

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C)(OAC) No.4063 of 2015

Bibekananda Mishra

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

08.07.2022

Order No

04.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.

2. Heard Mr. Mallik, learned counsel for the Petitioner and Mr. Tripathy, learned AGA appearing for the Opp. Parties.

3. The Petitioner has filed the present writ Petition with the following prayer:-

“(i) Direct/Order that the differential arrear salary of the applicant for the period from 1.5.1993 to 24.9.2014 shall be paid within a stipulated period with interest thereon.

(ii) Pass such other order(s)/direction(s) as may be deemed fit and proper in the bonafide interest of justice.”

4. It is submitted that the Petitioner while continuing on adhoc basis, when he was not allowed to discharge his duty, he

approached the learned Tribunal in O.A. No. 171(C) of 1992. It is further submitted that pursuant to the order passed by the learned Tribunal on 22.04.1993 the Petitioner was allowed to continue on adhoc basis vide order communicated on 30.04.1993 under Annexure-9 to the writ Petition and the Petitioner also joined in his post. But it is submitted that the Petitioner even though was allowed to continue on adhoc basis but he was paid on daily wage basis. Accordingly, the writ Petition was filed with the prayer as indicated hereinabove.

5. This Court while dealing with the matter passed an order on 14.09.2021, which is quoted hereunder:-

“3. The petitioner has filed this writ petition seeking direction to the opposite parties for compliance of order in Annexure-4 dated 12.05.1997 passed in MP No. 2859(C) of 1995 arising out of O.A. No. 671 (C) of 1992, wherein the tribunal has directed that the petitioner has to be deemed to be working on ad hoc basis and his salaries should be paid in the scale prescribed for the post. The said order was sought to be reviewed by the State and vide order dated 17.03.1998 the tribunal modified the order passed on 12.05.1997. Against the review order passed by the tribunal, the petitioner approached this Court by filing OJC No. 5689 of 1999, which was disposed of by order dated 27.09.1999 stating that the impugned order, so far as it reviews or modifies the order dated 12.05.1997 in MP No. 2859(C) of 1995, having been passed in illegal exercise of jurisdiction, needs to be and is accordingly quashed. Accordingly directed that review application no.59(C) of 1997 be restored to file and the matter would go back to the tribunal for hearing of review petition by the Bench presided over by Mr. J.N. Poddar, Member (Admn.), Orissa Administrative Tribunal. After review petition was restored, what is result of the review application nothing has been placed on record. In any case, finally O.A. No. 671 (C) of 1992 was

disposed of vide order dated 10.03.2010 directing that in view of the submissions made by learned counsel for both parties and considering communication at Annexure-8 to the said O.A. the matter is remitted back to opposite party no.1 for treating the same as a representation and issuing appropriate orders on merit in accordance with existing rules and executive instructions within three months from the date of receipt of that order under intimation to the petitioner. Thereby, the interim order passed on 12.05.1997 has merged with the final order passed on 10.03.2010. Nothing has been placed on record with regard to disposal of review application in compliance to the direction given by this Court.

4. In view of such position, the authority in compliance to the order passed on 10.03.2010 in O.A. No. 671 (C) of 1992 appointed the petitioner on regular basis in the scale of pay of Rs. 5200-20200/- with Grade Pay of Rs.1900/- with usual DA & other allowance as admissible from time to time on 24.09.2014 and such appointment is purely temporary and shall be terminated at any time without assigning any reason thereof.

5. It is contended that the petitioner having been allowed to continue in the scale of pay on ad hoc basis for a period of three months, which was extended from time to time, but nothing has been placed on record to substantiate that from time to time his appointment was extended and he was allowed to get regular scale of pay.

6. On the other hand, in the counter affidavit filed on behalf of the State it has been specifically mentioned that the petitioner was appointed on two spells as Junior Clerk temporarily for a period of three months and then 89 days respectively and on expiry of the stipulated period he was terminated from service and after long gap of three years as per his own request he was engaged on daily wage basis, but he was disengaged due to receipt of allegation against him. Therefore, the claim of the petitioner to get salary in the post of Jr. Clerk from 01.05.1993 to 24.09.2014 is untenable.

7. In view of the above, unless the petitioner produced the relevant document indicating that for the period from 01.05.1993 to 24.09.2014 he was continuing against regular post of the particular scale of pay, the claim made in this writ petition cannot sustain in the eye of law. However, Mr. Mallik, learned counsel for the petitioner seeks time to produce the relevant documents. On his request, call this matter after two weeks enabling him to produce the materials before this Court to consider his claim made in this writ petition.”

6. Pursuant to the said order passed by this Court, an additional affidavit has been filed by the Petitioner indicating therein that the Petitioner though was allowed to continue on adhoc basis, he was all through paid on daily wage basis till he is regularized w.e.f.24.09.2014.

7. Since the very initial engagement of the Petitioner is on adhoc basis and while taking back him into service, he was allowed to continue on adhoc basis, there was no justification on the part of the Opp. Parties to pay him on daily wage basis.

8. In the counter though a specific stand was taken that the Petitioner was allowed to continue on daily wage basis, but the order annexed to the additional affidavit vide Annexure-9 does not indicate so.

9. Having heard learned counsel for the Parties and after going through the materials available on record, this Court finds that the Petitioner was not only appointed initially on adhoc basis but also he was taken back to his service vide order at Annexure-9 on adhoc basis. Therefore, the Petitioner is entitled to get benefit of the scale of pay as due and admissible for the period 01.05.1993 to 24.09.2014.

10. This Court accordingly directs O.P. No. 3 to calculate the entitlement of the Petitioner for the period 01.05.1993 to 24.09.2014 and disburse the same after deducting the wages that was paid on during the aforesaid period. The entire exercise shall be completed within a period of four (4) months from the date of receipt of this order.

11. The writ Petition is disposed of accordingly.

(Biraja Prasanna Satapathy)
Judge

Sneha

