

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.C (OAC) NO.2753 OF 2018

(An application under Section 19 of the Administrative Tribunal's Act)

Badri Narayan Routray ... Petitioner

-versus-

State of Odisha & others ... Opposite Parties

Advocates appeared in the case through hybrid mode:

For Petitioner : Mr. Satyajit Behera, Advocate

-versus-

**For Opposite Parties : Mr.N.K.Praharaj,
Government Advocate**

CORAM:

JUSTICE SASHIKANTA MISHRA

**JUDGMENT
27.07.2022.**

Sashikanta Mishra,J. Aggrieved by the rejection of his claim for regularization of service by the Additional Chief Secretary to Government in Finance Department (Opposite Party No. 1), the Petitioner has preferred the instant application seeking the following relief:

“Under the circumstances, it is humbly prayed therefore that the Hon’ble Court may graciously be pleased to quash the impugned order dated 4.10.2018 passed by the Opposite Party No.1 under Annexure-25;

And further be pleased to direct the Opposite Parties to regularize the service of the Petitioner as has been done in the case of the Anadi Charan Tripathy and Bhaskar Ch. Roul, and keeping view the letter dated 21.6.2011 under Annexure-15 with all consequential service benefits;

Or pass any other order/orders as this Hon’ble Court may think fit and proper.”

2. The facts of the case, relevant only for deciding the present application are as follows:

Pursuant to instruction issued by the Director of Treasuries and Inspection, Orissa (Opposite Party No.2) by letter dated 4.8.2009, the Treasury Officer of Jajpur had appointed the Petitioner and another person as Peons against the contractual posts created by the Government in Finance Department Letter No. 97 dated 1.1.2009 at the consolidated salary of Rs.2550/-. As such the Petitioner was appointed and posted in the Sub-Treasury Office, Sukinda against the vacant post vide order dated 18.8.2009 of the Treasury Officer, Jajpur. On 16th April, 2011, the Directorate of Treasuries and Inspection, Orissa, Bhubaneswar directed all Treasury Officers to

furnish a report as to whether the procedure such as calling of names from Employment Exchange, observation of ORV Act and advertisement in Newspapers had been properly followed at the level of Treasury Officer while filling of the contractual posts of Peons/Watcher-cum-Sweeper (WCS) in Treasury/ Special Treasury/Sub-Treasuries. Pursuant to such letter the Treasury Officer, by letter dated 21.6.2011 intimated that proper procedure had been followed while filling up the post of Peon in the Sub-Treasury, Sukinda. It was categorically stated that public notice was given in the Notice Board on 1.7.2009 inviting applications from persons interested to join in the post of Peon and WCS. Subsequently, eight numbers of applications were received and scrutinized by a committee formulated by the Treasury Officer. The candidates were called for an interview and basing on their performance in such interview, the petitioner and one Sanjay Kumar Parida were appointed as peons while one Paresh Kumar Patra was appointed as WCS at Sub-Treasury, Sukinda. While the matter should thus, the Government of Odisha, General Administration Department issued Resolution dated 17th September, 2013 with regard to regular appointment of existing contractual Group C and Group D employees upon satisfactory completion of six years of

service by providing that they shall be deemed to have been regularly appointed and that a formal order of regular appointment shall be issued by the appointing authority. No action was taken in the matter of regularization of the service of the Petitioner and his services were only renewed from time to time. A gradation list was prepared for contractual employees. It is stated that some of the similarly placed employees as the Petitioner were regularized in service ignoring his case. The Directorate of Treasuries, in his letter dated 7.7.2014 addressed to Opposite Party No.1, furnished the list of contractual Class-IV employees, who had completed six years of contractual service for regularization of their services against Class-IV posts and in the said list, the name of the petitioner found place at Serial No. 9. Upon receipt of such letter, the Opposite Party No. 1 sought for certain clarifications, which were duly furnished by opposite party No.2. While the matter stood thus, the Petitioner's scale of pay was revised and he was also allowed to draw grade pay vide office order dated 5.1.2015. Since no step was taken to regularize his services, the petitioner approached the erstwhile Odisha Administrative Tribunal by filing O.A. No. 941(C)/2015. The said OA was disposed of vide order dated 28.6.2018 directing Opposite Party No.1 to take a decision on the recommendation of

Opposite Party No. 2 as per his letter dated 25.8.2014 regarding regularization of service of the Petitioner within a period of three months from the date of receipt of a copy of the order and to convey the result thereof to the Petitioner soon thereafter. The Opposite Party No.1, as per the impugned order dated 04.10.2018, enclosed as Annexure-25 to the Writ Petition, rejected the claim of regularization of the Petitioner on the ground that no transparent procedure for recruitment was followed as neither selection was made basing upon open advertisement nor the name of the Petitioner was sponsored by the Employment Exchange. Being aggrieved, the Petitioner approached the Odisha Administrative Tribunal by filing O.A. No.2753(C)/2018, which has since been transferred to this Court and registered as the present application seeking the following relief:

“Under the circumstances it is humbly prayed therefore that the Hon’ble Tribunal may graciously be pleased to quash the impugned order dated 4.10.2018 passed by the Respondent No.1 under Annexure-25;

And further be pleased to direct the Respondents to regularize the service of the applicant as has been done in the case of the Anadi Charan Tripathy and Bhaskar Ch. Roul, and keeping in view the letter dated 21.6.2011 under Annexure-15 with all consequential service benefits.

Or pass any other order/orders as this Hon’ble Tribunal may think fit and proper.”

3. Be it noted here that the Petitioner was originally engaged as Peon on 16.11.1994 against the leave vacancy for 45 days. The prayer of the Petitioner for regular appointment not having been considered, he had approached the Odisha Administrative Tribunal in O.A. No. 814 (C)/1995, which was disposed of by granting liberty to him to submit a representation before Opposite Party No.2 within a period of thirty days with a direction that the same shall be considered by the said authority and the decision communicated to the Petitioner within a period of six months. By order dated 30.4.98 the Deputy Director of Treasuries and Inspection informed that the grievance of the Petitioner for appointment shall be considered as against Class-IV post in view of the G.A. Department Resolution dated 22.9.1989 provided the recruitment process is taken up in the near future. The Petitioner challenged the said order before the Odisha Administrative Tribunal in O.A. No.1500(C)/2000, which was disposed of by directing that if the authority wants to fill up these posts, the name of the Petitioner along with others shall be considered provided he is eligible for the same. In view of the interim order passed by the Tribunal in the aforesaid case the Petitioner was engaged on temporary basis against a contractual post of watcher-cum-sweeper in the Sub-Treasury, Dharmasala vide

order dated 30.4.2005 till the end of February with the consolidated remuneration of Rs.2500/- subject to his giving an undertaking that the contractual appointment shall be renewed subject to satisfactory performance. Thus the 1st appointment given to the Petitioner is in the year 2005.

4. A detailed counter affidavit has been filed on behalf of opposite party Nos. 1 and 2. The engagement of the Petitioner prior to his appointment in the year 2009 has been admitted. It is further stated that in pursuance of the order passed by the Odisha Administrative Tribunal in O.A. No.941(C) /2015, a high-power committee was convened on 29.9.2018 which considered the proposal for regularization of the Petitioner in the light of the G.A. Department Resolutions dated 17.9.2013, 12.11.2013 and 16.1.2014. The high-power committee came to a definite conclusion that the Petitioner was not engaged on contractual basis after following the recruitment procedure, which violates the provisions of Government Notifications/Resolutions and, accordingly, it was observed that the case of the Petitioner shall be governed under Rule 8 of the Odisha Group C and Group D Posts (Contractual Appointment) Rules 2013. In short, the impugned order was justified. It is further stated that as per the Resolution dated 16.1.2014, three mandatory eligibility

conditions are required to be fulfilled for regularization of contractual appointments and unless all the three conditions are fulfilled, an employee cannot be given regular appointment. As regards the claim that one employee was regularized, it is stated that he was granted temporary status as per Finance Department Resolution dated 4.9. 2012 and thereafter, regularized.

5. The petitioner has filed a rejoinder to the counter affidavit filed by the Opposite Party Nos. 1 and 2. It is reiterated that the Petitioner is legally entitled for regularization of service as per G.A. Department Resolution dated 17.9.2013. Since the Petitioner was appointed in 2005 in pursuance of the order passed by the Tribunal, the question of following any recruitment procedure does not arise.

6. Heard Mr. Satyajit Behera, learned counsel for the Petitioner, and Mr. N.K.Praharaj, learned Government advocate.

7. Mr. Behera would argue that the Petitioner has been in employment under the Government since 1994. Even assuming that his 1st appointment was in the year 2005, he became eligible for regular appointment in the year 2011. Even considering his appointment in the year 2009 as the 1st appointment, he should have been regularized in service since 2015. Assailing the impugned order

Mr. Behera would contend that all the three mandatory conditions as per the Government Resolution dated 20.1.2014 was satisfied in the case of the Petitioner but the Opposite Party No.1 has taken a hyper-technical view to deny the legitimate claim of the Petitioner for regularization of his services.

Mr. Behera further argues that the post in question was admittedly created by the Finance Department and being a single post, the provisions of ORV Act do not apply. As regards the following of transparent recruitment procedure, the Opposite Party No. 3 has categorically stated in his letter under Annexure 15 that the same was adhered to by appointing the Petitioner and others. Therefore, the Petitioner having rendered nearly 13 years of service by now, relegating him to appear in the recruitment test again as provided under Rule 8 of the 2013 Rules is not only unjustified but also is illegal.

8. Sri N K.Praharaj , on the other hand, argues that for the purpose of considering the claim of regularization of the Petitioner, his 1st appointment has to be treated as the one made in the year 2009 and all his previous spells of engagement were not in accordance with law. A contractual employee, after coming into force of the 2013

Rules can only be regularized in accordance with the provisions thereof and not otherwise. Such being the case, according to Mr. Praharaj, the Petitioner must satisfy the requirements of the said Rules read with the Resolution dated 20.0.2014. The high-power committee constituted in pursuance of the order passed by the learned Tribunal in O.A. No.941 (C) of 2015 has meticulously examined the records after taking into consideration the facts and circumstances vis-à-vis the Petitioner and found that no transparent recruitment procedure had been followed by appointing him. Therefore, it was rightly held that the Petitioner is not entitled to be regularized in service.

9. This Court has perused the materials on record carefully and has given its anxious consideration to the rival contentions noted above. The facts of the case are not really disputed inasmuch as the Petitioner was appointed as a Peon by the Opposite Party No.3 and posted in the Sub-Treasury at Sukinda as per order dated 16.11.1994. Admittedly six years have elapsed. The regularization of contractual employees is governed by the Odisha are Group C and Group D Contractual Employees Rules, 2013 read with the G.A. Department Resolution dated 16.1.2014. Rule 10 of the 2013 Rules provides as under:

“10. Conditions of Service on Regular appointment-

(1) Regular Appointments: On the date of satisfactory completion of six years of contractual service under sub-rule (1) or Rule 8, they shall be deemed to have been regularly appointed. A formal order of regular appointment shall be issued by the appointing authority.

(2) Pay and other benefits: On regular appointment they shall be entitled to draw the time scale of pay plus Grade Pay with DA and other allowances as admissible in the corresponding pay band.

(3) Other conditions of service: (a) The other conditions of service shall be such as has been provided in the relevant recruitment rules.

(b) The conditions of service in regard to matters not covered by sub-rule (2) and clause (a) of this sub-rule shall be the same as are or as may from time to time be prescribed by the State Government.”

By a further Resolution of the Government and G.A. Department issued on 16.1.2014 it was provided under clause-4 as under:

“(a) Proposal for regularization of contractual appointees/engagements as per the aforesaid Resolution shall be considered and approved by a High Power Committee to be constituted under the Chairmanship of the Secretary of the relevant Department in which the concerned Head of Department and FA/AFA of the Department shall be Members.

(b) In case the matter pertains to Administrative Department, then the High Power Committee shall be constituted under the Chairmanship of the Secretary of the Department with Special Secretary/Additional Secretary in-charge of the office establishment and FA/AFA of the Department as Members.

(c) While considering the cases of regularization, High Power Committee shall at the outset ensure

*that the concerned appointments fulfil the mandatory eligibility conditionalities as elucidated in Para.1 above and thereafter consider the case on the basis of the stipulations contained under the heading “**Regular Appointments**” of the General Administration Department Resolution No.26108/Gen., dated the 17th September, 2013.”*

Clause-1 lays down the mandatory eligibility conditionalities is for regularization of contractual employees as under:

- (i) Contractual appointments/engagements must have been made against contractual posts created with the concurrence of Finance Department on abolition of the corresponding regular posts or contractual posts created with the concurrence of Finance Department without abolition of any corresponding regular post in case of new offices or for strengthening of the existing offices/services.*
- (ii) Such Contractual appointments/engagements must have been made following the recruitment procedure prescribed for the corresponding regular posts, and*
- (iii) Principle of reservation of Posts must have been followed in case of such Contractual appointments/engagements.”*

10. Coming to the facts of the present case, it is seen that the Petitioner was appointed as a Peon by the Treasury Office as per order dated 19.8.2009. Considering the claim of regularization of

contractual employees of different districts the Finance Department sought for reports from the concerned Treasury Officers regarding the procedure followed for recruitment of such persons as per letter dated 16.4.2011 enclosed as Annexure-14 to the Writ Petition. In response, the Treasury officer in charge, vide letter dated 22.6.2011, informed about the procedure followed to appoint the petitioner and other employees. Again by letter dated 25.8.2014 further the clarification was issued to the effect that recruitment procedure has been followed. The contractual post of the Peon at Sub-Treasury Office was created by the Government in Finance Department and that it being a single post of peon the ORV Act is not applicable as per Sub-section 31 of the said Act. The high-power committee appears to have considered the claim of the Petitioner and it was held that one of the mandatory eligibility conditionalities is as envisaged in G.A. Department Resolution dated 16.1.2014 namely, that the appointment must have been made following the recruitment procedure having not been complied with in case of contractual appointment of Sri Routray, the committee decided not to consider his case for regularization of his contractual service, and that his case will be governed under Rule 8 of the 2013 rules. Thus it is seen that the matter boils down to the question whether the high-power

committee was correct in holding as above. In other words, whether a transparent recruitment procedure was followed while appointing the Petitioner.

11. In course of argument, learned State Counsel was directed to inform the Court as to what is the prescribed recruitment procedure for Group D employees of the Government. The State Counsel fairly submitted that there is no rule as such but as per the norms prescribed for all public employment, a fair and transparent procedure with full opportunity to all intending candidates is required to be maintained. This Court is also willing to accept the proposition that in matters of public employment a fully transparent procedure has to be adopted. But when the rules are silent as to the procedure to be followed, what is to be done? It is well settled that all eligible candidates have a fundamental right to apply and be considered for appointment under Article 16 of the Constitution of India. Reference in this regard may be had to the decision of the Apex Court in the case of the ***Pradip Gogoi and others v. State of Assam and others***; reported in (1998) 8 SCC 726. It is also well settled if equality of opportunity in relation to appointment is to be made meaningfully effective, the fact that there is a proposal for recruitment requires compulsory and sufficient publicity. Publicity

regarding vacancies is the surest means of fulfilling the fundamental rights conferred by Articles 14 and 16 of the Constitution of India.

In the case of ***B. S. Minhas v. Indian Statistical Institute and others***; reported in (1983) 4 SCC 582 the Supreme Court held as follows:

“Compliance with this by-law also seems to be necessary in the name of fair play. If the vacancy in the post of Director had been publicized as contemplated by by-law, all the persons eligible for the post may have applied and in that case, the field of consideration would have been enlarged and the selection committee of the Council would have had a much larger field from which to choose the best available person and that would have removed all doubts of arbitrariness from the mind of those eligible for the post.”

Advertisement of vacancies is the commonest and, from the point of view of publicity, the most effective means of inviting applications from the world at large that is, the open market. The appointment to any post and under the State can only be made after making a proper advertisement inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial, through a written examination or interview or some other rational criteria for judging the inter se merit of candidates, who applied in response to the advertisement made. Reference in this

regard may be had to the decision of the Supreme Court in the case of *Renu and others v. District and Sessions Judge, Tis Hazari Court, Delhi and others* reported in (2014) 14 SCC 50.

12. But the question is, can advertisement be the only mode of publicity. In other words, in case the post has not been advertised in newspapers but sufficient notice of the vacancy has been given through other modes can it not be treated as a transparent and fair procedure? In the case of *G. Trilochan Rao v. Principal A.P Residential School for Backward Classes*, reported in 1992 1 SLR 341 (AP); 1991 SCC OnLine AP 107, the Andhra Pradesh High Court held that putting up notices on the notice board or in such public offices as revenue offices, courts etc. where people often visit can also be treated as a fair procedure. In the case of *B. S. Minhas* (supra) the Supreme Court pointed out that it is not essential to advertise a publicized vacancy before making appointment to every post.

13. The facts of the case examined in light of the legal propositions noted in the preceding paragraph reveals that a public notice was given on the Treasury Notice Board on 01.7.2009 inviting applications from interested applicants for the post of peon and

WCS. 8 numbers of applications were received and scrutinized by a committee constituted by the Treasury Officer. The committee members were Treasury Officer, Additional Treasury Officer and Accountant of District Treasury. The candidates were called for an interview and basing on their performance therein, the petitioner and one Sanjay Kumar Parida were appointed as peons while one person was appointed as WCS at Sub-Treasury Office. Thus, even though a public advertisement in newspaper was not published yet it is not a case where there was no public notice at all. In fact, there was a public notice on the notice board of the Treasury Office, which obviously is a public place and the very fact that there were eight applicants suggests that it was within the knowledge of all concerned. Further, the applications so received were scrutinized and the candidates were called to attend an interview. Basing on their performance in the interview, three persons were selected from out of the eight applicants. Therefore, this is not a case where no transparent procedure was followed as has been held by the high-power committee. True, an advertisement in a widely circulated newspaper could have enlarged the scope of applications but then if the higher authorities considered that the public notice was not in compliance of the legal requirement, the decision of the Treasury

officer in appointing the petitioner and others should have been interfered with at that stage. So what has happened is that the Finance Department, which is the administrative department, had never objected to such procedure of appointment. After having served for more than 6 years (presently 12 years) it would be entirely unconscionable for the Petitioner's claim for regularization to be rejected by questioning the mode of his recruitment when he has undisputedly rendered satisfactory service to the Government. Another aspect for consideration is that the petitioner is a Group D employee. Admittedly, there is no recruitment rule as such. It is only by the pronouncements of the Apex Court that the question of public advertisement etc. is being referred to. While there can be no quarrel with the proposition laid down by the Apex Court in this regard, fact remains that this is a case where there was notice to the public though not through newspapers. Had there been no notice and the persons concerned been appointed without even a semblance of a recruitment procedure, the matter would have been different but, as has been narrated in detail herein before, not only there was public notice on the notice board of the Office which is a public place, but also a recruitment procedure was adopted in the form of selecting

the intending candidates on the basis of their performance in an interview.

14. While the need to maintain fairness and equality in public employment is of paramount importance and cannot be compromised with in any manner whatsoever yet, when it comes to the livelihood of persons already in service, the State being a model employer cannot be expected to take a purely hyper-technical approach to deny them their due benefits. It goes without saying that livelihood is included within the purview of Article 21 of the Constitution of India and hence cannot be taken lightly by the authorities concerned.

15. For the foregoing reasons therefore, this Court holds that the impugned order dated 4th October, 2018 (Annexure-25) cannot be sustained in the eye of law and is, therefore, quashed. The Opposite Party authorities are hereby directed to issue necessary order in accordance with the relevant rules to regularize the services of the Petitioner with effect from the date he completed six years of service reckoned from 19th August, 2009 with all consequential service and financial benefits without any further delay and in any case, not later

than three months from the date of communication of this order or
on production of a certified copy thereof by the Petitioner.

Ashok Kumar Behera

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Sashikanta Mishra,
Judge





