

ORISSA HIGH COURT: CUTTACK

W.P.(C) NO. 12823 OF 2019

In the matter of an application under Articles 226 and 227
of the Constitution of India

AFR

State of Odisha and others Petitioners

-Versus-

Lalat Kishore Mohapatra & another Opp. Parties

For Petitioners : Mr. S. Jena, Standing Counsel
(S & ME Deptt.)

For Opp. Parties : M/s H.P. Rath, A.K. Behera
and R.P. Rath, Advocates

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
HONOURABLE MR. JUSTICE SANJAY KUMAR MISHRA**

Date of hearing and judgment: 28.07.2022

DR. B.R. SARANGI, J. The State of Odisha and its
functionaries, who were Opposite Parties No.1 to 3 before
the Tribunal, have filed this Writ Petition seeking to quash

the Order dated 29.01.2018 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack, in O.A. No.2555(C) of 2001 under Annexure-3, by which the Tribunal has allowed the Original Application and directed the Authorities to regularize the service of Opposite Party No.1 within a period of two months.

2. Though Opposite Party No.1 has entered appearance through learned Advocates M/s H.P. Rath, A.K. Behera and R.P. Rath, but at the time of call none was present on his behalf. Even then, for the reasons to be recorded hereinafter, instead of giving another chance to Opposite Party No.1, this Court proceeded to decided the matter on the basis of the materials available on record, after hearing learned Counsel appearing for the State-Petitioners.

3. The factual matrix of the case, as is revealed from the record, is that Opposite Party No.1, who was Applicant in the O.A., was selected and appointed as Junior Clerk until further orders in Government Secondary Training

School (W), Puri, by the present Petitioner No.3, vide Order dated 09.10.1985. Subsequently, such Order was modified by the Petitioner No.3 on 22.02.1986 allowing the Opposite Party No.1 to continue as Junior Clerk for a period of 89 days w.e.f. 12.01.1986. The said Order was followed by successive Orders allowing Opposite Party No.1 to continue as Junior Clerk for successive spells of 89 days with one day artificial break between such spell of 89 days. The Opposite Party No.1 continued in the said post against an existing vacancy, but the present Petitioner No.3 adopted the aforesaid method of appointment for successive spells of 89 days with one day break between each spell of 89 days solely with the intention to deny him regularization. After 30.04.1988, Petitioner No.3 allowed Opposite Party No.1 to continue in service without break and opened his Service Book and granted annual increments, thereby transferred and posted him as Junior Clerk to different Institutions and Offices within his administrative control and within the cadre of Junior Clerk like other regular Junior Clerks. The Opposite Party No.1 was also allowed to appear in the

Junior Accounts Examination held at Collectorate, Puri, from 26.12.1990 to 28.12.1990 and he passed the said Examination. In the meantime, the Government in Education & Youth Services Department, vide letter dated 01.01.1991, issued instructions that the irregular recruitee should be given chance to appear in the next two consecutive Recruitment Examinationd. Pursuant thereto, Opposite Party No.1 requested Petitioner No.3 to sponsor his name for the Recruitment Examination, but his name was not sponsored, as because the examination he had already passed was far superior than the Recruitment Examination. Therefore, there was no necessity for him to appear in the Recruitment Examination in future. Then, in good faith and bona fide belief that his services will be regularized, he continued in service as Junior Clerk. He was allowed annual increments in the prescribed time scale of pay and revisions of pay under the relevant ORSP Rules from time to time. But, ultimately, when the same was not done, Opposite Party No.1 approached the Tribunal by filing O.A. No.2555(C) of 2001, which was allowed on 29.01.2018

directing the Authorities for regularization of his service.
Hence, this Writ Petition.

4. At the outset, Mr. S. Jena, learned Standing Counsel appearing for the State-Petitioners, contended that the Tribunal has committed gross error apparent on the face of record by extending the relief to the Opposite Party No.1 relying upon the Interim Order dated 27.07.1989 passed in M.P. No.970 of 1989, arising out of O.A. No.687/1988, passed by the Tribunal at the instance of the Opposite Party No.1, though ultimately the said O.A. was dismissed by the Tribunal, vide Order dated 02.11.1998. Thereby, it is contended that by suppressing the material facts, Opposite Party No.1 got the relief from the Tribunal, which cannot be sustained in the eye of law. Therefore, he seeks for quashing of the Order dated 29.01.2018 passed by the Tribunal in O.A. No.2555(C) of 2001.

4.1 It is further contended that the Tribunal has committed gross error on the face of the record by passing the Order impugned dated 29.01.2018, by which the

Tribunal directed for regularization of service relying upon the fact that Opposite Party No.1 earlier approached the Tribunal by filing Original Application No.687/1988, in which the Tribunal passed an Interim Order on 27.07.1989, in M.P. No.970 of 1989, allowing him to continue. Taking into consideration the said Interim Order, whereby Opposite Party No.1 was allowed to continue in service, the Tribunal has come to an erroneous conclusion that as the Opposite Party No.1 had continued in service and continuing as such, his services should be regularized. But fact remains, O.A. No.687 of 1988 was dismissed by the Tribunal on 02.11.1998, being devoid of merits, and said fact was not placed before the Tribunal, while the Order impugned was passed on 29.01.2018 in O.A. No.2555(C) of 2001, which was filed by Opposite Party No.1 with the self-same prayer. It is contended that once such a prayer made before the Tribunal in O.A. No. 687/1988 was dismissed, suppressing such fact and by only indicating that the Interim Order was passed in the said Original Application, Opposite Party No.1 could not have taken benefit of regularization of his service.

Due to suppression of fact, the Order impugned passed by the Tribunal, has to be set aside. To substantiate his contention, learned Standing Counsel appearing for the State-Petitioners, has placed reliance on the cases of **Netrananda Mishra v. State of Orissa**, 2018 (II) OLR 436 and **Sukanta Sethi v. State of Odisha & others** [W.P.(C) No.15960 of 2021 disposed of on 07.10.2021].

5. This Court heard learned Standing Counsel for the School and Mass Education Department by virtual mode, perused the records and examined the Order dated 29.01.2018 passed by the Tribunal in O.A. No.2555(C) of 2001, Paragraphs-3 and 6 whereof read thus:

“Counter has been filed since 23.04.02 by Resp.No.3 with the following averments:

The applicant was appointed as a Junior Clerk on adhoc basis for a period of 89 days with one day break spell in Government S.T. School (W), Puri against the existing vacancy of Senior Clerk for minimum requirement of the school. The applicant had not joined in service by facing any recruitment rules. Consequent upon filling up the post of senior clerk, the applicant was relieved from the office of the Inspector of Schools, Puri. Being aggrieved, he had filed O.A. No.687/98 and vide order dtd. 27.07.89 in M.P. No.970 of 1989, he continued in the post of Junior Clerk until further orders

on the strength of the interim order passed by the Tribunal. Passing of Accounts examination, grant of increment, leave etc. in favour of the applicant does not confer any right on him for his regularization of his service. His service cannot be regularized without passing of the recruitment examination."

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"6. The stand taken by the applicant in the O.A. has not been refuted by the respondents, but the fact remains that the applicant was a irregular recruiter as he was not appointed through a recruitment process. Besides this, he was appointed against the vacancy of Senior Clerk and when the post of Senior Clerk was filled up he was relieved from the office of the Inspector of Schools, Puri, but by virtue of the order of the Tribunal dtd. 27.07.89 in M.No.970 of 1989 arising out of O.A.No. 787/19888, he continuing. So, in the mean time, if his initial date of appointment is taken into consideration by the time of filing of the O.A. he had completed 15 years of service and by now he has completed more than 30 years of Service. Learned counsel for the applicant has relied on the judgment dtd. 23.13.93 in O.A.8/1988 and batch of 41 cases, but I do not think, this judgment will squarely cover the issues at hand, because this applicant continued in service with effect from 27.7.89 only on the strength of the interim order passed by the Tribunal in M.P No.970/89 arising out of O.A.No. 687 of 1988. In the case record, I find that the applicant has enclosed judgment dtd.01.08.97 of O.A.No.127 of 1989, I find that in that case also, the applicant was a Junior Clerk in the Office of the Inspector of Schools, Puri Circule on ad hoc basis and thereafter continuos and when his service was terminated, he had approached the Tribunal

and continued on the basis of the interim order passed by the Tribunal and by the time of filing of the O.A. he had continued for 14 years. So, the present applicant is similarly situated like the applicant of O.A.No.127 of 1989. In that O.A.127/89, the Division Bench of the Tribunal in its order dtd. 01.08.97 has observed as follows:

Para-9: “We would thus conclude that OMS Rules are applicable to the Inspectorates of the School and Mass Education Department which are District Offices as defined. Ad hoc appointment of the applicant continued for long 14 years be regularized by the competent authority, counting his seniority from the date of such regularization and placing him below all the regularly recruited Junior Clerks till the date of regularization giving him benefit of his past services for pension and other retrial benefits. Tendency to give ad hoc appointment as a matter of course, should be leashed and whenever such ad hoc appointments are made in exigencies of Government Service and public interest, the same shall replaced by appointment of regularly recruited candidates ordinarily within a period of one year”.

6. From the above, it is made clear that because of the Interim Order dated 27.07.1989 passed in the earlier O.A. No.687 of 1988, the Tribunal has come to a conclusion that since Opposite Party No.1 is continuing in service, the

benefit of regularization has to be extended to him. But fact remains, O.A. No.687 of 1988, which was filed with the self-same prayer, was ultimately dismissed on 02.11.1998. While passing the Order impugned, the Order passed in O.A. No.687 of 1988, was not brought to the notice of the Tribunal. Had such fact been brought to the notice of the Tribunal by Opposite Party No.1, the Tribunal would have taken a different view and passed a different Order. Therefore, by suppressing the earlier Order passed by the Tribunal, the impugned Order having been passed, the same cannot be given effect to, as the same suffers from suppression of material fact and, as such, Opposite Party No.1 has not approached the Tribunal with clean hands.

7. As regards expressing distorted facts before the Court and not approaching with clean hands, in **R. v. Kensington, Income Tax Commissioner**, (1971) 1 KB 486 at page 506, it was held as follows:

“The prerogative writ is not a matter of course; the applicant must come in the manner prescribed and must be perfectly frank and open with the Court.”

8. In ***State of Haryana v. Karnal Distillery***, AIR 1977 SC 781, the apex Court refused to grant relief on the ground that the applicant had misled the Court.

9. In ***Chancellor v. Bijayananda Kar***, AIR 1994 SC 579, the apex Court held that a Writ Petition is liable to be dismissed on the ground that the Petitioner did not approach the Court with clean hands.

10. Taking into consideration the above judgments, this Court, in ***Netrananda Mishra v. State of Orissa***, 2018 (II) OLR 436, came to a conclusion in paragraph-26 of the said judgment and held as under:-

“.....For suppression of facts and having not approached this Court with a clean hand, the encroacher is not entitled to get any relief, particularly when the valuable right accrued in favour of the petitioner is being jeopardized for last 43 years for no fault of him, on which this Court takes a serious view.....”

11. Therefore, applying the above ratio to the present case, this Court is of the considered view that by giving

distorted facts, the Opposite Party No.1 misled the Tribunal and obtained the Order impugned.

12. In that view of the matter, the Order dated 29.01.2018 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack, in O.A. No.2555(C) of 2001 is unsustainable in the eye of law and the same is liable to be quashed and is hereby quashed.

13. Accordingly, the Writ Petition is allowed. However, there shall be no Order as to costs.

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DR. B.R. SARANGI,
JUDGE

S.K. MISHRA, J. I agree.

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S. K. MISHRA,
JUDGE

Orissa High Court, Cuttack
The 28th July, 2022, Ashok/Padma/GDS