

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.21037 of 2021

Tushar Kant Barik & Anr. *Petitioners*
Mr. A.P. Bose, Adv.
-versus-
State of Odisha & Ors. *Opposite Parties*

CORAM:
DR. JUSTICE S.K. PANIGRAHI

Order
No.

ORDER
30.08.2022

03. 1. This matter is taken up through hybrid arrangement.
 2. Heard.
 3. In this Writ Petition, the petitioner seeks to quashed the Letter dated 20.04.2021 under Annexure-18 as the contract period was extended under Annexure-16 and when similarly placed persons have been allowed to continue under Annexure-20 and 21 and also directed the Opposite Party No.5 to give the remuneration to the petitioners for the month of February to April 2021.

*14. Regularization of contractual services has been a persistent matter of litigation for the last several decades. In this regard, the Apex Court has clarified that the same has to be based on the necessity of the said post and the duration of the service of the employee. In the case of **Roshan Lal Tandon v. Union of India**¹, the Supreme Court observed:*

"It is 'true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a government servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public 'law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Art. 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Art. 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are 'fixed by the law and in the enforcement of these duties society has an interest."

15. In *Ashwani Kumar and others v. State of Bihar and others*² , the Apex Court was considering the validity of confirmation of the irregularly employed. The Court observed:

"In this connection it is pertinent to note that question of regularization in any service including any government service may arise in two contingencies. Firstly, if on any available clear vacancies which are of a long duration appointments are made on ad hoc basis or daily-wage basis by a competent authority and are continued from time to time and if it is found that the incumbents concerned have continued to be employed for a long period of time with or without any artificial breaks, and their services are otherwise required by the institution which employs them, a time may come in the service career of such employees who are continued on ad hoc basis for a given substantial length of time to regularize them so that the employees concerned can give their best by being assured security of tenure. But this would require one precondition that the initial entry of such an employee must be made against an available sanctioned vacancy by following the rules and regulations governing such entry. The second type of situation in which the question of regularization may arise would be when the initial entry of the employee against an available vacancy is found to have suffered from some flaw in the procedural exercise though the person appointing is competent to effect such initial recruitment and has otherwise followed due procedure for such recruitment. A need may then arise in the light of the exigency of administrative requirement for waiving such irregularity in the initial appointment by a competent

authority and the irregular initial appointment may be regularized and security of tenure may be made available to the incumbent concerned. But even in such a case the initial entry must not be found to be totally illegal or in blatant disregard of all the established rules and regulations governing such recruitment."

16. *This is a case where the Government has failed to take any steps for regularization of their contractual employees working over the years. Every year there have been several litigations pertaining to regularization. In such cases, the court has to play a guiding role while issuing directions for regularizing such employees more particularly when the conditions prescribed in the said orders can be said to be either unreasonable, arbitrary or discriminatory.*

4. In the case of ***Santosh Panda vs. State of Odisha and Ors¹***, this court considered the issue of regularization of contractual employees (Casualty Managers) and observed that there is a need of Casualty Managers in Medical Colleges and Hospitals and they play a critical role in casualty management which all the more necessitates a serious consideration and course of action at the level of Government.

5. In light of the above mentioned facts and guided by the precedents cited hereinabove, the Opposite Party No.5 is requested to examine the case of the petitioner and

¹ W.P.(C) 24687 of 2021

consider formulating a policy to absorb the petitioner in the post of Casualty Manager as the said posts have been approved under Annexure-13 and considering the service rendered by him at the hospital.

6. Further, the letter dated 20.04.2021 under Annexure-18 is quashed as similarly placed persons have been allowed to continue under Annexure-20 and 21.

7. According, this Writ Petition is disposed of.



(Dr. S.K. Panigrahi)
Judge

SD