

IN THE HIGH COURT OF ORISSA AT CUTTACK
WPC (OA) NO.1815 OF 2018

Pravat Kumar Majhi

....

Petitioner

-versus-

State of Odisha & Others

....

Opp. Parties

COROM:
JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

10.10.2022

Order No

1. 1. This matter is taken up through Hybrid Mode.

2. Heard Mr. G. Mishra, learned Senior Counsel for the Petitioner and Mr. Panigrahi, learned Addl. Standing Counsel appearing for the State-Opp. Parties.

3. The present Writ Petition has been filed by the petitioner with the following prayer:-

“(i) That the Hon’ble Tribunal may be pleased to quash the impugned order dtd. 28.07.2018 under Annexure-11 in withdrawing the regularization order dtd. 19.7.2018 of the applicant in the post of Jr. DEO as illegal, unlawful, unfair, capricious and void.

“(ii) That the Hon’ble Tribunal may further be pleased to direct the Respondents to revoke the impugned order dt. 28.7.2018 under Annexure-11 immediately.

“(iii) That the Hon’ble Tribunal may further be pleased to direct the Respondents to give all financial and sub sequential service benefits in the event of revocation of impugned order dtd. 28.7.19.

“(iv) Cost of the litigation may be awarded in favour of the applicant.

“(v) Any other relief(s) as your honour may deem fit and proper be granted”.

4. Learned counsel for the Petitioner submitted that the Petitioner was initially appointed as a Data Entry Operator in the Department of Higher Education through service provider.

5. Learned counsel for the petitioner further submitted that the Petitioner while continuing as such vide Office Order dated 27.04.2012 under Annexure-2, he was appointed on contractual basis with consolidated remuneration of Rs.5,200/- per month.

6. It is also submitted that in the Office Order dated 3.5.2014 issued under Annexure-3 by the Department of Higher Education, the Petitioner was placed at Sl. No.4 of the tentative Gradation List of Data Entry Operator working in the Higher Education Department on contractual basis.

7. It is submitted that taking into account the continuance of the petitioner as a Data Entry Operator on contractual basis in terms of order issued under Annexure-2 and the resolution issued by the G.A. Department on 17.09.2013 as well as 16.01.2014, the Petitioner's services as Junior Data Entry Operator was regularized vide office order dated 19.07.2018 under Annexure-8.

8. Mr. Misra, learned Senior Counsel further submitted that subsequent to the office order issued under Annexure-8, the salary of the Petitioner was also fixed under ORSP Rules, 2017 in Level-IV, Cell-01 w.e.f. 27.04.2018 against the regular post of Junior Data Entry Operator created vide letter of the Department dated 12.7.2011 read with office order dated 19.07.2018.

9. Mr. Mishra, learned Senior Counsel for the Petitioner submitted that even though the Petitioner in terms of the resolution issued on 17.09.2013 and 16.01.2014 was duly regularized in her services vide order dated 19.07.2018, but vide impugned order dated 28.07.2018, the said order was withdrawn unilaterally by the Department and the present Writ Petition was filed against the said order.

10. Mr. Mishra, learned Senior Counsel for the Petitioner submitted that prior to withdrawing the order of regularization vide the impugned order under Annexure-11, the Petitioner was never issued with any show cause nor any opportunity of hearing was given and thereby the said order was issued in complete violation of principle of natural justice.

11. Mr. Mishra, learned Senior counsel further submitted that similar claim made by one **Jatin Kumar Das** in O.A. No.2172(C)/2015 was not only allowed by learned Tribunal vide its order dated 17.05.2017, but also the said order was confirmed by this Court vide order dated 10.05.2018 in W.P.(C) No.6661 of 2018.

12. It is also submitted that the said order on being challenged by the State-Authority before the Hon'ble Apex Court in Special Leave to Appeal No.18642 of 2018, was also dismissed vide order dated 06.08.2018.

13. It is also submitted that subsequent to the confirmation of the order passed by the learned Tribunal by the Hon'ble Apex Court in its order dated 06.08.2018, the Petitioner in the said O.A. No.2172(C)/2015 was regularized vide office order dated 29.10.2018.

14. It is submitted that the Petitioner in O.A. No.2172(C)/2015 is similarly situated as like the present Petitioner and his order of regularization issued on 29.10.2018 was never withdrawn or modified and the petitioner therein is continuing as a regular employee.

15. Mr. Mishra also submitted that after passing of the impugned order on 28.07.2018 under Annexure-11, the Petitioner is

continuing as a contractual Data Entry Operator in the Department as usual.

16. Mr. Misra accordingly submitted that since similar benefits has been extended in favour of the Petitioner in O.A. No.2172(C)/2015, the impugned order passed under Annexure-11 needs interference of this Court with passing of an appropriate order.

17. Mr. Panigrahi, learned Addl. Standing Counsel for the State- Opposite Parties on the other hand submitted that after issuance of the order of regularization in favour of the Petitioner vide order dated 19.07.2018 under Annexure-8, a review was made and in the said review it was found that the Petitioner does not fulfill the requirement contained in resolution dated 17.09.2013 and 16.01.2014 and accordingly the order has been rightly withdrawn vide Annexure-11.

18. Heard learned counsel for the Parties.

19. Perused the materials available on record. This Court after going through the same finds that the Petitioner while continuing as a Data Entry Operator through outsourcing was appointed as such on contractual basis by the Department of Higher Education vide officer order dated 27.06.2012 under Annexure-2 and in view of the stipulation contained in the resolution dated 17.09.2013 and 16.01.2014, the Petitioner was rightly absorbed in the regular establishment vide office order dated 19.07.2018 under Annexure-8. This Court further finds that the claim of **Jatin Kumar Das** in O.A. No. 2172(C)/2015 is similar to the case of the present petitioner and the said petitioner in the aforesaid O.A. was regularized vide order dated 29.10.2018 after the order passed by

the learned Tribunal was confirmed by this Court as well as by the Hon'ble Apex Court.

20. In view of the same, this Court finds that the impugned order passed on 28.07.2018 under Annexure-11 withdrawing the order of regularization passed in respect of the Petitioner is not sustainable in the eye of law. Accordingly, while quashing the same, this Court restore the order passed on 19.07.2018 under Annexure-8. While holding so, this Court directs the Opposite Party No.1 to extend the benefit of the regularization as has been issued vide order under Annexure-8 with all service and financial benefits as due and admissible. Necessary order in that regard be issued within a period of one(1) month from the date of receipt of this order.

21. With the above observation and direction, the writ petition stands disposed of.

(Biraja Prasanna Satapathy)
Judge

sangita