

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.20791 of 2022

Bishnu Charan Mishra

....

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. S.K.Ojha, learned counsel for Petitioner and Mr. A.P.Das, learned Addl. Standing Counsel for the State-Opposite Parties.

3. The present Writ Petition has been filed challenging the order dated 27.07.2022 passed by the Government-Opposite Party No.1 under Annexure-12, wherein the prayer of the Petitioner for his regularization has been rejected.

4. It is submitted that the Petitioner is continuing on ad-hoc basis as against the post of Peon in the Office of the Collector, Jajpur-Opposite Party No.3 since 12.09.1994.

5. It is submitted that the Petitioner is continuing as against a vacant sanctioned post w.e.f. 12.09.1994 and the said fact is reflected in the communication issued by the Opposite Party No.3 on 12.05.2015 under Annexure-9.

6. It is submitted that though the Petitioner was allowed to continue on ad-hoc basis as against the vacant

sanctioned post, but when no step was taken to absorb him in the regular establishment, the Petitioner approached learned Tribunal in O.A. No.393(C)/2013.

7. It is submitted that the said Original Application was disposed of by learned Tribunal vide order dated 27.04.2018 with a direction on the Opposite Party No.1 to take a decision in the matter as per the request of the Collector, Jajpur within a period of three months from the date of receipt of the order.

8. It is submitted that as the said order passed by the learned Tribunal was not complied with, the Petitioner filed Contempt Petition in CONTC (CPC) No. Nos.335/15, CONTC No. 1549/2022 and 4411 of 2022.

9. It is submitted that lastly vide the impugned order dated 27.7.2022 the claim of the petitioner has been rejected without proper appreciation on his claim vis-à-vis the decisions governing the field in the case of **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.**

10. It is submitted that the claim of the Petitioner is covered by the decision of this Court passed in W.P.(C) No.26860 of 2013 as well as the order passed on 19.01.2016 in Writ Appeal No.406/2015 and batch.

11. It is also submitted that the claim of the Petitioner for his absorption was also recommended by the Collector, Jajpur on different occasion and without taking into

account that aspect, the prayer of the Petitioner was rejected.

12. Mr. Ojha also brought to the notice of this Court, the order of regularization passed in respect of similarly situated person vide order dated 23.07.2020 under Annexure-11.

13. Making all his submission, Mr. Ojha prayed for interference of this court in the impugned order and for passing appropriate order with regard to the claim made in the writ petition for regularization of the Petitioner.

14. Mr. Das, learned State Counsel on the other hand submitted that though the claim of the Petitioner was recommended time and again by the Collector, Jajpur, but the Petitioner is not similarly situated as like the person who was regularized basing on the order passed by the Government under Annexure-11.

15. Heard learned counsel for the Parties.

16. Perused the materials available on record. This Court after going through the same finds that the Petitioner is continuing as against a vacant sanctioned post of Peon since 12.09.1994 in the Office of Opposite Party No.3. Therefore, in view of such long continuance of the Petitioner as against a vacant sanctioned post his claim for regularization is covered by the decision of the Hon'ble Apex Court in above noted cases as well as the decision relied on by Mr. Ojha.

17. In view of the same, this Court finds that the Opposite Party No.1 without proper appreciation of the claim passed

the impugned order on 27.07.2022 under Annexure-12. 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 within a period of three months from the date of receipt of this order. Since the Petitioner is in the verge of retirement, it is expected that necessary order be passed within the time stipulated by this Court.

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

