

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.2629 of 2015

In the matter of an application under Section 19 of the
Administrative Tribunal Act, 1985.

.....

Kabindranath Sahoo & Petitioners
Another

-versus-

State of Odisha & Another Opposite Parties

For Petitioner : M/s.K.K.Swain, P.N.Mohanty,
P.K.Mohanty, U.Chhtray &
P.K.Mohapatra.

For Opp. Parties : Addl. Government Advocate
Mr. R.N. Mishra.

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing:28.07.2022 and Date of Order:04.08.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. K.K.Swain, learned counsel for the Petitioners and Mr. R.N.Mishra, learned Addl. Government Advocate for the State-Opposite Parties.
3. The present Writ Petition has been filed by the Petitioners with the following relief:-

*“(i) Under the above circumstances, it is humbly
prayed that the Original Application may be allowed*

and necessary direction may be made to the opposite parties to regularize the services of the applicants against the posts of Garderns with effect from the year 2000 with regular scale of pay in terms of the Circular dated 27.11.1997 (Annexure-5) which was prevalent at the relevant time when the applicants were selected for the post of Gardeners and all consequential benefit may be made available to them pending regularization of their service from the year 2000 without prejudice to the rights and contentions of the parties. The applicants may be paid the minimum of time scale of pay and grade pay and enhanced pay in consonance with the Rules, 2013 and the differential arrear salary may be calculate and paid within the time that would be stipulated by this Hon'ble Tribunal".

4. Mr. Swain, learned counsel for the Petitioners submitted that pursuant to the order dated 30.12.1999 of the Deputy Director of Horticulture, Cuttack, the Petitioners were selected to undergo pre-service Gardeners training for the year 1999-2000 in the School of Horticulture, Khurda.

5. It is submitted that as per the Government circular governing the field, acquisition of pre-service Gardeners training is a requirement for appointment as Gardeners by the concerned Horticultures / Deputy Director of Horticulture and Director of Horticulture as per the merit list against the existing vacancy.

6. Mr. Swain, further submitted that even though, the Petitioners successfully completed the training in terms of the order issued under Annexure-1 and were issued with the certificate under Annexure-4-Series, but the petitioners were never appointed as against the post of Gardeners in terms of the guidelines issued under Annexure-5.

7. It is submitted that in spite of repeated approach when the petitioners were not appointed as Gardeners, the petitioners approached the learned Tribunal in O.A.

No.1297(C) of 2010 and O.A. No.1298(C) of 2010 respectively seeking a direction on the opposite parties to give them appointment as Gardeners.

8. It is submitted that learned Tribunal vide its order dated 14.05.2010 under Annexure-7-Series disposed of both the Original Applications so filed by the petitioners with the following orders:-

“ After careful consideration, on perusal of the pleadings of the parties and documents annexed thereto so also after hearing the counsels for both parties and without entering into the merits of the claim of the applicant, it is hereby ordered that the copy of paper book be sent to the respondent Director of Horticulture, Bhubaneswar to consider the grievance of the applicant contained therein, within three months from communication of this order.”

9. Mr. Swain, further submitted that in the aforesaid O.A. Nos.1297(C) and 1298(C) of 2010, a stand was taken by the Opposite Parties that due to financial stringency and instruction from the Finance Department, the order of appointment was not issued in favour of the petitioners, even though they have successfully completed the required training pursuant to the order under Annexure-1.

10. It is further submitted that after disposal of the matter by the learned Tribunal the Petitioners including 61 similarly situated persons who had undergone the Gardeners training were appointed as Gardeners on contractual basis vide officer order dated 5.6.2010 of the Director of Horticulture, Orissa-Opposite Party No.2.

11. It is submitted that since the Petitioners were appointed as Gardners on contractual basis vide office order dated 05.06.2010 under Annexure-8, they became

eligible for their absorption in the said post in view of the resolution issued by the General Administration Department and the rules framed to that effect vide notification dated 12.11.2013 under Annexure-10.

12. It is submitted that basing on the said resolution even though the Petitioners moved the Opposite Party No.1 with a prayer to absorb them in the post of Gardeners, but no action when was taken, the petitioners filed the present writ petition with the aforesaid prayer.

13. It is submitted that in view of the notification issued under Annexure-10, the petitioners after completion of six years of engagement on contractual basis became eligible for their absorption in the said post.

14. It is further submitted that since 5.6.2010 the Petitioners are also continuing on contractual basis and their claim for absorption is not only coming under the provision of the notification dated 12.11.2013 but also their claim is covered by the decision of the Hon'ble Apex Court 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.

15. Mr. Swain further submitted that the claim of the petitioners is also covered by the decision of this Court reported in **2015(suppl.) (II) OLR 301**, **2018 (Suppl.1) OLR 111**, **2017 (1) OLR 293** and **2019 (1) ILR, Cuttack-235**.

16. Making all such submissions, Mr. Swain submitted that necessary direction be issued to the opposite parties to absorb the petitioners in their respective posts of Gardners.

17. Mr. Mishra, learned counsel for the Opposite Parties made his submission basing on the stand taken in the counter affidavit. Though in the counter, it has not been disputed with regard to appointment of the petitioners on contractual basis vide order under Annexure-8 i.e. 5.6.2010 and the continuance of the petitioners in the said capacity, but it is submitted that the petitioners are not coming within the purview of the guideline issued under Annexure-9 and accordingly they are not entitled for the relief as claimed in the Writ Petition.

18. Heard learned counsel for the Parties.

19. Perused the materials available on record. This Court after going through the same is of the view that the Petitioners though completed the training in terms of the order under Annexure-1 on 21.10.2000, but they were not provided with the appointment because of financial stringency and instructions given by the Finance Department. Only after the Opposite Party No.3 was directed to consider the claim of the petitioners for their appointment by the learned Tribunal in its order under Annexure-7-Series, the Petitioners along with 61 others were appointed on contractual basis vide order dated 5.6.2010 under Annexure-8.

20. Since the Petitioners in the meantime have rendered more than 6 years of continuous service on contractual basis as per the considered view of this Court, their claim for absorption is covered by the notification issued under

Annexure-9. Not only that the said claim of the Petitioners is also covered by the decision of this Court rendered in the case of **Patitapabana Dutta Das**. This Court is also of the opinion that since the Petitioners without any protection from any court of law are continuing on contractual basis for more than 10 years as on date their claim for absorption in the said post is also covered by the decision of the Hon'ble Apex and the decision of this Court as cited (supra).

21. In view of that this Court while disposing the Writ Petition directs the Opposite Parties to absorb the petitioners in the post on regular basis in which they are continuing, within a period of three months from the date of receipt of this order.

22. With the aforesaid observations and directions, the WPC(OA) stands disposed of. There shall be no order as to costs.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 4th of August, 2022/Subrat

