

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.1011 of 2016

Niranjan Nayak

....

Petitioner

Ms. Saswati Mohapatra, Adv.

-versus-

State of Odisha and Ors.

....

Opposite Parties

Mr. H.K. Panigrahi, SC

(for SAT (Cuttack))

CORAM:

DR. JUSTICE S.K. PANIGRAHI

Order

No.

07.

ORDER

21.12.2022

1. This matter is taken up through hybrid mode.
2. The present petition has been filed assailing the order dated 06.11.2015 passed by the Opposite Party No.3, inter-alia, treating the Petitioner as contractual employee and thereby, to discontinue the operation of GPF account. The Petition calls into question the action of Opposite Parties in not regularising the post of the Petitioner even though similarly situated persons have been extended the aforesaid benefit.

I. FACTS OF THE CASE

3. Shorn of unnecessary details, the substratum of matter presented before this court remain that the Petitioner was appointed in the year 1993 against a sanctioned

vacancy of Peon on ad-hoc basis for a period of 44 days with the scale of pay of Rs.750-12-870/-. He was appointed as Peon against the vacancy which had arisen due to promotion of one Lushee Murmu the post of Daftary.

4. The petitioner approached the learned Tribunal in OA No.2971(C) of 2006 seeking regularization of his service citing regularization of one Bankia Behera whose name finds place on Sl. No.6 of the minutes of Selection Committee dated.05.04.1991. The OA No. 2971(C) of 2006 filed by the Petitioner was disposed vide order dated 14.03.2011 inter alia directing to consider the case of Petitioner for regularization in accordance to Finance Department resolution dated 15.05.1997.
5. Subsequently, the Opposite Party No.1 passed the Order of regularization on 24.02.2015 after dismissal of SLP No.27340 of 2013 filed by the State. After regularization, GPF Account was allotted to the Petitioner along with others. The applicant was allotted with GPF Account No. GAO62466. However, subsequently, the Petitioner vide letter dated 06.11.2015 was intimated about the discontinuance of GPF account on the grounds that the Petitioner along with others were appointed on a contractual basis.

II. SUBMISSION ON BEHALF OF THE PETITIONER

6. It is submitted by Learned Counsel for the Petitioner that the Petitioner was appointed against sanctioned vacancy and stands in a similar footing to Sri Bankia Behera as in SLP No.27340/2013. Therefore, the Petitioner is entitled to get all benefits as has been granted in all other similarly situated persons like Bankia Behera.
7. Furthermore, it is contended by Learned Counsel for the Petitioner that the judgment of *Moti Dei v. State of Odisha*, is not at all applicable to the case at hand. Because, it is a categorical finding that the Petitioner's (Moti Dei) continuance in service was beyond rules and also the Petitioner's post (in Moti Dei's Case) was not sanctioned by the Higher Authority. In the present case, the Petitioner was appointed in the year 1993 against sanctioned vacancy and after long legal battle and, in the year 2014, the Petitioner was regularised in service.

III. SUBMISSION ON BEHALF OF THE OPPOSITE PARTIES

8. Per contra, it is contended by Learned Counsel for the Opposite Parties/State that the Petitioner was appointed temporarily as Peon for 44 days from the date of joining without any regular recruitment process and was not

appointed on an ad-hoc basis. Moreover, the Petitioner's name does not find place in the minutes of Selection Committee meeting dated 05.04.1991 and hence, he has not come through the regular recruitment process.

IV. COURT'S ANALYSIS AND REASONS

9. On perusal of the above-mentioned pleadings, this Court is of the view that the Petitioner is similarly situated as Bankia Behera in O.A No.909 (C) of 2006. Moreover, the Petitioner had been discharging his duties in the post of Peon since 1993 and the said post was a substantive vacant post due to promotion of Lushee Murmu to the post of Daftary. It is a settled position in law that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This view has also been iterated in *State of Uttar Pradesh and Others v. Arvind Kumar Srivastava and Others*¹.

¹ (2015) 1 SCC 347

10. In *Ashwani Kumar and others v. State of Bihar and others*², while considering the validity of confirmation of the irregularly employed, the Apex Court observed that:

"In this connection it is pertinent to note that question of regularization in any service including any government service may arise in two contingencies. Firstly, if on any available clear vacancies which are of a long duration appointments are made on ad hoc basis or daily-wage basis by a competent authority and are continued from time to time and if it is found that the incumbents concerned have continued to be employed for a long period of time with or without any artificial breaks, and their services are otherwise required by the institution which employs them, a time may come in the service career of such employees who are continued on ad hoc basis for a given substantial length of time to regularize them so that the employees concerned can give their best by being assured security of tenure.

But this would require one precondition that the initial entry of such an employee must be made against an available sanctioned vacancy by following the rules and regulations governing such entry. The second type of situation in which the question of regularization may arise would be when the initial entry of the employee against an available vacancy is found to have suffered from some flaw in the procedural exercise though the person appointing is competent to effect such initial recruitment and

²1996 Supp. (10) SCR 120

has otherwise followed due procedure for such recruitment. A need may then arise in the light of the exigency of administrative requirement for waiving such irregularity in the initial appointment by a competent authority and the irregular initial appointment may be regularized and security of tenure may be made available to the incumbent concerned."

11. In the case of **Secretary, State of Karnataka v. Umadevi and Others**³, the Supreme Court iterated:

"One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process

³Appeal (civil) 3595-3612 of 1999

must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

12. Similarly, in the case of ***Amarendra Kumar Mahapatra & Ors. vs State of Orissa & Ors***⁴, the Supreme Court was of the opinion that the appellants were entitled to regularization in service having regard to the fact that they have rendered long years of service on ad hoc basis.
13. In the case at hand, it can be ascertained that the Petitioner was appointed against a substantive vacant post and he had been discharging his duties in the said post since 1993. The appointment was made on an ad-hoc basis and was extended from time-to-time. Since, the Petitioner was appointed against substantive vacancy and the post was sanctioned by Higher Authorities, the Petitioner should have been extended the benefit of regularisation like other similarly situated persons.

⁴(2014) 4 SCC 583

14. In conspectus of the facts and guided by the precedents stated herein above, this Court sets aside the order dated 06.11.2015 passed by the Opposite Party No.3. The Opposite Party No.3 is hereby directed to regularize the appointment of the Petitioner as other similarly situated persons and extend the benefits that has accrued to him within a period of three months.

15. In the final evaluation, the Writ Petition is allowed. There shall be no orders as to costs.

B.Jhankar



(Dr. S.K. Panigrahi)
Judge