

IN THE HIGH COURT OF ORISSA AT CUTTACK
WPC(OAC) No.1107 OF 2014

Bidyadhar Mallik

....

Petitioner(s)

Mr. P.K.Mishra,
Advocate

-versus-

State of Odisha and others

....

Opposite Party(s)

Mr. S.P.Panda,
AGA

CORAM:
JUSTICE BISWANATH RATH

ORDER
04.07.2022

Order No.

03. 1. This application involves the following relief:-

“7. **Relief(s) sought for :-**

In view of the facts and circumstances of the case, the applicant most fervently prays that this Hon’ble Tribunal may be graciously be pleased :

- (a) To direct the respondents to regularize the services of the applicant retrospectively w.e.f. 1995 as has been extended to similarly situated employees/counter parts (applicants of T.A. No.56(C)/93).
- (b) To count the service of the applicant from the year 1995 so that the applicant will be eligible for pension after his retirement.
- (c) To pay the arrear dues /service benefits to the applicant from 1995 till 2008.
- (d) To pass any other order / orders as would be deemed fit and proper.”

2. Factual background involved herein is, for the disposal of the T.A. No.56(C)/1993 on 23.11.1995 the State Authorities moved Hon'ble Apex Court in SLP No.5683 of 1996, which finally got dismissed. There is no dispute that the principle decided in T.A. No.56(C)/1993 has been confirmed by the Hon'ble apex Court. It has been brought to the notice of this Court through a communication of the Government of Orissa in Revenue and Disaster Management Department dated 10.10.2008 that through this letter the name of the Petitioner find place at Sl. No.5 and there is already a direction by the competent authority to regularize all these persons including the Petitioner against the existing vacancies in the Office of the Survey & Map Publication, Odisha, Cuttack except rejecting the case of one Karna Bewa for the reason indicated therein. It is next taking this Court to the development taken place in the meantime, learned counsel for the Petitioner submitted that for the services of the Petitioner being regularized on 12.11.2008, the Petitioner filed O.A. for antedating his date of regularization keeping in view the settled position of law. Bringing to the notice of this Court the document at page 24 of the brief, learned counsel for the Petitioner contended that in the same batch there has been regularization of certain persons w.e.f. 19.06.1999 and 2.07.1999 and thus Petitioner submitted that there is discrimination in the case of the Petitioner.

In the circumstance learned counsel for the Petitioner contended that when a set of people have been regularized in 1999, there was no occasion for regularizing the services of the Petitioner in a different batch, who stands in similar footing. It is thus

contended that there was no room with the competent authority to discriminate the Petitioner by regularizing him from 10.11.2008. Learned counsel for the Petitioner further taking this Court to the circular being the foundation in regularizing the persons named at page 24 of the brief and the resolution of the Finance Department dated 15th May, 1997 contended that for the clear provision therein the case of the Petitioner should have been considered to have been regularized upon completion of 10 years from the date of his joining at least since 14.12.1998 and in no circumstance from 12.11.2008.

3. It is, in the above background of the matter, learned counsel for the Petitioner claimed for allowing this application and giving suitable direction to the competent authority for preponing the date of regularization of the services of the Petitioner at least from 14.12.1998.

4. Mr. Panda, learned State Counsel in his attempt to support the case of the State Authorities relying on the direction at Annexure-9 (series) being passed on the direction of the Tribunal in T.A. No.56(C)/1993 contended that for the regularization of the Petitioner having been taken place following the direction of the Tribunal in disposal of the aforesaid T.A., there appears, there is no illegality in regularizing the services of the Petitioner from 12.11.2008. There is, however, no dispute to the claim of the Petitioner that the order of the Tribunal in T.A. No.56(C)/1993 has been confirmed by the Hon'ble apex Court in disposal of the SLP No.5683 of 1996 and also involving similar O.A. in SLP No.19310 of 1996. There is also no dispute to the existence of the Finance

Department Resolution dated 15th May, 1997 benefitting the Petitioner herein.

Considering the rival contentions of the parties, this Court finds, the prayer involved herein was also the prayer made by a different group of people involving T.A. No.56(C)/1993. This T.A. was disposed of with the following direction:-

“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.

7. A question arose whether direction can be given to give relief to casual employees who neither hold a civil post nor is a member of civil service. Their claim is for regularization in posts which comes within recruitment and Tribunal has jurisdiction in that respect to give direction to a civil post or civil service. Ancillary, it can give direction for lesser relief till they are absorbed in regular posts.

8. In case no 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.

9. On the facts and circumstances of this case, I have exercised power under Section 5(6) of the Act to hear the application by a Bench of one Member for early disposal to mitigate grievance of the applicants.

10. With this direction the Transferred Application is disposed of. There shall be no order as to costs.”

5. There is no dispute at Bar that this order was challenged by the State Authorities in the Hon’ble apex Court through SLP No.5683 of 1996 and the same was dismissed affirming the order of the Tribunal. Further after finality of the issue involving T.A. No.56(C)/1993 even through the Hon’ble apex Court, the competent authority in further consideration of the matter issued a communication to the Additional Secretary to Government, Revenue & Disaster Management with clear direction to the competent authority to consider the case of the persons involved in T.A. No.56(C)/1993 for their regularization from their completing 10 years of service. This Court takes into account the provision in the Government vide Finance Department Resolution No.22764-WFI-24/97-F dated 15th May, 1997 and the relevant provision in the said resolution dated 15th May, 1997 reads as follows:

“1. Separate Gradation/Seniority list shall be prepared by the Appointing Authority for each category of workers determining the length of engagement of a particular person. The workers should have worked under the administrative control of the Department concerned directly for a minimum period of 10 years. The engagement of 240 days in a year shall be construed as a complete year of engagement for this purpose.

2. The workers should have been engaged prior to 12.4.1993 i.e. prior to promulgation of ban on engagement of N.M.R/D.L.R./Job Contract Workers etc. vide Finance Department Circular No.17813-WP-II-180/92-F. dated 12th April 1993.
3. They should have the minimum educational / Technical qualification prescribed for the post against which they would be absorbed.”

6. Reading through the direction of the competent authority vide Annexure-4 to treat the persons in the manner involving direction in T.A. No.56(C)/1993, together with the Finance Department Resolution dated 15th May, 1997, this Court finds, there remains no doubt that the persons engaged as NMR/DLR/Job contract workers engaged prior to 12.04.1993 ought to be regularized on their completion of 10 years of service. This Court, therefore, records, the action of the State Authorities here remains both contrary to the position of Law indicated herein and their own circular.

7. It is, in the circumstance, this Court finds, there was no option with the State Authorities than to regularize all such persons appointed prior to 12.04.1993 involving the above category of employment on their completion of 10 years from the date of their engagement.

8. Now coming to the case at hand, this Court finds, there is no dispute that the Petitioner was engaged as a DLR(Helper) on 14.12.1988. For the observation of this Court and for the support of the communication of the Government vide Annexure-4 reading together with the resolution of the Finance Department dated 15th May, 1997 and decision through above T.A., this Court finds, there is no requirement of further consideration of the case of the

Petitioner, as the Petitioner's case is squarely covered by the direction of the Tribunal and for the communication of the resolution indicated hereinabove, this Court also takes into account the development involving four similarly situated persons as appearing at page 24 of the brief who have all been regularized from 19.06.1999 & 2.07.1999 respectively on their completing 10 years of service. In the process, while interfering in the order at Annexure-9 (series) so far it relates to the Petitioner, this Court directs the Opposite Party No.1 to treat the Petitioner to be a regular employee from 14.12.1998 and release all consequential benefits in favour of the Petitioner accordingly.

9. The above direction be worked out within a period of one & half months from the date of communication of an authenticated copy of this order by the Petitioner.

10. The O.A. succeeds to the extent indicated hereinabove. There is, however, no order as to the costs.

(Biswanath Rath)
Judge