

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.1420 of 2014

Janhabi Das @ Prusty

....

Petitioner

-versus-

State of Odisha and others

....

Opposite Parties

For Petitioner

:

Mr. Abhiram Swain, Advocate

For Opp. Parties

:

***Mr. P.C. Das,
learned Addl. Standing Counsel***

CORAM:

JUSTICE A.K. MOHAPATRA

JUDGMENT

Date of hearing : 24.02.2022 | Date of Judgment : 31.03.2022

A.K. Mohapatra, J.

1. The present writ petition has been filed by the petitioner for a direction to the Opposite Party Nos.2 and 3 to take necessary steps for regularizing the service of the Petitioner from 01.07.1999 to 10.04.2013 with consequential service and financial benefits.

2. The factual background of the case, in brief is that pursuant to the advertisement dated 14.04.1999, the petitioner applied for a post of Tailoring Mistress to the Opposite Party No.2. The Petitioner, she having requisites qualification, was found suitable and she was called upon by the authorities to produce the original documents and the same was produced

by her. It is further stated that the requisite qualification for appoint as a Tailoring Mistress trade from I.T.I. which the petitioner conferred possessed from among many other candidates, who had applied for the said post. However, ignoring the case of the petitioner, the authorities appointed one Chimayee Panda though she was not having requisite qualification and went on to issue appointment letter in favour said Chinmayee Panda. As a result, the present petitioner lodged a written report before the Collector, Keonjhar (Opposite Party No.2) alleging that the appointment of said Chinmayee Panda is illegal and void as she did not have requisite qualification.

3. It is further alleged in the application that the Opposite Party No.2 sat over the matter and did not take any action promptly on the complaint of the petitioner. Under such compulsion, the petitioner approached the learned Odisha Administrative Tribunal by filing O.A. No.3206(C) of 1999 challenging the illegal order and action of the Opposite Party No.2 and to declare the appointment of said Chinmayee Panda as void.

4. While the matter was pending before the learned Odisha Administrative Tribunal, the Opposite Party No.2 issued another order keeping the appointment of said Chinmayee Panda in abeyance which was assailed by her by filing O.A. No.3044 of 1999 before the OAT. Further by virtue of interim order dated 10.03.2000, said Chinmayee Panda got adhoc appointment.

5. As both the above noted O.As. arise out of a common set of facts, hence both the O.As. were taken up for hearing together by the learned Odisha Administrative Tribunal. After hearing the respective parties, the Odisha Administrative Tribunal by a common order dated 0305.2012 has held that the said Chinmayee Panda applicant in O.A. No.3044 (C) of 1999 had been appointed without having the eligibility to be appointed as such and the said appointment is thus not sustainable in the eye of law. It was

further held that the present petitioner, who was an applicant in O.A. No.3206(C) of 1999, is the sole candidate having requisite eligibility and that she was denied appointment without any valid reason and therefore, while directing the Opposite Parties to cancel the appointment of said Chinmayee Panda, further direction was given to consider the appointment of the Petitioner against the said post of Tailoring Mistress.

6. After receiving the order passed by the Odisha Administrative Tribunal, the Opposite Party No.2 passed an order cancelling the appointment of Chinmayee Panda and gave appointment to the petitioner vide Memo No.983 / welfare, dated 10.04.2013. Thereafter, the present petitioner joined in service at Government Girls' High School, Chilida, Keonjhar.

7. It is submitted by learned counsel for the petitioner that although the common order passed by the learned Odisha Administrative Tribunal was communicated to the Opposite Parties vide Memo No.4998 dated 14.05.2012, however, Opposite Party No.2 had issued the appointment order to the petitioner after lapse of one year from communication of the order of the Odisha Administrative Tribunal without any valid reason.

8. It is further submitted by learned counsel for the petitioner that pursuant to the direction issued by the Odisha Administrative Tribunal, although the above named Chinmayee Panda was adjusted by the authorities on the ground of equity, the authorities are treating the petitioner with a step motherly attitude. The petitioner has been issued fresh appointment order and posted as such, at the Government Girls' High School, Chilida, Keonjhar whereas the above named Chinmayee had been issued with an order of appointment as Assistant Mistress (MCT) which according to the petitioner is an advantageous position of posting. Therefore, the petitioner

alleged that she has been discriminated by the authorities for reasons best known to them.

9. It is further alleged by the learned counsel for the petitioner that pursuant to the advertisement and the follow up selection process, the petitioner, who was the only available qualified candidate, should have been given appointment w.e.f. 01.07.1999 i.e. the date when the appointment of said Chinmayee has been held to be illegal by the Tribunal and a specific direction was given to the authorities to cancel her appointment and to consider the matter of giving appointment to the present petitioner. Therefore, learned counsel for the petitioner submits that the interest of justice demands that the petitioner should have been given appointment w.e.f. 01.07.1999 i.e. the date on which the above named Chinmayee had been given appointment initially and the petitioner had offered her candidature for appointment, which of course she was denied. Since the OAT has held that the appointment of Chinmayee Panda was illegal, therefore, the post of Tailoring Mistress is to be deemed to have been lying vacant since the date of her appointment and further, since the petitioner is the only eligible and qualified candidate, she should have been given appointment w.e.f. 01.07.1999. he further submits that the petitioner has lost 13 years of her service for none of her fault even though she was the only eligible and qualified candidate to be appointed to the post in question.

10. Learned counsel for the State, on the other hand, had submitted a written note of submission wherein it has been stated that after receiving the common order passed by the Odisha Administrative Tribunal, the Opposite Parties have passed necessary orders cancelling the appointment of Chinmayee Panda and giving the very same appointment to the present petitioner vide order dated 10.04.2013. It has also been stated by the learned counsel for the State that the total period thus calculated for the purpose of

service rendered by the petitioner i.e. from the date of her appointment w.e.f. 10.04.2013. He further submits that the authorities have acted pursuant to the direction of the OAT and as such have not committed any illegality in the matter. Further, the claim of the petitioner that the period of service from dated 01.07.1999 to 10.07.2013 be regularized, is baseless and vague.

11. in reply to the submission advanced by the learned counsel for the State, learned counsel for the petitioner submits that it is because of the illegality committed by the Opposite Parties, the petitioner was deprived of the service for the period from 01.07.1999 to 10.04.2013 and as such, she was illegally kept away from service for almost 12 years for none of her fault although she was lawfully entitled to be appointed in the year 1999 when the post was advertised and the selection took place. Claiming salary for the period and the seniority, the learned counsel for the petitioner relies upon the judgment of the Hon'ble Supreme Court delivered in Civil Appeal No.3018-21 of 1987 in the case of ***Union of India vs. K.V. Jankiraman***. (2) O.J.C. No.8129 of 1998 in the case of ***Kuni Sahoo vs. State of Orissa and others*** and (3) ***Premelata Dei vs. State of Orissa and four others***.

12. It is apt to clarify here that the Opp. Parties shall do well to consider the claim of the petitioner as prayed by her. However, it is made clear here that the Petitioner cannot claim any salary, allowances or other service benefits except the seniority and the period of service as qualifying service. Since the petitioner has not worked for the period for which she was illegally kept out of service despite being validly selected for the post, the petitioner is not entitled to salary for the said period by applying the principles of no work no pay.

13. At this juncture, learned counsel for the petitioner submits that he has submitted a detailed representation highlighting her grievances, which is

pending before the Collector & District Magistrate, Keonjhar (Opposite Party No.2). The same is stated to be pending since 23.10.2013 and no decision has been taken as of now. He further submits that it will suffice to direct the Opposite Party No.2 to consider the representation in the light of the aforesaid judgments within a stipulated period of time.

14. Learned counsel for the State, on the other hand, submits that he has no objection to such limited nature of prayer, if a direction is given to the authorities to consider the representation of the Petitioner within a stipulated period of time.

15. Considering the aforesaid submissions made, this Court disposes of the present writ petition with a direction to the Collector & District Magistrate, Keonjhar (Opposite Party No.2) to consider the representation of the petitioner dated 23.10.2013 under Annexure-4 series, stated to be pending before him, within a period of three months from the date of receipt of a certified copy of this order in accordance with law. Further while considering the representation, the Opposite Party No.2 shall take into consideration the judgment relied upon by the petitioner in support of her claim and shall consider and dispose of the same by passing a speaking and reasoned order within the time stipulated here in above. The decision so taken on the representation shall be communicated to the Petitioner within a period of two weeks thereafter.

16. With the aforesaid direction, the writ petition stands disposed of.

(A.K. Mohapatra)
Judge

Jagabandhu