

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No. 17928 of 2021

Pramod Kumar Das

....

Petitioner

Mr. L. Bhoi, Adv.

-versus-

State of Odisha & Ors.

....

Opp. Parties

*Mr. Biplaba Mohanty,
SC(for S & ME Deptt.)*

CORAM:
DR. JUSTICE S.K. PANIGRAHI

ORDER
14.10.2022

Order
No.

10. 1.This matter is taken up through hybrid mode.
2. Heard.
3. The present petition has been filed challenging the Office order No.7195/SME dated 30.03.2021 issued by the Principal Secretary, S &ME Deptt., Govt. of Odisha by which the Petitioner has been deprived of regularization of his service inspite of directions issued by this Court in W.P.(C) No. 20766 of 2020.
4. Shorn of unnecessary details, the substratum of matter presented before this court remain that Petitioner was initially appointed as a Class-IV employee (Peon) on ad hoc basis in Smruti Vidyapitha, Sidheswarpur, District-

Cuttack by the then Inspector of Schools, Cuttack Circle, Cuttack vide his office order No.11096, dated 07.07.1999. The said ad hoc appointment was made for 44 days term with one day gap between two spells of appointment.

5. During the service period, the Petitioner approached the Opposite Parties through multiple representations to regularize his service as the post of peon was lying vacant in that school without making any fresh recruitment or appointment towards the concerned post. However, the representations of the Petitioner were not considered. The Petitioner being aggrieved by the action of the Opposite Parties No. 3, 4 and 5 approached the State Administrative Tribunal in O.A (C) No. 161 of 2019 and the matter was admitted.

6. While the matter stood, the OSATs were abolished by the Govt. of Odisha vide notification dated 08.08.2019 and therefore, the Petitioner approached this Court by filing W.P.(C) No. 28733 of 2019 whereby the Court issued directions to the Learned Tribunal to transfer the case record. Since, the Petitioner was unaware about the transfer of case record, the fate of the case became unknown to the Petitioner and the Learned Counsel for the Petitioner.

7. Consequently, the Petitioner was compelled to file W.P.(C) No. 20766 of 2020 with a prayer for directing the regularization of his service. In view of the same, the Court passed an order directing the Opposite Party No.1 to consider the grievance of the petitioner within a period of three months. However, such order was not complied with within the aforesaid period and the Petitioner filed a contempt petition against Opposite Party No.1 which was disposed of on 26.03.2021 with a direction to the Opposite Party No.1 to take a decision within another three months.

8. However, the Petitioner vide Office Order No. 7195/SME dated 30.03.2021 received a direction from the Opposite Party No.1 that his application with respect to regularization of service has been dismissed. The order of dismissal issued by the Opposite Party No. 1 has been assailed in the present writ petition for contravening the principles of natural justice.

9. It is submitted by Learned Counsel for the Petitioner that the Petitioner has made persistent efforts for being absorbed in the concerned post and he has been discharging his duties under the said post for a period of 20 years. Therefore, the inaction on the part of the

Opposite Parties to regularize his service is in violation of principle of natural justice.

10. Per Contra, it is contended by Learned Counsel for the Opposite Parties that the grievance as has been made by the Petitioner in the writ petition merits no consideration in view of the fact that the very initial appointment of the Petitioner is temporary, ad hoc and can be terminated without notice.

11. Heard learned Counsel for the parties. The Petitioner being an outsider was initially appointed as Peon on ad hoc basis for a period of 44 days by the Inspector of Schools, Cuttack on 07.07.1999 with one day gap between two spells of appointment. The appointment of the Petitioner was done without resorting to the prescribed norms and guidelines for such appointment. The authority has given appointment to the Petitioner without making any advertisement inviting applications from the general public for their participation for engagement and filling of the post of peon of the school. Hence, it appears from the record that the appointment of the Petitioner is illegal. The appointment of the Petitioner and continuance in the service in non-sanctioned post is beyond the rules and no procedures have been followed to appoint in order to fill up the Group-D post. The

Petitioner was appointed on 44days basis and it was extended from time to time with one day break and received salary meant for the ad hoc peon post. The position in law has been reaffirmed in a catena of judgments after *State of Karnataka Vs. Uma Devi and others*¹, hence, the continuance of service of the Petitioner is beyond the rules. Thus, the Petitioner's service cannot be regularized. If the appointment is illegal, the principles laid down in Uma Devi (supra) cannot come to the aid of the Petitioner. This Court has, however, no doubt in its mind that the Constitution Bench deprecated appointment through side door/back door being contrary to the Constitutional Scheme of equality.

12. The decision of this Court in *Moti Dei v. State of Odisha*² passed in W.P.(C). No.39394 of 2021 is squarely applicable to the facts of the present case as it delved on similar subject-matter. The decision of regularization of service is a policy decision of the Government. The prayer of the Petitioner is beyond the purview/ jurisdiction of the present Opposite Party No.3, 4 &5 who have already considered his case in pursuance to the order passed by this Court. Therefore, the present Writ Petition is liable to be dismissed being devoid of merits.

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

(Dr. S.K. Panigrahi)
Judge

SD

