

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.C (OAC) No. 712 of 2014

An application under Sections 226 and 227 of the Constitution of India)

Anil Kumar Bal

.....

Petitioner

-Versus-

State of Odisha and another

Opp. Parties

Advocate(s) appeared in this case :-

For Petitioner : M/s. J. Pattnaik, Sr. Advocate
B. Mohanty, B.S. Rayaguru,
A. Pattnaik & S. Pattnaik,
Advocates

For Opp. Parties : Mr. B.P. Tripathy,
Addl. Government Advocate

CORAM:

JUSTICE SASHIKANTA MISHRA

J U D G M E N T

7th September, 2022

SASHIKANTA MISHRA, J.

The petitioner was initially engaged as casual worker in the Map and Printing Establishment under the Joint Director of Survey, Map Publication (opposite party No.2) as Binder on 08.09.1986. Since the work and establishment was permanent in nature, the petitioner and several other similarly placed persons approached

this Court in OJC No. 4361 of 1989 with prayer to direct the authorities to absorb them as regular employees and to pay them equal wages for the equal work performed in other establishments with arrears. The matter was transferred to the erstwhile Orissa Administrative Tribunal and registered as T.A. No. 56(C) of 1993. The Tribunal, vide order dated 23.11.1995 allowed the TĀ by directing the respondents to prepare a scheme within six months for absorption of the existing casual skilled and highly skilled employees by phases so that all will be absorbed within three years and will retire as regular employees to get benefit of their service. The Tribunal further directed that till they continue as casual employees, they shall be paid the minimum in the scale applicable to such posts in similar organization with such direction to be worked out within three months. The opposite parties-authorities approached the Supreme Court in SLP(C) No.19310 of 1996 but the same was dismissed vide order dated 26.03.1993. Despite dismissal of the SLP, the opposite parties did not take any step to implement the order of the Tribunal for which the

petitioner and others filed a contempt application being C.P. No. 308(C) of 2000 before the Tribunal. Finally, in the year 2007, the petitioner was regularized in service. By order dated 04.01.2013 passed in the contempt application, the Tribunal took note of the affidavit filed by the present opposite party no.1 that the petitioner and the other similarly placed employees are entitled to be paid Rs.12,92,288/-. Again on 30.10.2013, the Tribunal took note of the affidavit filed by the present opposite party no.1 to the effect that the actual amount payable to the petitioners is Rs.1,04,13,524/-, out of which, they have already been paid Rs.51,36,900/- and are entitled to get the balance amount of Rs.52,76,624/-. Accordingly, the contempt petition was dropped and an affidavit was filed by the petitioner and others that they have already received the scale of pay from 23.11.1998 till their regularization, i.e., 30.10.2007. It is claimed that they have not been paid the differential amount from 2007 till date. The petitioner has enclosed a chart as Annexure-7 showing his entitlement. On such facts, the petitioner

approached the Tribunal in O.A. No.712(C) of 2014 seeking the following relief:-

“In view of the above facts stated in para-6, the applicant prays for the following relief(s).

The date of regularization of service of the applicant shall be fixed from 23.11.1998 and differential salary for the period from 31.10.2007 till today may kindly be sanctioned in favour of the applicant and further the respondents may be directed to pay minimum scale of pay from 23.11.1995 to 22.11.1998 as per the direction of this Hon’ble Tribunal in T.A. No.56(C)/1993 dated 23.11.1995.”

The said O.A. has since been transferred to this Court and registered as the present writ petition.

2. Counter affidavit has been filed on behalf of the opposite party no.2. It is stated that pursuant to direction of the Tribunal in T.A. No.56(C) of 1993, a scheme was prepared in conformity with the guidelines of Finance Department Resolution No.22764 dated 15.05.1997 specifically for absorption of NMR/DLR/JC employees on regular basis against vacant posts of Class-IV and Class - III categories. Accordingly, the petitioner along with sixteen other employees were regularized vide letter dated 01.08.2007 and appointed against existing vacancies vide

office order dated 30.10.2007. It is further stated that in compliance of the order passed by the Tribunal, the O.P. No.2 has disbursed a sum of Rs.12,92,288/- to seventeen employees for the period from 23.11.1995 to 25.04.2000 and prior to that they have been paid minimum scale of pay from 26.04.2000 till their regularization. It is further stated that a total amount of Rs.1,04,13,524/- has been disbursed to seventeen numbers of DLs and that the earlier calculation was made, which covered ten years of entitlements prior to pronouncement of orders, i.e., from 1985 to 1995 and five years after regularization, i.e. from 2007 to 2012, which was irregular and inadmissible.

3. The petitioner filed a rejoinder to the counter filed by opposite party no.2. It is stated that the opposite parties regularized his service from 30.10.2007 instead of 23.11.1998, though differential salary has been paid from 23.11.1998 to 30.10.2007. It is stated that this amounts to violation of the order of the Tribunal. It is further stated that the petitioner is also not getting the increments and other pay particulars for the period from 23.11.1998 to 30.10.2007. Further, because of non-implementation of

the order of the Tribunal with regard to regularization of services, the service period from 23.11.1998 to 30.10.2007 has not been calculated towards pensionable service.

4. Heard Mr. Jagannath Pattnaik, learned Senior Counsel with Mr. Biplab Mohanty, learned counsel for the petitioner and Mr. B.P. Tripathy, learned Additional Government Advocate for the State.

5. Mr. Pattnaik, learned Senior Counsel argues that the order of the Tribunal is clear and unambiguous and is not amenable to any interpretation save and except that the petitioner and the similarly placed applicants along with him were entitled to be regularized in service by 23.11.1998. Further, till such time, they are entitled to minimum scale of pay as available to their counterparts in the regular establishment of similar organizations. The petitioner has not been paid salary of a regular employee from 2007 onwards. Though the petitioner was regularized, yet the same is from 30.10.2007, as a result of which, he having retired on superannuation, is held to have not rendered the minimum qualifying service

required for grant of pension. According to Mr. Pattnaik the order of the Government runs entirely contrary to the letter and spirit of the order passed by the Tribunal. Mr. Pattnaik has further referred to the chart enclosed as Annexure-7 showing the entitlements of the petitioner.

6. Mr.B.P. Tripathy, learned AGA, on the other hand, has argued that being purportedly aggrieved by non-implementation of the order of the Tribunal, the petitioner and other similarly placed employees had filed contempt application before the Tribunal. During pendency of the said contempt application, the opposite parties-authorities paid the differential amount due to the applicants taking note of which the contempt proceeding was dropped. Therefore, no further cause of action survives for the petitioner to agitate. As regards the claim for regularization with effect from 23.11.1998, it is contended by Mr. Tripathy that regularization of services depends upon availability of vacancies and financial capacity of the State. The Government, after taking note of the vacancies, absorbed them as per the scheme prepared in the year

2001 against existing vacancies. Therefore, the petitioner cannot claim to have been discriminated in any manner.

7. As it appears, the main grievance of the petitioner is his claim for regularization of his services with effect from 23.11.1998 instead of 30.10.2007. It has been argued at length that the order of the Government in regularizing the services of the petitioner with effect from 30.10.2007 runs contrary to the order passed by the Tribunal. It would therefore be proper to refer to the order of the Tribunal at the first instance. It is to be noted that the petitioner was engaged as a casual worker on 08.09.1986. It was claimed that both the establishment as well as the work in which the petitioner was engaged are permanent in nature and therefore, he could not have been engaged on casual basis. The Tribunal after considering the rival contentions held as follows:-

“4. Casual employees are engaged for casual work to be performed. Where an establishment is permanent, employees are to be engaged on regular basis. Employment on casual basis in a permanent establishment for a long period amounts to exploitation. No good society will accept exploitation of its members since the same is contrary to provision of equality. In a democratic set up, society impliedly authorizes the executive to guard this constitutional mandate. Where there is a breach, judiciary rises to the occasion to give direction as the facts and circumstances require balancing the nature of

infringement and burden on the State exchequer keeping note that the direction does not encroach upon executive administration.”

8. This Court fully agrees with the reasoning adopted by the Tribunal and reiterates that the decision to engage casual employees in permanent work for inordinately long periods of time cannot meet with the sanction of law. Holding thus, the Tribunal went on to pass the following directions:-

“6. Taking all these decisions into consideration I direct respondents that a scheme will be prepared within six months from the date of receipt of a copy of this order to absorb the existing casual skilled and highly-skilled employees and by phases all will be absorbed within three years, so that they will retire as regular employees to get the benefit of their service. Till they continue as casual employees, they shall be paid the minimum in the scale applicable to such posts in similar organization. This shall be worked out within three months from the date of receipt of a copy of this order and the payments shall be made immediately thereafter. Once the principle is decided, no joint application will be entertained and individual employee aggrieved has to approach the Tribunal for redressal his grievance under section 19 of the Act.”

xxx

xxx

xxx

xxx

8. In case of scheme is declared within six months as directed and the applicants are not paid emoluments which will be equal to the minimum in the scale of pay to which they are entitled within three months as directed, individual applicants are given liberty to approach the Tribunal under section 19 of the Act so that each grievance can be examined independently depending upon facts and circumstances of his case. No joint application shall be permitted.”

From a bare reading of the order quoted above, it is evident that the following directions were issued:

- (i) A scheme for absorption of existing and casual skilled and highly skilled employees was to be prepared within six months.
- (ii) All such workers shall be absorbed by phases within three years, i.e., 23.11.1998.
- (iii) Till they are regularized, the employees shall be paid minimum scale as applicable to such posts in similar organizations, i.e., from 23.11.1995 till the date of their regularization.

9. In course of hearing, it is submitted by Mr. Pattnaik that the direction to pay minimum scale from 23.11.1995 to 30.10.2007 has already been complied with and the petitioner has received his entitlements in full.

10. There are thus two more aspects to be considered, namely, the claim of regularization with effect from 23.11.1998 and payment of differential salary with effect from the said date onwards.

11. As has already been stated hereinbefore, the order of the Tribunal attained finality upon dismissal of the SLP

filed by the State in the Supreme Court. There was thus, no option available with the State but to comply with the order of the Tribunal in letter and spirit. Though Mr. Tripathy, learned Additional Government Advocate, in course of argument has referred to non-availability of vacancies and financial capacity etc., the same cannot be taken into consideration for the reason that in such event, the State could have approached the Tribunal seeking modification of its order citing the above reasons, if the same, according to it were bonafide. Such an exercise was never undertaken. At this stage, it would be proper to again refer to the observation of the Tribunal quoted hereinbefore which clearly shows that the Tribunal was fully conscious of the fact that in addressing a grievance arising out of breach of the constitutional mandate the judiciary is required to balance the nature of infringement and burden on the State exchequer so that the direction does not encroach upon executive administration. This Court can add nothing further to such pious observation made by the Tribunal while issuing the direction in question.

12. Such being the position, there is no way by which the specific direction of the Tribunal to complete the process of absorption within three years, i.e., 23.11.1998 could be given a go-bye by the authorities concerned. This Court, therefore, has no hesitation in holding that the petitioner having been engaged way back in the year 1986 and performed his duties apparently without any blemish, was entitled to be regularized with effect from 23.11.1998, if not earlier. Therefore, this cannot be treated as full compliance of the order of the tribunal. It is well settled that part compliance is no compliance in the eye of law. When a Court or Tribunal passes an order it is to be complied with fully and no discretion is left with the complying authorities to modify the same in any manner without leave of the court. It is observed at the cost of repetition that the order of the Tribunal having become final there was no other option for the government but to regularize the services of the petitioner with effect from 23.11.1998.

13. It is further argued that not only was the petitioner not regularized with effect from 23.11.1998 but also he

was not paid the regular salary and was paid only the minimum scale without any increments and other benefits. It is also argued that his remuneration was fixed at Rs. 2650/- from 1998 till regularization in the year 2007. On regularization his salary was fixed at the minimum scale that is Rs. 2550, which is less than what he was getting earlier. According to learned Senior Counsel, the petitioner should have been granted regular salary not only from 23.11.98 but also with all increments, DA and other benefits from the said date. Accordingly his salary ought to be revised.

14. Once it is held that the petitioner is entitled to be regularized with effect from 23.11.19 98, the authorities cannot pay him only minimum scale from the said date. Since the Tribunal had directed that minimum scale is to be paid till the date of regularization, the same ought to have been paid from the date of the order that is, 23.11.1995 till his regularization, which according to the Tribunal should have been effected latest by 23.11.1998. It is not disputed that the minimum salary for the above period has been paid. However, the petitioner was paid

minimum scale from 23.11.98 till the date of his regularization. For the reasons indicated above, it is evident that the petitioner was entitled to full salary due to a regular employee as on 23.11.1998. Consequently his salary should have been fixed at the appropriate scale along with all pay benefits admissible to such scale.

15. It is also argued that the petitioner has retired in the meantime and his claim for pension was turned down specifically on the ground that he had rendered only four years six months in regular establishment which does not amount to qualifying service of minimum ten years as per Rule-47(2) of OCS (Pension) Rules, 1992 for pension and minimum five years as required under Rule-49(1) of the said Rules for the purpose of gratuity. Since this Court has already held that the petitioner is entitled to be regularized w.e.f. 23.11.1998, his qualifying service for the purpose of pension and other retirement benefits also needs to be reckoned from such date.

16. For the foregoing reasons therefore, the writ petition deserves to be allowed and it is ordered accordingly. It is directed that the petitioner shall be deemed to have been

regularized in service with effect from 23.11.98. Accordingly, he is held entitled to full regular salary along with DA, increments and other pay benefits from such date till his retirement which shall be fixed appropriately and paid to him after adjusting the amount already paid within a period of three months from the date of communication of this order or on production of certified copy thereof by the petitioner. Consequently, the petitioner shall be allowed to count his qualifying service from 23.11.98 for the purpose of pension and other retirement benefits, which shall also be calculated and paid with a period of three months after the above mentioned revision of his salary with effect from 23.11.1998.

.....
Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 7th September, 2022/ B.C. Tudu