

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No.178 of 2018

Abhimanyu Samal

.... ***Petitioner***
Ms. B.K. Pattnaik, Advocate

-versus-

State of Odisha & others

.... ***Opposite Parties***
Mr. B.P. Tripathy, AGA.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

17.11.2022

Order No.

- 04.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. The name of Mr. Manoja Kumar Khuntia be deleted from the first page of order sheet.
 3. Heard Ms. B.K. Pattnaik, learned counsel for the Petitioner and Mr. B.P. Tripathy, learned Additional Government Advocate appearing for the State-Opposite Parties.
 4. Initially the Petitioner had approached the State Administrative Tribunal, Cuttack Bench, Cuttack by filing O.A. No.178 of 2018 with a prayer to quash the order dated 22.12.2017 passed by the Principal Secretary to Government of Odisha, Department of Water Resources under Annexure-10 and to direct the Opposite Parties to regularize his service and release his salary w.e.f. February, 2003. However, in the meantime, State

Administrative Tribunal has been abolished and the O.A. has been transferred to this Court and it has been reregistered as WPC (OAC) NO.178 of 2018.

5. It is submitted by the learned counsel for the Petitioner that the Petitioner was initially engaged on NMR basis in the year 1989. Thereafter, he continued to discharge the service in the office of the Executive Engineer, Prachi Division, Bhubaneswar. However, pursuant to the Finance Department Resolution dated 15.5.1997, the case of the present Petitioner also was eligible, but unfortunately he was not considered for regularization although he was engaged prior to 12.4.1993, i.e., the cut-off date as prescribed in the said resolution. It is contended by the learned counsel for the Petitioner that when the Petitioner approached the authorities, the initial date of entry into the service of the Petitioner was disputed, a committee was constituted to find out the initial date of entry into service of the Petitioner along with others. On perusal of the report of the committee which is annexed as Annexure-3 to the writ petition. In the initial part of the report, it has been observed that the engagement of the Petitioner on DLR/CLR basis has not traced out. However, in the concluding part of the report, the Executive Engineer, Prachi Division, Bhubaneswar was requested by the committee to initiate necessary proposal to incorporate the names of the above incumbents for their continuance on DLR basis as they were engaged prior to 12.4.93 with a view to prepare a secondary list for approval of the Government. On the basis of the said inquiry, the Director Personnel of the office of the Engineer-in-Chief, Water Resources, Orissa, Bhubaneswar vide its letter dated 5.8.2005 under Annexure-2 informed the Executive

Engineer, Prachi Division, Bhubaneswar, since the name of the Petitioner and two other persons were found and that they were engaged prior to 12.4.93, therefore, the Executive Engineer, Prachi Division, Bhubaneswar was requested to submit necessary proposal incorporating the name of the Petitioner along with two others, who have been claiming for their continuance on DLR basis to enable the Director Personnel to prepare a secondary list for approval of the Government as desired by the Engineer-in-Chief, Water Resources, Orissa, Bhubaneswar. Despite such request by the Director Personnel, no action was taken and the Petitioner who was working in the office of the Executive Engineer, Prachi Division, Bhubaneswar continued in the work till 2006. It is further contended that since they were not getting their salary w.e.f. February, 2003, they were unable to maintain and look after their families. Accordingly, the Petitioner and others stopped discharging their duty since 2006. They were going to the office till the end of March, 2006. In view of the report and recommendation under Annexure-2, learned counsel for the Petitioner submits that the case of the Petitioner is directly covered under the Resolution dated 15.5.1997 of the Finance Department, Government of Odisha and, as such, the Petitioner is entitled to the benefits as provided in the said resolution of the Government of Odisha. However, due to inaction of the Opposite Parties, the Petitioner's service has not been regularized till date and, as such, he is facing lot of financial hardship.

6. Learned Additional Government Advocate appearing for the State-Opposite Parties submits that it could not be ascertained as to when the Petitioner was initially engaged in the office of the

Executive Engineer, Prachi Division, Bhubaneswar. Therefore, a committee was constituted to find out the same. He further submits that even the report of the Government is also not very clear and inconsistent observations are there in the report. In such circumstances, Government authorities were not in a position to take a final decision in the matter. It is further contended by learned Additional Government Advocate that no documents were found in the office of the Engineer-in-Chief, Water Resources, Orissa, Bhubaneswar in support of the contention of the learned counsel for the Petitioner that the Petitioner had initially joined in the year 1989. Accordingly, it is submitted that the Petitioner is not entitled to the benefits under the 1997 Resolution referred to hereinabove.

7. Having heard the learned counsel for the respective parties and upon a perusal of the materials placed before this Court, this Court is of the view that when a specific committee was constituted by the Engineer-in-Chief, Water Resources, Orissa, Bhubaneswar vide the office order No.159 dated 11.1.2005 to examine the documents pertaining to engagement of the Petitioner along with two others on DLR basis and to furnish a report along with necessary views before Engineer-in-Chief, Water Resources and the committee was constituted to submit its view in the shape of report which has been annexed as Annexure-3 dated 25.2.2005, the authorities should not have entertained any doubt with regard to date of entry of the Petitioner in service in the year 1989 in the office of the Executive Engineer, Prachi Division, Bhubaneswar. Therefore, this Court is also of the considered view that the report of the committee should have been accepted and accordingly

necessary follow up steps should have been taken for regularization of the service of the Petitioner under 1997 Regulation of the Government. Further, the impugned order dated 22.12.2017 passed by the Principal Secretary to Government of Odisha, Department of Water Resources under Annexure-10 rejecting the prayer of the Petitioner for reengagement in the post of Peon is not based on any material on record. Further, the impugned order has not taken into consideration the report of the committee which was specifically constituted for the purpose to find out as to when the Petitioner had initially joined in the office of the Executive Engineer, Prachi Division, Bhubaneswar.

8. Therefore, this Court is of the view that the same is unsustainable in the eye of law and, accordingly, the order dated 22.12.2017 under Annexure-10 is set aside. However, it is directed that the case of the Petitioner for regularization be considered on the basis of the recommendation made by the Director Personnel of the office of the Engineer-in-Chief, Water Resources, Orissa, Bhubaneswar under Annexure-2 vide its letter dated 5.8.2005 and the services of the Petitioner be regularized against any sanctioned vacant post. However, considering the admitted position that the Petitioner did not discharge any duty after March, 2006, it is not open to the Petitioner to claim any salary or wages for the period from April, 2006 to till date and no such claim shall be entertained by the authorities. It is further directed that unpaid salary or wages of the Petitioner from February, 2003 upto March, 2006 be also calculated and the same be paid to the Petitioner, if the same has not already been paid to the Petitioner, within the period of six weeks from the date of production of certified copy of this order

along with interest @ 7% per annum.

9. With the aforesaid observation and direction, this writ petition stands disposed of.

(A.K. Mohapatra)
Judge

Debasis

