

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.1385 of 2018

Ganesh Chandra Pradhan

..... Petitioner
Mr.L.K.Mohanty, Advocate

-versus-

State of Odisha and others

..... Opp.Parties
Mr.P.C.Das, A.S.C..

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

28.03.2022

Order No.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. Heard learned counsel for the Petitioner and the learned Additional Standing Counsel for the State.
3. Initially the Petitioner has filed the original application before the Orissa Administrative Tribunal challenging the order of transfer dated 19.05.2018 issued by Opposite Party no.2 under Annexure-17 and further he has prayed for quashing of the order dated 19.05.2018. The Petitioner has also prayed for a direction to regularise his service as a driver in the Office of Opposite Party No.3
4. While the matter was pending before the Orissa Administrative Tribunal, the same got abolished. Thereafter the matter has been transferred to this Court and has been reregistered as WPC(OAC) No.1385 of 2018.
5. Heard Mr.L.K.Mohanty, learned counsel for the Petitioner and

Mr.P.C.Das, learned Additional Standing Counsel for the State-
Opposite Parties.

6. The factual backdrops of the fact bereft of unnecessary details is that the Petitioner was initially appointed as driver in the year 2007 against a regular vacant post in the Office of the B.D.O., Balasore Sadar on being selected through a valid selection process. The Petitioner has been continuing against the said vacant post for last 10 years without any break and receiving wages meant for highly skilled labour. It is seen from the pleadings that the Petitioner had earlier approached the Orissa Administrative Tribunal by filing O.A.No.2041(C) of 2017 with a prayer for regularization of his service against the vacant post of driver. The Orissa Administrative Tribunal by order dated 04.09.2017 disposed of the said original application with a direction to Opposite Party No.2 to consider the grievance of the Petitioner for regularisation of his service. It is further stated by the Petitioner that the Opposite Party No.2 has rejected the claim of the Petitioner in a mechanical manner without considering the claim of the Petitioner in its proper perspective and without taking into consideration the law laid down by this Court as well as the Hon'ble Apex Court.

7. Learned counsel for the Petitioner submits that the Petitioner has been discharging his duties as a driver to the satisfaction of the authorities since 2007 on a regular basis against a substantive vacant post in the Office of the B.D.O., Balasore Sadar. After completion of 10 years of service, the Petitioner approached the authorities for regularization of his service. Since no action was taken by the authorities, the Petitioner was compelled to approach the Orissa Administrative Tribunal for a direction to the Opposite Party no.2 to consider the case of the Petitioner and to regularize his service as

driver. He further submits that although the Petitioner has been appointed on temporary basis he has been discharging his duties as a driver on regular basis and the duties he is performing at the moment are perennial in nature. Moreover, the post against which the Petitioner has been appointed is a regular post which was lying vacant when the Petitioner was appointed initially.

8. Learned counsel for the Petitioner further contends that pursuant to the direction of the Tribunal in O.A.No2041(C) by order dated 04.09.2017 the Petitioner approached the authority to consider his representation dated 16.11.2016 as directed by the Orissa Administrative Tribunal. Further drawing the attention of this Court to letter dated 05.01.2018 under Annexure-13, learned counsel for the Petitioner submitted that the B.D.O., Balasore Sadar recommended the case of the Petitioner for regularization to the Collector & District Magistrate, Balasore. Further in the said letter the B.D.O., Balasore Sadar has also indicated that the Petitioner was initially appointed on daily wage basis by order dated 26.05.2007. The B.D.O. in his letter dated 05.01.2018 has also stated that since 2005 regular post of driver has been lying vacant and against the said post Ganesh Chandra Pradhan has been engaged on daily wage basis. Further, it has been stated that the Petitioner is a well experienced driver and that he bears a good moral character.

9. Mr.L.K.Mohanty, learned counsel for the Petitioner further submits that pursuant to order dated 04.09.2017 passed by the Orissa Administrative Tribunal, the Collector, Balasore considered the representation of the Petitioner relying upon a circular of the Finance Department vide Office Memo No.31271/F dated 16.07.2019 wherein instruction has been issued to the effect that the vacancy shall not be filled up without prior concurrence from the Finance

Department and the intimation from the Government vide letter No.26143/RDM dated 03.09.2014 to the effect to follow the guidelines issued by the Finance department vide O.M. dated 29.09.2012 for hiring of vehicles for official use instead of recruiting drivers, the representation of the Petitioner was rejected by the Collector, Balasore vide its order dated 16.02.2018.

10. Learned counsel appearing for the State on the other hand submits that the Petitioner was appointed on daily wage basis to perform the tour duties of the B.D.O. From the date of his initial appointment, the Petitioner was well aware of the fact that he has been given appointment on temporary basis i.e on payment of daily wages as applicable to the highly skilled labour as notified by the Government of Odisha. Therefore, he was well aware of the fact that his engagement was temporary/ad hoc in nature and as such he is estopped to claim regularization/absorption of his service against the regular vacant post.

11. Having heard learned counsel for the parties and after going through the documents filed along with the writ application, this Court has come to a conclusion that the Petitioner was initially appointed with effect from 26.05.2007 against the existing vacant post of driver in the Office of the B.D.O., Balasore Sadar. Further none of the opposite parties have raised any question with regard to competency, eligibility and the method of selection of the Petitioner as a driver. Further, the Petitioner has been discharging his duties to the satisfaction of the authority for more than one decade. The Collector, Balasore while passing the impugned order dated 16.02.2018 under Annexure-14 has not taken into consideration the law relating to regularisation/absorption of service on daily wage/contractual employees as has been decided by this Court as

well as the Hon'ble Apex Court. Accordingly, on the basis of the Finance Department Circular, the claim of the Petitioner has been rejected by the Collector Balasore, which according to this Court is highly illegal and arbitrary.

12. The Hon'ble Supreme Court of India in the matter of **Amarkanti Rai v. State of Bihar and others**, reported in **(2015) 8 Supreme Court Cases 265** while giving a direction to regularize the service of a person who was engaged on daily wage basis has categorically held that considering that the appellant was duly qualified for the post and on unblemish records for further two decades, his service are directed to be regularised with effect from 03.01.2002 of the date on which the post became vacant whichever was later, but without any monetary benefit. It was further held in the said decision the appointment of the appellant cannot be termed as illegal, but was only irregular. Further as per the standard staffing pattern there are two posts of Class- II employees lying vacant in the college against which the appellant was appointed. Therefore, the law laid down in the Amarkati Rai case (supra) is squarely applicable to the fact of the present case. Perused the writ application as well as the documents annexed to the writ application.

13. Similarly in **Nihal Singh v. State of Punjab** reported in (2013) 14 SCC 65 referring to the judgment of the constitutional judgment of the Supreme Court in the matter of **State of Karnataka v. Uma Devi** reported in (2006) 4 SCC 1 the Hon'ble Supreme Court in paragraph 35 of the judgment held as follows:

“Therefore, it is clear that the existence of the need for creation of the posts is a relevant factor with reference to which the executive government is required to take rational decision based on relevant consideration. In

our opinion, when the facts such as ones obtaining in the instant case demonstrate that there is need for creation of posts, the failure of the executive government to apply its mind and take a decision to create posts or stop extracting works from persons such as appellants herein for decades together itself would be arbitrary action (inaction) on the part of the State.”

The Hon’ble supreme Court again in **Narendra Kumar Tiwari and others vrs. State of Jharkhand and others** reported in (2018) 8 Supreme Court Cases 238 were required to deal with the issue of regularization again. In the said judgment while referring to the judgment of the Constitution Bench in Uma Devi case (supra) the Hon’ble Supreme Court has held as follows:

9. The High Court as well as the State of Jharkhand ought to have considered the entire issue in a contextual perspective and not only from the point of view of the interest of the State, financial or otherwise – the interest of employees is also required to be kept in mind. What has eventually been achieved by the State of Jharkhand is to short circuit the process of regular appointments and instead make appointments on an irregular basis. This is hardly good governance.

10. Under the circumstances, we are of the view that the Regularisation Rules must be given a pragmatic interpretation and the appellants, if they have completed 10 years of service on the date of promulgation of the Regularisation Rules, ought to be given the benefit of the service rendered by them. If they have completed 10 years of service they should be regularised unless there is

some valid objection to their regularization like misconduct, etc.

11. The impugned judgment and order passed by the High Court is set aside in view of our conclusions. The State should take a decision within four months from today on regularisation of the status of the appellants. The appeals are accordingly disposed of.”

14. Following the aforesaid Supreme Court judgment this Court has also dealt with many similar matters where direction has been given to the authorities to regularise the services of ad hoc/temporary/daily wage employees keeping in view the services rendered by them over a long period of time. In such view of the matter, this Court deems it proper and in the interest of justice, the order dated 16.02.2018 under Annexure-14 passed by the Collector, Balasore is unsustainable in law and the same is liable to be set aside. Accordingly, the same is hereby quashed. Further, the Collector, Balasore, Opposite Party No.2 is directed to consider the case of the Petitioner afresh in the light of the judgment referred herein above and in the event it is found that there is no serious allegation of any misconduct/derelection of duty then the Petitioner should be regularised in the vacant post of driver against which he was appointed on daily wage basis. The entire exercise be completed within a period of two months from the date of production of certified copy of this order.

15. With the aforesaid observation, the present writ application stands disposed of.

16. Issue urgent certified copy as per Rules.

