

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.18499 of 2022

Tapas Kumar Nayak

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

COROM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

22.09.2022

Order No

4.

1. This matter is taken up through Hybrid Mode.

2. Heard Mr. R.N.Panda, learned counsel for Petitioner and Mr. A.P.Das, learned Addl. Standing Counsel for the State-Opposite Parties.

3. The Petitioner is aggrieved by the order dated 13.01.2022 passed by the Principal Secretary to Govt. of Orissa Information and Public Relations Department- Opposite Party No.1 under Annexure-7, wherein his prayer for regularization has been rejected.

4. Learned counsel for the Petitioner submitted that the Petitioner vide order dated 31.10.1994 under Annexure-1-Series was appointed as a Junior Clerk in the Office of Opposite Party No.3 on ad hoc basis.

5. Learned counsel for the Petitioner also submitted that pursuant to the said order, the Petitioner submitted his joining on 04.11.1994 and since 04.11.1994 to till date he is continuing as such ad-hoc basis. In spite of such long continuance, when the services of the Petitioner was not

regularized, he approached the learned Tribunal in WPC (OAC) No.2718 of 2017. This Court vide order dated 23.11.2021, disposed of the said writ petition with a direction on the Opposite Party No.1 to take a decision on the Petitioner's claim taking into consideration the ratio decided in the case of **Secretary, State of Karnataka vs. Uma Devi (3), (2006) 4 SCC-1, State of Karnataka vs. M.L.Keshari, (2010) 9 SCC 247, Nihal Singh & Others vs. State of Punjab & Others, 2013 (14) SCC 65 and Amarkant Rai vs. State of Bihar & Others, 2015 (8) SCC 265.**

6. It is submitted that without considering the claim of the petitioner in the light of the ratio decided in the above noted cases and without taking into consideration the fact that the Petitioner is continuing on ad hoc basis since 4.11.1994, the prayer of the Petitioner was rejected vide the impugned order dated 13.01.2022 under Annexure-7.

7. On being queried by this Court as to whether the petitioner is continuing as against a vacant sanctioned post. Mr. Panda filed an office order issued on 19.08.2022 by the Government-Opposite Party No.1, wherein it has been indicated that the Petitioner is continuing as against a vacant sanctioned post on 44 days basis.

8. Mr. Panda also submitted that not only he is continuing as against the vacant sanctioned post but also in view of his long continuance w.e.f. 04.11.1994, the Petitioner's claim is covered by the decision of the Hon'ble Apex Court in the case **Secretary, State of Karnataka vs.**

Uma Devi (3), (2006) 4 SCC-1, State of Karnatak vs. M.L.Keshari, (2010) 9 SCC 247, Nihal Singh & Others vs. State of Punjab & Others, 2013 (14) SCC 65 and Amarkant Rai vs. State of Bihar & Others, 2015 (8) SCC 265.

9. Mr. Panda also brought to the notice of this Court, similar order passed on 15.02.2012 in W.P.(C) No.8446/2009, wherein this Court relying on the decision of the Hon'ble Apex Court directed for regularization of the Petitioner therein.

10. Mr. Das, learned Addl. Standing Counsel for the State-Opposite Parties on the other hand submitted that in spite of being intimated pursuant to the order passed by this Court on 28.07.2022 and 22.08.2022 as well as 07.09.2022, no information was provided by the Opposite Parties. But it is fairly submitted that as reflected in the office order dated 19.08.2022, the Petitioner is continuing as against the vacant sanctioned post on ad hoc basis.

11. In view of the fact narrated hereinabove and placing reliance on the decision of the Hon'ble Apex Court as cited (supra) as well as the decisions of this Court, this Court held that Petitioner because of his long continuance w.e.f. 4.11.1994 as against a vacant sanctioned post has accrued a right of regularization. But the Opposite Party No.1 has illegally rejected his claim vide impugned order under Annexure-7. Therefore, while quashing the same, this Court directs the Opposite Party No.1 to pass appropriate order by absorbing the petitioner in the regular establishment as against the post he is continuing. Such

an exercise shall be completed within a period of three months from the date of receipt of this order.

12. With the aforesaid observation and direction, the Writ Petition is disposed of.

