

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.33272 of 2021

Satish Chandra Sasmal

....

Petitioner

Mr. Srikanta Mahunta, *Advocate*

-versus-

State of Odisha and others

....

Opp. Parties

Mr. S. Jena,

Standing Counsel for S & ME

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

04.01.2022

Order No.

01.

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

2. This writ petition involves the following prayer:

“In view of the aforesaid fact and circumstances this Hon’ble Court may graciously be pleased to:

I) Admit the writ petition.

II) Issue a writ of mandamus or any other writ/writs direction/directions directing the opposite parties to the appointment of the petitioner ATO on PTGI basis shall be treated as contractual ATO in Govt. TTI, Takatpur, Baripada in district of Mayurbhanj against the trade of Electrician and after completion of 6 years of service as contractual ATO his case shall be considered for regularization with all service benefits.

III) And further be pleased to quash the notice under Annexure-7 dtd.08.07.2021 pursuant to action taken an advertisement issued on 24.12.2016 so far the ATO is concern.

IV) And pass such other order/orders, direction/directions as this Hon'ble Court deemed just and proper in the facts and circumstances of the case.

And for this act of kindness, the petitioners as in duty bound ever pray.”

3. Background of the case is that involving the post of Asst. Training Officer there used to be a permanent post in the name of Assistant Training Officer in a particular establishment. It appears that after some time on the direction of the Government the post of Assistant Training Officer has been abolished. Fact remains, even though such post has been abolished, persons having qualification to be engaged as Assistant Training Officer have been again recruited by the Takatpur, Baripada Govt. T.T.I. against the Electrician Trade under the nomenclature Part Time Guest Instructor but undisputedly by way of advertisement. Filing the writ petition, it is alleged that even though the Petitioner has been recruited through institutional committee and posted as Part Time Guest Instructor and is working in such capacity in 2014 even involving an advertisement for said purpose. It is also alleged that in spite of discharging similar duties and in spite of requirement of post of Assistant Training Officer, State Government with an intention to have a secondary treatment to such type of employees is not creating post of Assistant Training Officer and managing such post in the guise of recruitment to the post of Part Time Guest Instructor. On the premises that there is requirement of such permanent post as has been managed through the Part Time Guest Instructor like that of the Petitioner. Considering long continuance of the Petitioner it is claimed that Government should have taken decision in creation of post of Asst. Training

Officer in Takatpur, Mayurbhanj Govt. TTI to accommodate the Petitioner, who has already completed six years of service. It is, in the circumstances, the Petitioner claims there should be a direction to the competent authority for creation of post of Asst. Training Officer in respect of T.T.I. involved herein.

4. Mr. Jena, learned Standing Counsel for School and Mass Education Department for the contesting Opposite Parties submitted that it is for the State Government to find out as to whether there is scope for creation of such post or not and it is again dependant on several considerations. Mr. Jena, learned Standing Counsel for School and Mass Education Department further submitted that as per the decision of the appropriate authorities the posts are managed by Part Time Guest Instructor and the Petitioner cannot seek for mandamus for creation of such post. It is, however, left open for consideration of the authority.

5. From the rival submission of the parties, this Court finds that earlier such posts were managed by Asst. Training Officer. However, presently these posts are managed through Part Time Guest Instructor. Considering the submissions advanced on behalf of the Petitioner and the pleadings involved in the writ petition this Court finds that the Petitioner has at least demonstrated that there is no difference between the work of Asst. Training Officer and the Part Time Guest Instructor. This Court, here, therefore finds that there is prima facie satisfaction to the claim of the Petitioner for creation of the post of Asst. Training Officer particularly such posts are continuing over six years. Considering the long continuance of the Petitioner, question thus remains, in the event there is long requirement of such post and works are managed presently by

temporary arrangement for a long period, amounts to exploitation of employees, the State should behave as a model employer and should not adopt such ulterior motive to manage such post by temporary hands.

6. This Court while deprecating such attempt of the State Authorities, in disposal of the writ petition directs the Opposite Party No.1 to make an enquiry to find out the nature of work being performed by the Petitioner and if it is akin to that of Asst. Training Officer and Petitioner and meets the required qualification and further considering the long requirement of such post, take a decision for creation of post of Asst. Training Officer. In the event, the State revives the post of Asst. Training Officer in Electrician considering the manner of recruitment of Petitioner and his long continuance, an appropriate decision be taken for absorption of the Petitioner against such post. Till a decision is taken the position of the Petitioner as on date shall not be disturbed. The entire exercise shall be completed within three months.

7. With the aforesaid observation and direction the writ petition is disposed of.

8. Urgent certified copy of this order be handed over on proper application.

Jagabandhu

(**A.K. Mohapatra**)
Judge