

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 5424 of 2016

State of Odisha & Ors.

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Petitioner

Mr. B.P. Tripathy, AGA

Vs.

***Prasanna Kumar Patra &
Anr.***

.....

Opposite parties

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

30.03.2022

Order No.

This matter is taken up through hybrid mode.

2. Heard Mr. B.P. Tripathy, learned Additional Government Advocate for the State-petitioners.

3. The State-petitioners have filed this writ petition challenging the order dated 01.07.2015 passed in O.A. No.2060 of 2000, by which the Odisha Administrative Tribunal, Bhubaneswar has held that the engagement of opposite party no.1 is prior to 12.04.1993 and by so holding has directed to engage opposite party no.1 as NMR within a period of two months but he shall be not entitled to back wages on the principle of “no work no pay”. The tribunal has also granted liberty to the State-authorities to take appropriate action against the concerned Executive Engineer, if the certificate issued by him, is not within his official capacity.

4. As it appears, opposite party no.1 was engaged as NMR in the office of petitioner no.4 and he discharged the duty of typist since March, 1993. His services were terminated w.e.f. 31.07.2000 and challenging the same, opposite party no.1

approached the Odisha Administrative Tribunal, Bhubaneswar by filing O.A. No.1797 of 2000. The tribunal issued notice for hearing and final disposal and also passed an interim order to the effect that pendency of the O.A. will not be a bar to engage opposite party no.1 as a NMR employee subject to necessity of manning such post and availability of funds for payment of salary. Pursuant to such order, opposite party no.1 was again engaged and continued in the post of typist. Since opposite party no.1 was again terminated from service, he approached the tribunal by filing O.A. No.2060 of 2000 and the tribunal passed the impugned order holding that opposite party no.1 having been engaged prior to cutoff date, i.e. 12.04.1993, which is evident from the certificate given by the Executive Engineer, Upper Indravati Canal Division No.II, Junagarh, the termination cannot be held to be justified and the termination order had been passed without compliance of Section 25(f) of the Industrial Dispute Act. Therefore, the tribunal, vide order dated 01.07.2015, quashed the order of termination dated 26.08.2000 in Annexure-11 to the O.A. and consequentially directed to engage opposite party no.1 as NMR within two months and further directed that he is not entitled to back wages on the principle of “no work no pay” and also directed the State-authorities to take appropriate action against the concerned Executive Engineer, if the certificate issued by him is not within his official capacity.

5. Being aggrieved by the aforesaid order of the tribunal, the State approached this court by filing this writ petition on 22.03.2016 and the file was defective one. Consequentially, on 21.07.2016, this Court directed learned Additional Government Advocate to remove the defect within two weeks. After removal of defect, the matter has been listed today, after five years. As such, delay has been caused to pursue the matter before this Court

though the same was filed in the year 2016. When this Court posed a question to know the latest position, learned Additional Government Advocate stated that he has no instructions. As such, reliance has been placed on two certificates, issued by the Executive Engineer, Right Canal Division No.II, Upper Indrabati Irrigation Project out of which one was given on 07.01.1993, which has been placed at page 24, and the other was given on dated 05.03.1999 at page 21 of the brief. Thereby, on the basis of the certificates issued, it is made clear that the petitioner was engaged prior to 12.04.1993 and therefore, the tribunal has come to a conclusion that the petitioner was engaged prior to cutoff date, i.e. 12.04.1993 and the termination order passed by the authority is contrary to Section 25(f) of the Industrial Disputes Act. Needless to say, when the matter was argued before the tribunal though opportunity was given to the State Counsel, but he did not raise any question on that score.

6. Therefore, this Court is of the considered view that the order dated 01.07.2015 passed by the tribunal in O.A. No.2060 of 2000 is well justified, which does not warrant interference of this Court. More so, the writ petition suffers from delay and laches in view judgment/order of this Court in the case of *State of Odisha v. Surama Manjari Das*, (W.P.(C) NO.15763 of 2021 dismissed on 16.07.2021).

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

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(DR. B.R. SARANGI)
JUDGE

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(SAVITRI RATHO)
JUDGE

