

ORISSA HIGH COURT: CUTTACK

W.P(C) NO. 17798 OF 2020

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

State of Odisha & Others Petitioners

-Versus-

Srimanta Ku. Gouda Opp. Party

For Petitioners : M/s. S. Rath,
Addl. Standing Counsel

For Opp. Party : M/s. P.K. Dash, Tapan Kumar
Biswar, Manas Pati, Advocate

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HONOURABLE MR JUSTICE B.P. SATAPATHY**

DATE OF HEARING & JUDGMENT: 16.12.2022

B.P. SATAPATHY, J. State of Odisha and its instrumentalities
are the Petitioners in the present Writ Petition wherein
they have challenged the order dated 31.07.2019
passed in O.A. No.2273 of 2019 by the Orissa

Administrative Tribunal, Bhubaneswar Bench, Bhubaneswar under Annexure-2. The Tribunal vide the said order while quashing the order of disengagement passed on 26.07.2012, directed the present petitioners to regularize the service of the applicant in a Group-C post under regular establishment from the date his immediate junior got such benefit of promotion with all service and financial benefits.

2. The factual matrix giving rise to filing the present Writ Petition is that the Opposite Party seeking regularization of his service as against a Group-C post of Junior Clerk under regular establishment from the date his immediate junior got the same benefit, approached the Tribunal in O.A. No.2273 of 2019.

2.1. It was the case of the Opposite Party that pursuant to the order issued by the Petitioner No.5 on 30.06.1993, he joined in the job contract establishment as a Process Server on 07.07.1993. In the gradation list published by the Petitioner No.2 on 31.03.1996 in respect of all Class-IV job contract

employees under the State Government, the Opposite Party while was placed at Serial No.2455. Sri Bhagaban Gouda, Rajendra Kumar Pattanaik, Manmohan Mishra and Ranjit Mishra were placed at Serial No.2589, 2601, 2612, 2614 respectively. But in the meantime, when the claim of Sri Bhagaban Gouda for his absorption in the regular establishment was rejected on the ground that he has joined after 12.04.1993 i.e. during the ban period imposed by the Finance Department, Sri Bhagaban Gouda approached the Tribunal in O.A. No.2 of 2016. The O.A was disposed of vide order dated 01.11.2016 and in terms of the said order, Sri Bhagaban Gouda was regularized vide order dated 08.02.2019 of the Government in the Revenue and Disaster Management Department and the consequential order issued by the Member, Board of Revenue on 21.02.2019. In terms of the said order, Sri Bhagaban Gouda joined as a Junior Clerk on 05.07.2019 in the establishment of the Collector, Ganjam.

2.2. Similarly, pursuant to the order passed by the Collector and District Magistrate, Khurda on

25.11.2013, one Rajendra Kumar Pattanaik who was placed at Serial No.2601 of the gradation list of job contract employees published on 31.03.1996 was regularized. Not only that, Sri Manmohan Mishra, whose name was at Serial No.2612 of the gradation list was regularized vide order issued by the Collector and District Magistrate, Nayagarh on 11.08.2011. The person placed at Serial No.2614 of the gradation list namely Ranjit Mishra was also regularized vide order dated 02.09.2009 of the Collector and District Magistrate, Koraput.

2.3. On the face of such order of regularization issued in favour of job contract employees, who are placed below the Opposite Party in the gradation list published by the Board of Revenue on 31.03.1996, when the Opposite Party was not regularized, he approached the Tribunal in O.A. No.2273 of 2019. The Tribunal without taking into account the stand of the Petitioners and solely relying on the orders of regularization issued in favour of similarly situated job contract employees, who are junior to the Opposite Party in the gradation list of Class-IV job contract

employees, disposed of the O.A vide order dated 31.07.2019 with a direction on the Petitioners herein to regularize the services of the Opposite Party in a Group-C post under regular establishment from the date Sri Bhagaban Gouda, the applicant in O.A. NO.2 of 12016 was so regularized with all service and financial benefits.

3. It is the main contention of the learned counsel appearing for the Petitioners that since the Opposite Party was engaged in the job contract establishment after 12.04.1993 which is after the cut-off date fixed by the Finance Department in its resolution dated 15.05.1997, the Opposite Party is not eligible for such regularization even though same benefit has been extended in favour of Sri Bhagaban Gouda, the applicant in O.A. No.2 of 2016. Since in the instant case, the Opposite Party was engaged in the job contract establishment on 07.07.1993 which is after the cut-off date fixed for absorption of such job contract employees, the Tribunal should not have directed the petitioners for absorption of the Opposite Party in the regular establishment. Learned counsel

appearing for the Petitioners vehemently contended that if some person has been wrongly extended with some benefit, then in view of the decision of the Hon'ble Supreme Court in the case of **Basawaraj & Another Vs. Special Land Acquisition Officer**, reported in **(2013) 14 SCC 81**, the said benefit cannot be extended by perpetuating such illegality. Accordingly, it is contended that the impugned order dated 31.07.2019 passed by the learned Tribunal in O.A. No.2273 of 2019 is not legally sustainable and liable to be interfered with by this Court.

4. Mr. Pramod Kumar Dash, learned counsel appearing for the Opposite Party, on the other hand, contended that not only the applicant in O.A. No.2 of 2016, Sri Bhagaban Gouda was regularized as against a Class-C post, but also similarly situated job contract employees engaged subsequent to the Opposite Party and placed below him in the gradation list dated 31.07.1996 published by the Opposite Party No.2 have been regularized vide different orders issued on 21.02.2019, 25.11.2013, 11.08.2011 and 02.09.2009, enclosed to O.A. No.2273 of 2019 vide Annexures-8

to 11. All those persons were not only engaged subsequent to the engagement of the Opposite Party, but also they were placed below him in the gradation list of job contract employees published by the Board of Revenue on 31.03.1996 enclosed as Annexure-3 in O.A. No.2273 of 2019. All those persons were placed at Serial No.2589,2601,2612 and 2614, whereas the Opposite Party was at Serial No.2544.

4.1. It is also contended that the cut-off date fixed by the Finance Department in its Resolution dated 15.05.1997 is not applicable to the case of the job contract employees. Not only that those job contract employees who retired from their services without availing the benefit of regularization during the period from 16.07.1996 to 01.01.2005, were not only brought over to the regular establishment but also allowed pension as per the decision of the Government in the Revenue and Disaster Management Department. It is also contended that when the order passed by the learned Tribunal on 31.07.2019 was not complied with, the Opposite Party filed CONTC No.273 of 2020 and this Court vide order dated

17.02.2020 disposed of the said Contempt Petition with a direction on the petitioners to comply the said order, since in the present Writ Petition filed by the Petitioners, there is no interim order staying the operation of the order dated 31.07.2019. This Court accordingly vide order dated 03.08.2022 allowed time to the learned Additional Standing Counsel to obtain instruction as to whether the order passed by the Tribunal has been complied with or not. Such instruction as directed by this Court on 03.08.2022 was never provided though several opportunities were given to the learned Additional Standing Counsel.

4.2. It is accordingly contended that since persons engaged subsequent to the Opposite Party and placed below him have been regularized vide different orders issued under Annexures-8 to 11 of O.A. No.2273 of 2019, the direction issued by the learned Tribunal is legal and justified and no interference is called for. It is also contended that not only as a solitary case the applicant in O.A. No.2 of 2016, Bhagaban Gouda was regularized, but also number of persons engaged subsequent to the Opposite Party have been

regularized vide order under Annexures-9 to 11 enclosed to O.A. No.2273 of 2019.

5. We have heard Mr. S. Rath, learned Additional Standing Counsel for the Petitioners and Mr. P.K. Dash, learned counsel appearing for the opposite party. On their consent, the matter is disposed of at admission stage by the present order.

6. This Court after going through the materials available on record finds that the Opposite Party was engaged in the job contract establishment as a Class-IV employee on 07.07.1993 pursuant to the order issued on 29.06.1993 vide Annexure-2 to the O.A. In the gradation list of Class-IV job contract employees of the State published by the Board of Revenue on 31.03.1996 under Annexure-3 to the O.A. the Opposite Party while was placed at Serial No.2544, Sri Bhagaban Gouda, the applicant in O.A. No.2 of 2016 was placed at Serial No.2589 and Sri Rabindra Kumar Pattanaik, Manmohan Mishra and Ranjit Mishra were placed at Serial No.2601,2612 and 2614 respectively.

As reflected from the orders enclosed vide Annexures-8 to 11 to the O.A, not only Sri Bhagabn

Gouda but also Sri Rabindra Pattanaik, Manmohan Mishra and Ranjit Mishra along with some other job contract employees engaged subsequent to the Opposite party has been regularized with due absorption in the regular establishment. Therefore, the stand taken by the petitioners that the benefit extended in favour of the applicant in O.A. No.2 of 2016 cannot be claimed on the ground of negative equality, is not acceptable on the face of such order of regularization issued in favour of number of persons who are admittedly engaged subsequent to the Opposite Party. The decision relied on by the learned counsel appearing for the Petitioners in the case of Baswaraj and Another as cited (supra) cannot be made applicable to the facts of the present case.

On the other hand, taking into account the decisions of the Hon'ble Apex Court on the question of equality as enshrined under Article 14 of the Constitution of India reported in **AIR 2000 SC 498 (Indra Sawhney V. Union of India)**, **AIR 2003 S.C 1533 (Asutosh Gupta vs. State of Rajasthan)** and **AIR 2007 SC 1948 (State of Bihar vs. Bihar State**

+2 Lectures Association & Others), the Tribunal has rightly passed the order impugned.

6.1. Hon'ble Apex Court in Para-65 & 66 of the judgment in the case of **Indra Sawhney** has held as follows:-

"65. The preamble to the Constitution of India emphasizes the principle of equality as basic to our Constitution. In Keshavananda Bharati vs. State of Kerala (1973) 4 SCC 225: (AIR 1973 SC 1461), it was ruled that even constitutional amendments which offended the basis structure of the Constitution would be ultra vires the basic structure. Sikri, C.J. laid stress on the basic features enumerated in the preamble to the Constitution and said that there were other basic features too which could be gathered from the constitutional scheme (Para 506-A of SCC): (Para 523 of AIR). Equality was one of the basic features referred to in the Preamble to our Constitution. Shelat and Grover, JJ. Also referred to the basic rights referred to in the Preamble. They specifically referred to equality (Paras 520 and 535-A of SCC) (Paras 537 and 552 of AIR). Hegde and Shelat, JJ. Also referred to the Preamble (Paras 648, 652): (of SCC): (Paras 664, 668 of AIR), Ray, J. (as he then was) also did so (Para 886) (of SCC) : (Para 902 of AIR). Jaganmohan Reddy, J. too referred to the Preamble and the equality doctrine (Para 1159) (of SCC): (Para 1171 of AIR). Khanna, J. accepted this position (Para 1471) (of SC) : (Para 1482 of AIR). Mathew, J. referred to equality as a basic feature (Para 1621)(of SCC) : (Para 1634 of AIR). Dwivedi, J. (Paras 1882, 1883) of SCC (Paras 1895, 1896 of Air) and Chandrachud, J. (as he then was) (see Para 2086) (of SCC): (Para 2099 of AIR) accepted this position.

66. What we mean to say is that Parliament and the Legislatures in this country cannot transgress the basic feature of the Constitution, namely, the principle of equality enshrined in Art. 14 of which Art.16(1) is a facet. Whether creamy layer is not excluded or whether forward castes get included in the list of Backward Classes, the position will be the same, namely, that there will be a breach not only of Art.14 but of the basic structure of the Constitution.

The non-exclusion of the creamy layer or the inclusion of forward castes in the list of Backward Classes will, therefore, be totally illegal. Such an illegality offending the root of the Constitution of India cannot be allowed to be perpetuated even by constitutional amendment. The Kerala Legislature is, therefore, least competent to perpetuate such an illegal discrimination. What even Parliament cannot do, the Kerala Legislature cannot achieve”.

6.2. Hon’ble Apex Court in Para-6 of the judgment

in the case of **Asutosh Gupta** has held as follows:-

“6. The concept of equality before law does not involve the idea of absolute equality amongst all which may be a physical impossibility. All that Article 14 guarantees is the similarity of treatment and not identical treatment. The protection of equal laws does not mean that all laws must be uniform. Equality before the law means that among equals the law should be equal and should be equally administered and that the likes should be treated alike. Equality before the law does not mean that things which are different shall be treated as though they were the same. It is true that Article 14 enjoins that the people similarly situated should be treated similarly but what amount of dissimilarity would make the people disentitled to be treated equally is rather a vexed question. A Legislature, which has to deal with diverse problems arising out of an infinite variety of human relations must of necessity, have the power of making special laws, to attain particular objects; and for that purpose it must have large powers of selection or classification of persons and things upon which such laws are to operate. Mere differentiation or inequity of treatment does not ‘per se’ amount to discrimination within the inhibition of the equal protection clause. The State has always the power to make classification on a basis of rational distinctions relevant to the particular subject to be dealt with. In order to pass the test of permissible classification, two conditions must be fulfilled, namely: (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others who are left out of the group, and (ii) that that differential must have a rational relation to the object sought to be achieved by the Act. What is necessary is that there must be a nexus between the basis of

classification and the object of the Act. When a law is challenged as violative of Article -14, it is necessary in the first place to ascertain the policy underlying the statute and the object intended to be achieved by it. Having ascertained the policy and the object of the Act, the Court has to apply a dual test in examining the validity, the test being, whether the classification is rational and based upon an intelligible differentia which distinguished persons or things that are grouped together from others that are left out of the group, and whether the basis of differentiation has any rational nexus or relation with its avowed policy and objects. In order that a law may be struck down under this Article, the inequality must arise under the same piece of legislation or under the same set of laws which have to be treated together as one enactment. Inequality resulting from two different enactments made by two different authorities in relation to the same subject will not be liable to attack under Article 14. It is well settled that Article-14 does not require that the legislative classification should be scientifically or logically perfect. If we examine the impugned provisions of the Emergency Recruitment Rules from the aforesaid standpoint the conclusion is irresistible that the aforesaid set of Rules have been framed for a specific recruitment to the Administrative Service. The provision of Section 25 dealing with the seniority has been specifically designed to meet all situations under which people from different walks of life could be recruited to the Rajasthan Administrative Service under the Emergency Recruitment Rules. The law-making authority must be presumed to have examined pros and cons in making the aforesaid provision for seniority in the cadre which is in pari material with similar provisions for recruitment to the Indian Administrative Service and, therefore, it is difficult for us to hold that the aforesaid provision is discriminatory in nature”.

6.3. Hon’ble Apex Court in Para-11 of the judgment in the case of **State of Bihar & Others** has held as follows:-

“11. Now, it is well settled and cannot be disputed that Article-14 of the Constitution guarantees equality before the law and confers equal protection of laws. It prohibits the State from denying persons or class of persons equal treatment; provided they

are equals and are similarly situated. It, however, does not forbid classification. In other words, what Article 14 prohibits is discrimination and not classification if otherwise such classification is legal, valid and reasonable”.

6.4. Accordingly, this Court is not inclined to entertain the Writ Petition and dismiss the same. This Court directs the Petitioners to absorb the Opposite Party in the regular establishment within a period of three months from the date of receipt of this order. However, there shall be no order as to costs.

DR. B.R. SARANGI, J.

I agree. ମୁଁ ସମ୍ମତ କରୁଛି

**(B.P.SATAPATHY)
JUDGE**

**(DR. B.R. SARANGI)
JUDGE**

**Orissa High Court, Cuttack
The 16th of December, 2022, /sangita**