

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 19896 of 2021

State of Odisha and others

.....

Petitioners

Mr. A.K. Mishra, A.G.A.

Vs.

Rasmita Swain and another

.....

Opposite Parties

Mr. B.S. Tripathy-1, Adv.

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

08.03.2022

Order No.

2.

This matter is taken up through hybrid mode.

2. Heard Mr. A.K. Mishra, learned Addl. Government Advocate for the petitioners-State and Mr. B.S. Tripathy-1, learned counsel for the private opposite party no.1.

3. The petitioners-State have filed this writ petition seeking to set aside the order dated 02.01.2019 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.1901 (C) of 2017.

4. The private opposite party no.1 filed O.A. No. 1901 (C) of 2017 before the tribunal stating that she was initially appointed as staff nurse in Capital Hospital, Bhubaneswar under NRHM, Odisha from 05.07.2007 and continued till 17.11.2009. Pursuant to the advertisement dated 26.07.2008 issued by the Superintendent, MKCG Medical College and Hospital, Berhampur for appointment of staff nurse, opposite party no.1 appeared in the recruitment test and was selected. She joined in MKCG Medical College and Hospital, Berhampur on consolidated salary of Rs.5,200/- per month, vide office order dated 01.02.2010. The Health and Family Welfare Department issued resolution dated

27.12.2008 regarding regularization of service of contractual staff nurses on completion of six years uninterrupted and continuous service in regular post. Pursuant to such resolution, the service of the petitioner was regularized on completion of six years. Thereafter, a clarification was issued, vide resolution dated 17.09.2013, for regular appointment of existing contractual Group-C and Group-D employees, who were not holding any post in contravention of any statutory recruitment rules made under the proviso to Article 309 of the Constitution of India or any executive instruction in absence of such rules, according to which regular appointment of the contractual employees shall have to be made on the date of completion of six years of service. A further, clarification was also made, vide resolution dated 16.01.2014, that contractual appointments/engagements must have been made against contractual posts created with the concurrence of Finance Department on abolition of the corresponding regular posts or contractual posts created with the concurrence of Finance Department without abolition of any corresponding regular post in case of new office or for strengthening of the existing offices/services.

5. Mr. A.K. Mishra, learned Addl. Government Advocate for the petitioners-State contended that regularization of service of the petitioner was made solely basing on the resolutions dated 17.09.2013 and 16.01.2014 passed by the General Administration Department. Though the petitioner had joined against regular vacancy following due process of selection in the year 2009, her regularization was shifted, pursuant to resolution dated 16.01.2014 passed by the G.A. Department and, thereby, no illegality or

irregularity can be said to have been committed by the authority.

6. Mr. B.S. Tripathy-1, learned counsel for the private opposite party no.1 contended that the resolutions, which have been relied upon by the Government in Annexures-4 and 5 dated 17.09.2013 and 16.01.2014 respectively, have no application to the present case, as the petitioner had joined as staff nurse on contractual basis pursuant to resolution dated 27.12.2008 under Annexure-2, which provides that for the purpose of regularization, regular posts of staff nurse may be created, which were abolished earlier in lieu of contractual appointment without creation of any additional post and such creation of regular posts, may be limited to the number of regular posts abolished earlier for contractual appointment. As such, the staff nurse who have completed six years of uninterrupted and continuous service may be appointed on regular post. Therefore, the petitioner, on completion of six year of service, is entitled to be regularized and, as such, the tribunal while passing the order also relied upon the resolution dated 21.09.2010, which has been annexed as Annexure-5 to the writ petition, wherein it has been clearly mentioned that the past services of contractual staff nurses working under various schemes like Swasthya Bikash Samiti, Rogi Kalyan Samit, ZSS, NRHM shall also be counted for computation of six years at the time of regularization, after their absorption against the post of contractual staff nurses under general health care, subject to proper verification of documents by the appointing authorities. It is contended that since the petitioner had joined in service under NRHM and on completion of six years, her service has been regularized in terms of the resolutions dated 27.12.2008 and

21.09.2010, which are fully applicable to the staff nurses, the reliance placed by the State Counsel with regard to the resolutions dated 17.09.2013 and 16.01.2014 of the General Administration Department, are not applicable to the present case. Thereby, no illegality or irregularity has been committed by the tribunal, while passing the order impugned, so as to cause interference by this Court.

7. Having heard learned counsel for the parties and after going through the records, this Court finds that the petitioner had joined in service as a staff nurse under NRHM scheme at Capital Hospital, Bhubaneswar from 05.07.2007 to 17.11.2009 and thereafter by following due process of selection, she was appointed by the Government on 01.02.2010 and, as such, she joined on the very same day as contractual employee in MKCG Medical College and Hospital, Berhampur on consolidated salary of Rs.5,200/- per month. But fact remains, if her past service rendered under NRHM scheme from 05.07.2007 to 17.11.2009 is taken into consideration, then her service has to be regularized on completion of six years, pursuant to resolutions dated 27.12.2008 and 21.09.2010. Thereby, the fixation of her date of regularization as 13.03.2014 cannot be found faulted with. As such, shifting the date of regularization of service of the petitioner as 26.02.2016 instead of 13.03.2014, by the authority, pursuant to resolutions dated 17.09.2013 and 16.01.2014 of the General Administration Department, cannot be allowed to stand.

8. In the above view of the matter, this Court does not find any error apparent on the face of record to interfere with the order dated 02.01.2019 passed by the Odisha Administrative Tribunal in

O.A. No. 1901 (C) of 2017.

9. Accordingly, the writ petition merits no consideration and the same is hereby dismissed.

(DR. B.R. SARANGI)
JUDGE

Ashok/Puspa

(SAVITRI RATHO)
JUDGE

