

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 14416 of 2019

Union of India and others

.....

Petitioners

Mr.Bimbisar Dash, CGC

Vs.

Laxmidhar Das and another

.....

Opposite parties

Mr.R.N.Acharya, Advocate, O.P.1

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

02.05.2022

Order No.

19.

This matter is taken up through hybrid mode.

2. Heard Mr. B. Dash, learned Central Government Counsel appearing for the petitioners and Mr. R.N. Acharya, learned counsel appearing for opposite party no.1.

3. The opposite party no.1, who was working as Beldar in the office of the Assistant Engineer in Bhubaneswar Central Division No.1 in the Central Public Works Department had approached the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 260/00894/2014 with a prayer to quash the order of rejection dated 07.10.2014 and to direct the present opposite parties to regularize his service in a permanent cadre with effect from the date of his joining in any Group D/MTS category posts. After due consideration, the tribunal vide order dated 04.10.2016 passed the following order:

“In view of the discussion above, and particularly in view of the judgments of the Hon’ble Apex Court in the matter, we have no hesitation to hold that the respondent- Department have not considered the prayer for regularization of the applicant in conformity with extant guidelines, and as per the law established in this regard in the pronouncements of the Hon’ble Apex Court. We, therefore, quash the order dated 07.10.2014 issued by the respondents and direct the respondents to reconsider the matter of regularization in the light of the observations of the Tribunal given above and communicate the decision to applicant in a speaking order within a period of 90

days of receiving a copy of this order.

4. After the above order was passed, the present petitioners passed an order on 15.02.2017 under Annexure-2 and rejected the claim of opposite party no.1 for regularization. After such order was passed, opposite party no.1 instead of filing separate Original Application against such order, filed a contempt petition bearing C.P. No. 260/11/2017. The said contempt petition was disposed of vide order dated 14.05.2019 under Annexure-3, giving final opportunity to present petitioner no.5 to comply with the direction of the tribunal in O.A. No. 260/00894/2014 with due application of mind to the observation made therein and pass a further order which will be in supersession of the order dated 15.02.2017. The said exercise was to be completed within a period of sixty days from the date of communication of the order. However, the tribunal made it clear that by the said order, the CP was not dropped and the same was to be listed on 15.07.2019 for filing compliance report and for further orders.

5. On perusal of the record, it reveals that, opposite party no.1 had filed the Original Application stating inter alia that he was appointed as daily rated casual labourer (Beldar) on 10.02.1984 and was working as a skilled worker in a construction work under petitioner No.5, and to that effect a certificate was issued by the Assistant Engineer, CPWD, Bhubaneswar on 24.10.1994. Said certificate indicated that opposite party no.1 was working as Beldar on hand receipt/ M.Roll since 1984 up to 1992 and working on work order since then under Sub Division No. 1, Bhubaneswar Central Division No.1, CPWD. The Executive Engineer, CPWD, Bhubaneswar requested the Superintending Engineer to grant temporary status to the members of CPWD engaged on work order

or muster roll basis as per the CPWD Manual Vol III for W.C. Establishment Para 2.02 to fill up the vacancies, and opposite party no.1 was at serial No.10 of the list of workers. It is shown that the opposite party no.1 was working since the date 01.02.1992. Subsequently, by a Notification dated 16.11.2004 of the Executive Engineer, CPWD, and temporary status was granted to opposite party no.1 in the initial cadre of Group D, WC Establishment w.e.f.01.11.2004. Since that date, opposite party no.1 was working as a Temporary Status Worker drawing regular salary. This was evident from the Pay Slip in respect of opposite party no.1 for December 2013 available at Annexure 4 of the O.A. Opposite party no.1 along with some similarly placed temporary status workers made a representation to petitioners No. 4 and 5 on 15.11.2013 making a prayer for regularization of their services in terms of O.M. dated 28.03.1988 of the Department of Personnel and Training. It was indicated in the said representation that the case of similarly placed workers in the Income Tax Department were regularized on the basis of the above quoted O.M. of the Department of Personnel & Training. As the same was not carried out, opposite party no.1 approached the Tribunal in filing O.A no.29 of 2014. The Tribunal disposed of the O.A. by order dated 06.05.2014 directing the petitioners to dispose of the representation in a reasoned and speaking order. In compliance of the same, petitioner no.5 disposed of the representation, by an Office Order dated 07.10.2014 with an observation that the case of opposite party no.1 cannot be considered for regularization since the opposite party no.1 was engaged on casual basis and conferred with temporary status, but was not recruited through regular selection process. Therefore, opposite party no.1 once again approached the tribunal by filing O.A. No.

260/00894/2014 challenging the order dated 07.10.2014.

6. After due adjudication, the tribunal vide order dated 04.10.2016 directed the present petitioners to re-consider the matter of regularization in the light of the observations of the Tribunal and accordingly quashed the order of rejection dated 07.10.2014. In compliance to the said order of the tribunal dated 04.10.2016, the petitioners have passed the order dated 15.02.2017 under Annexure-2 stating therein that the case of opposite party no.1 can be considered for regularization. However, instead of filing separate original application challenging the order under Annexure-2, opposite party no.1 filed a contempt application bearing C.P. No. 260/11/2017. The said contempt petition was disposed of vide order dated 14.05.2019 under Annexure-3, giving final opportunity to present petitioner no.5 to comply with the direction of the tribunal in O.A. No. 894/2014 with due application of mind to the observation made therein and pass a further order which will be in supersession of the order dated 15.02.2017. This exercise shall be completed within a period of sixty days from the date of communication of the order. However, the tribunal made it clear that by the said order, the CP is not dropped and the same will be listed on 15.07.2019 for filing compliance report and for further orders.

7. Since the tribunal had passed the order dated 04.10.2016 directing the petitioners to re-consider the matter of regularization of service in the light of its observations made therein and, in compliance of the same, the petitioners have passed the order dated 15.02.2017, if opposite party no.1 is aggrieved by such order, he was at liberty to file separate original application, instead of filing contempt application. The tribunal should not have entertained such contempt application, as its order had already been complied with by

the petitioners. More so, the contempt proceeding cannot be utilized as a tool to grant the benefit, which was not directed by the tribunal in the Original Application.

8. On perusal of the order of the tribunal, it is made clear that nowhere the tribunal has issued any direction to the present petitioners to regularize the services of opposite party no.1. The direction was given to the present petitioners to reconsider the matter of regularization, which has been re-considered by the authority. As such, the order of the tribunal has been complied with. Against the said order, no contempt lies.

9. In view of the above, the tribunal has committed gross error and more so acted beyond its jurisdiction in passing the order dated 14.05.2019. Therefore, the order dated 14.05.2019 passed in C.P. No. 260/11/2017 is liable to be quashed and is hereby quashed. However, liberty is granted to opposite party no.1, if he is aggrieved by the order passed by the petitioners dated 15.02.2017, to approach the tribunal by filing fresh application, if he is so advised.

10. With the aforesaid liberty, the writ petition stands disposed of.

(DR. B.R. SARANGI)
JUDGE

Arun/Bichi

(SAVITRI RATHO)
JUDGE