 31.5.2001 giving rise to filing of the present Writ Petition.

6. Considering the aforesaid development and the case and counter case of the Parties, also the development through the documents appended, keeping in view the clarification and/or modification, vide Annexure-4 but the settled position of law, this Court observes, the appointments under the Rehabilitation Assistance Rules are special appointments made. Keeping in view the contingency at relevant point of time and to mitigate the hardship of a family facing request for Rehabilitation Assistance Scheme appointment and keeping in view the contingency involved requiring such appointment. For the opinion of this Court, there should not have been temporary creation of posts. It is at this stage, considering the reason in the counter affidavit, this Court finds, the Government in appropriate Department was though interested in continuing with the Petitioner but keeping in view the ban order prevailing at the relevant point of time attempted to discontinue the service of the Petitioner. This Court here observes, in the event of operation of a ban giving fresh appointment, same are given as a temporary measure and cannot be allowed to stay long. In fact the State Government has overcome the financial hardship subsequently. Consequently, keeping in view the counter averment that there was scope

for considering the case of the Petitioner after the State is relieved of financial hardship. In spite of such a scope being available, it is seen, there was no application of mind in re-engaging the Petitioner, as his engagement was under Rehabilitation Scheme. It is keeping all the above in view and for an appointment to the Petitioner provided under the Rehabilitation Assistance Rules even though this Court finds, the order of termination is illegal but however keeping in view that there is long lapse of time, there is no interim direction in between in the judicial process pending declaring the order at Annexure-8 bad, this Court directs the O.Ps. to take the Petitioner into service in the post of Junior Clerk/Peon in the Establishment involved at least by taking decision within a period of two months from the date of communication of this order. Keeping in view that there is illegal termination of the Petitioner, this Court again observes, even though the Petitioner has suffered in the meantime, there is no disclosure as to whether the Petitioner was engaged or not or engaged otherwise in the meantime, this Court while directing reinstatement of the Petitioner within two months in the post of Junior Clerk/Peon, observes, same will be a fresh appointment.

7. With the above observation/direction, the Writ Petition stands disposed of.

(Biswanath Rath)
Judge

M.K.Rout