

IN THE HIGH COURT OF ORISSA AT CUTTACK
WPC (OAC) No.1665 of 2007

Sayed Fazal Ahmed

....

Petitioner

-versus-

State of Odisha & Others

....

Opp. Parties

COROM:
JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER
22.9.2022

Order No

1. 1. This matter is taken up through Hybrid Mode.
2. 2. Heard Mr. S.K. Mishra, learned counsel for the petitioner and Mr. B. Panigrahi, learned A.S.C.
3. 3. This Writ petition has been filed by the petitioner challenging the order dated 20.12.2006 passed by Opp. party No.3 under Annexure-7. It is submitted that the petitioner though was appointed on a regular basis as against the post of Jr. Clerk vide order No.299 dated 7.2.1986 of the District Agriculture Officer, Champua where he joined on 10.2.1986, but by taking him as an irregular appointee, when the Collector and District Magistrate, Keonjhar directed Opp. Party No.3 to terminate the services of the petitioner vide communication issued on 3rd June, 1987 under Annexure-A/2 to the rejoinder, the petitioner challenging the same approached the learned Tribunal in O.A. No.246 of 1988. It is submitted that learned Tribunal while entertaining the Original application, passed an interim order staying operation of the

communication issued by the Collector and District Magistrate, Keonjhar on 3.6.1987. It is further submitted that though the petitioner was appointed as against a regular post, where he joined on 10.2.1986, but learned Tribunal while disposing a batch of O.As along with O.A. No.246 of 1988 passed the following order.:

“ By now the applicants have put in several years of service as Junior Clerks ranging from 14 to 18 years. The applicant in O.A 573/1989 has put in more than 25 years of service having been appointed in December, 1971. Hence, following the principles adopted by us in our decision in O.A. NO.544/1989 decided on 21.11.1995 in which we had relied upon the Apex Court decision in the case of Dr. A.K. Jain Vs. Ukoj of India (1987) Supplementary SCC 497 and Smt. P.K. Narayani and others Vs. State of Kerala and others (AIR 1984 SC 534), we would direct that their performance in the posts of Junior Clerks be now evaluated on the basis of their C.C.Rs for the periods they worked as such, by a committee of Officers consisting of the appointing authority, the Collector/A.D.M of their respective districts and the District Welfare Officer. If the Committees find that their performance is satisfactory, then their services be regularized by obtaining orders of Government for relaxation of Rule 14 of the O.M.S Rules, 1985. While doing so, the provisions of the O.R.V Act shall be kept in mind. If the post against which each of them is officiating is earmarked for the category to which he belongs, then he should be regularized against that post. Those who are working in posts earmarked for other categories should be regularized in the respective categories. The applicant shall be entitled to count their seniority in the posts of Junior Clerks only from the dates their services are regularized against such posts. But their pay in the scale of Junior Clerks be fixed notionally taking into account the post services rendered by them as Junior Clerks. They shall not be entitled to arrear of differential pay on account of such pay fixation.”

4. It is submitted that since the petitioner was appointed as against a regular post where he joined on 10.2.1986, even though the learned Tribunal directed

the authorities to pass an order of regularization, but the same was never acted upon by the Opp. party and the petitioner as usual was allowed to continue as against the post of Jr. Clerk in the office of Opp. Party No.3. It further submitted that subsequently in the final gradation list of Jr. Clerk published on 6.6.2005 under Annexure-4, the petitioner was also placed at Sl. No.1 by showing his date of entry into Govt. service as 10.2.1986. But subsequently while issuing the revised gradation list on 17.11.2006 vide Annexure-5, the petitioner when was placed below his juniors, the petitioner filed an objection to the same under Annexure-6. It is submitted that without considering the claim of the petitioner in its proper perspective and without taking into account the fact the petitioner from his very being beginning is continuing as against a regular post, the impugned order at Annexur-7 was passed with a wrong observation that the seniority of the petitioner will be maintained on his regularization of his service.

5. Mr. Mishra, learned counsel for the petitioner submitted that due to pendency of the matter before this Court for the last 15 years, the petitioner was not extended with the service and financial benefit and even after his retirement on 31.1.2022, the petitioner is not getting his retiral benefits also. Accordingly, Mr. Mishra prayed for passing of appropriate order by this Court in the matter.

6. Mr. Panigrahi, learned A.S.C on the other hand made his submission basing on the stand taken in the counter affidavit. It is submitted that pursuant to the order passed by the learned Tribunal in a batch of O.As vide its order dated 16.7.1996 under Annexure-A/3 , since the petitioner was never regularized, he is not entitled to get any relief.

7. Heard learned counsel for the parties. Perused the materials available on record.

8. This Court after going through the same finds that even though the petitioner was appointed on a regular basis as against the post of Jr. Clerk in the office of Opp. Party No.3 where he joined on 10.2.1986, but he was shown as an irregular recruitee and Collector and District Magistrate, Koraput without proper appreciation of the nature of appointment of the petitioner issued the communication on 3.6.1987 by directing Opp.party No.3 to terminate the services of the petitioner. Since this Court finds that the said order of termination was never acted upon as the petitioner was protected by the Interim Order passed by the learned Tribunal, this Court finds that the petitioner being a regular appointee, no order of regularization was required to be passed even basing on the order passed by the learned Tribunal. This Court also finds that in the counter affidavit which was filed on 22.4.2015, no further order showing the regularization of the petitioner is enclosed pursuant to the order passed by the learned Tribunal. However,

this Court finds that in the final gradation list published by the office of opp. party No.3 under Annexure-4, the date of entry into Government service of the petitioner was indicated as 10.2.1986. Therefore, it is to be held that the petitioner being a regular appointee as against the post of Jr Clerk, his date of entry has to be reckoned from 10.2.1986. While holding so, this Court directs Opp. Party No.3 to extend all the service and financial benefit as due and admissible in favour of the petitioner. Opp. Party No.3 is further directed to take appropriate step for sanction and release of the retiral benefits as due and admissible also. Since Mr. Mishra, learned counsel for the petitioner submits that the petitioner's claim be confined only as against the post of Sr. Clerk only, the benefit as due and admissible as against the post of Jr. Clerk be extended in favour of the petitioners including the retiral benefits.

9. This Court directs Opp. party No.3 to complete the entire exercise within a period of four months from the date of receipt of this order.

(Biraja Prasanna Satapathy)
Judge

Sangita