

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.33722 of 2021

***Subash Chandra Panda and
another***

....

Petitioners

Mr.K.K.Rath, Advocate

-versus-

***Vice Chancellor, Utkal University
of Culture and others***

....

Opp.Parties

Mr. Y.S.P.Babu, A.G.A.

Mr.P.K.Patnaik, Advocate for OP No.1.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

29.03.2022

Order No.

- 06.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. The present writ application has been filed by the Petitioners with a prayer to quash the order dated 21.10.2021 issued by the Opposite Party No.2 and further it has been prayed by the Petitioners for a direction to the Opposite Parties to give engagement to the Petitioners for complete one year as has been advertised under Annexure-3 to the writ application and the period of engagement should be treated from 01.11.2021 to 31.10.2022 as has been done in the case of persons named in Sl.Nos.3 to 10 in order dated 21.10.2021.
 3. The case of the Petitioners, bereft of unnecessary details, is that the Petitioners, who are retired Odisha Government employees came across the advertisement issued in the daily newspaper inviting candidates for a Walk-in-Interview for engagement as Senior Office

Assistant at Utkal University of Culture, Bhubaneswar. The Petitioner no.1 while working as Accountant at Utkal Sangit Mahavidyalaya, Bhubaneswar had retired from service on attaining the age of superannuation with effect from 28.02.2018. So far as Petitioner No.2 is concerned, he was working as an Audit Officer in the Excise Department of the Government of Odisha and on attaining the age of superannuation on 28.02.2018 had retired from Government service.

4. It is further pleaded in the writ application that the General Administration Department of Government of Odisha had published a Resolution dated 27.08.2014 and a comprehensive guideline relating to engagement of retired Government servants in various departments. Pursuant to the said Resolution, the Utkal University of Culture conducted a Walk in Interview for engagement of Officers on Special Duty in the year 2018. Both the Petitioners were selected in the said Walk in interview conducted by the University and as such were given appointment as Officers on Special Duty on a fixed tenure basis. The tenure of both the Petitioners came to an end with effect from 31.10.2021.

5. While this was so, the Utkal University of Culture, Bhubaneswar, Opposite Party No.2 again published another advertisement inviting Officers for Walk-in-Interview for their engagement as Senior Office Assistant. In the said Advertisement the post of Officers on Special Duty to which the Petitioners were initially appointed, have been omitted. Pursuant to the said advertisement, the Petitioners again appeared in the said Walk in Interview. Again the Petitioners were selected to be appointed as Senior Office Assistant.

6. The dispute which is involved in the present writ application arose only when the Opposite Party No.2 issued an Office Order dated 21.10.2021 wherein the merit list was given indicating the names of 10 candidates including the present Petitioners. A perusal of the letter

dated 21.10.2021 would reveal that except the present Petitioners, two in number, all other persons whose names have been reflected in the said order have been given engagement with effect from 01.11.2021 to 31.10.2022, However, so far as the present Petitioners are concerned, the period which has been reflected in the order is with effect from 01.11.2011 to 05.04.2022 and 08.04.2022 respectively. Further, a careful scrutiny of the advertisement under Annexure-3 reveals that the advertisement was published inviting persons for a Walk in Interview for engagement as Senior Office Assistant. It also reveals that their engagement shall be for a period of one year with a consolidated remuneration of Rs.15,000/- per month. It has also been stipulated in the said advertisement that persons not above the age of 64 years as on 01.08.2021 having sound knowledge in establishment, Finance, legal, University Examination matter and having computer knowledge shall be preferred.

7. Learned counsel for the Petitioners submits that the present Petitioners have been grossly discriminated and that the conduct of Opposite Party No.2 University is in violation of the terms and conditions reflected in the advertisement that was published on behalf of the University by the Registrar, Opposite Party No.2. He further submits that in a matter of public employment the authorities are bound by the terms and conditions of the advertisement under which the recruitment/interview is taking place. Learned counsel for the Petitioners further submits that the advertisement published by Opposite Party No.2 University does not whisper anything about the Resolution of the General Administration department dated 27.08.2014. As such the restriction contained therein are not applicable to the present process of recruitment.

8. Mr.Rath, learned counsel for the Petitioners further submits that pursuant to the advertisement dated 18.08.2021 several candidates

appeared in the Walk-in-Interview. Finally 10 candidates were selected for appointment to different categories of the post as advertised by the Opposite Party No.2 University. Under the impugned letter dated 21.10.2021 all other eight candidates have been given appointment for one year i.e. with effect from 01.11.2021 to 31.10.2022. However, the present Petitioners whose names appear against Sl.Nos.1 & 2 of the said list have been given appointment for a period less than one year which is contrary to the terms reflected in the advertisement. Moreover, he submits that the conduct of the authorities in treating one set of employees recruited under one advertisement by following a common Walk in Interview have been given different engagement period. Therefore, the conduct of the University is grossly arbitrary, discriminatory and illegal.

9. Mr.P.C.Das, learned Additional Standing Counsel for the State, Per Contra, submits that the Petitioners were appointed after their retirement from Government service. Relying heavily on the G.A. Department Resolution dated 27.08.2014 relating to engagement of retired Government servants, Mr.P.C.Das,learned Additional Standing Counsel submits that Clause-iv of the Resolution provides that reemployment can be made for a maximum period of four years in different spells and not beyond 65 years of age in any case or till the post are filled up by regular process whichever is earlier. He further submits that by following the said Resolution the Utkal University of Culture, Bhubaneswar has given engagement to the Petitioners. He further argues that under the said Resolution, the Petitioner No.1 joined on 06.04.2018 and Petitioner No.2 joined on 08.04.2018 as per the stipulation in Clause-iv of the Resolution dated 27.08.2014. He further submits that under the said Resolution the Petitioners are eligible to work for a maximum period of four years up to April, 2022.

10. In the Counter Affidavit filed by the Opposite Party No.2, it has

been stated that after first engagement for one year, the engagement of the Petitioners was continued in different spells almost 15 in number up to 04.10.2021. Learned counsel for Opposite Party No.2 therefore, submits that under the impugned order dated 21.10.2021 the Petitioners have been given engagement for the balance period as the Petitioners could not have continued after completion of four years of their retirement and accordingly, learned counsel for the Opposite Party No.2 defends the impugned order dated 21.10.2021.

11. In course of hearing learned counsel for the Petitioners files a copy of the advertisement for Walk in Interview for engagement of OSD which was published in the daily newspaper "The Samaj" on 20.03.2018. The same is taken on record. On perusal of the said advertisement, it appears that the Resolution of the G.A. Department dated 27.08.2014 and Finance Department Memorandum dated 07.04.2016 are part of advertisement of the year 2018. However, the aforesaid two documents are not part of the advertisement of the year 2021. Therefore, the advertisement which was published in the year 2021 is an open advertisement without any restriction under any of the Government Resolution, Memo etc.

12. The Resolution of the G.A. Department, Government of Odisha dated 27.08.2014 which has been issued in the nature of a guideline relating to engagement of retired Government servants. A further scrutiny of the said Resolution reveals that the Government of Odisha after a careful consideration of the scenario prevailing due to delay in making regular appointment and with a view to ensure uniform principle it has been decided by the Government that the department of the Government while taking decision for engagement of retired persons having professional excellence in Government assignment shall follow the uniform principle as has been laid down in the said Resolution for engagement of retired Government servants on

contractual basis. Such objective prima facie appears to be applicable in the case of engagement of retired Government servants on contractual basis in Government departments only. Further, Clause-1 which reveals that applicability provides that the guidelines shall be applicable to the Officers to be employed to such post/service as may be decided by the Government from time to time. Further, under Clause-iv i.e tenure, terms and conditions it has been stipulated as follows

i) The re-employment shall be made initially for a period of two years and can be extended for subsequent period of two years with spells of one year each subject to satisfactory performance up to a total period of four years not beyond the age of sixty-five years of age in any case or till the posts are filled up by regular process whichever is earlier.”

iv) Clause iv of the Resolution dated 27.08.2014 stipulates that the retired Government employees shall be initially appointed for a period of two years and thereafter the same can be extended for subsequent period of two years with spells of one year each up to a total period of four years.

The Opposite Party No.2, it seems has not followed the said Clause-iv as would be evident from the counter affidavit wherein the Opposite Party No.2 has specifically stated that the Petitioners were reengaged in several spells totaling 15 in number. Therefore, the Opposite Party no.2 itself has violated Clause-iv which they are heavily relying upon in the present case. Moreover Clause iv makes it mandatory that no appointment beyond the age of 65 years of age can be given. In the present case, the Petitioners are well within 65 years of age. Therefore, it cannot be said that by appointing the Petitioners in the advertised terms of one year Clause-iv would have been violated in any manner by Opposite party No.2-University.

13. Most importantly the advertisement pursuant to which the

Petitioners and others were engaged vide Office order dated 21.10.2021 reveals that Government Resolution dated 27.08.2014 is not a part of that advertisement. In the previous year advertisement of the year 2018 it was clearly mentioned that the appointment is subject to the Resolution of the G.A. department dated 27.08.2014. However, the same has been done away with in case of the advertisement of the year 2021. Moreover in view of Clause-1 the Government having not declared/decided that the Resolution is applicable to the Opposite Party No.2-University, the Opposite Party no.2 University is not bound by the said Resolution. In any case the advertisement pursuant to which the Petitioners were appointed is an independent one and any engagement made under the said advertisement has to be done strictly in terms of the conditions contained in the said advertisement. The conduct of Opposite Party no.2 in changing the condition later on and imposing the restriction of four years maximum period appears to be unreasonable, unfair to the Petitioners. The same is also contrary to the principle that the Rules of the game cannot be changed while the game is on. In the present case, the Opposite Party No.2 University is trying to change the terms of appointment after the selection process was over.

14. In view of the aforesaid facts and circumstances, this Court is of the considered view that the order dated 21.10.2021 to the extent it restricts the engagement of the present Petitioners up to 05.04.2022, the same is unfair, unreasonable and the same is liable to be quashed and is hereby quashed. Further, the Opposite Party no.2 is directed to consider the period of engagement of the Petitioners in similar terms as has been done in the case of other persons who have been given engagement under Office order dated 21.10.2021 and accordingly the period of engagement of both the petitioners stand modified i.e. they shall now be engaged for the period from 01.11.2021 to 31.10.2022.

15. With the aforesaid writ application, the writ application stands disposed of.

16. Issue urgent certified copy as per Rules.

RKS

(A.K. Mohapatra)
Judge

