

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.C. (OAPC) No.48 of 2016

Jayanti Jena

....

Petitioner

Mr. Pradip Kumar Dhal, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. L. Samantaray,

Additional Government Advocate

CORAM:

JUSTICE M.S. RAMAN

ORDER

20.07.2022

Order No.

01.

1. This matter is taken up through virtual/physical mode.
2. The Original Application Provisional No.48 of 2016 (C) was filed before the Odisha Administrative Tribunal, Cuttack Bench, Cuttack. After its abolition, the same has been transferred to this Court which is renumbered as WPC (OAPC) No.48 of 2016.
3. The Petitioner joined as Staff Nurse on contractual basis has filed this writ petition under Article 226 of the Constitution of India with the following prayer:-

“i) *Hold & Declare that the applicant has been deemed to have been regularly appointed w.e.f. 24.8.2001 as Staff Nurse in the scale of pay meant for regular Staff Nurse and entitled for all other allowances & benefits as is admissible to regular Staff Nurse on the basis of State Government decision under Annexure-1,2 & 3.*

ii) *Direct the respondents to forthwith issue a formal order of regular appointment in favour of the applicant retrospectively w.e.f. 24.08.2001 with all consequential service and monetary benefits.*

iii) *Direct the respondents to grant all service & monetary benefits including the arrear dues to the applicant as Staff Nurse on the basis of Annexure-1,2 3 within a stipulated date.”*

4. It is averred that though the appointment of the Petitioner was against regular vacancy, she was given contractual appointment on the plea of pendency of disputes before the Court, where stay order was operating. It was assured that her service would be regularized after vacation of stay order.

5. It is submitted by learned counsel for the Petitioner that by passage of time, the service of the Petitioner has been regularized.

6. In similar fact situation in the case of ***Smt. Geetarani Nayak and another –v- State Government of Odisha and others (O.A. No.794 of 2012)*** vide order dated 25.09.2014, the Odisha Administrative Tribunal was pleased to hold as follows:-

“xx xx xx xx
7. Therefore, we hold that the applicants should be treated as regular employees with effect from the date the stay order was vacated w.e.f.18.06.2003 and shall be entitled to service benefits like seniority and can be covered under the OCS (Pension) Rule, 1992. However, they will not be entitled to actual financial benefit or the regular scale of pay till 14.09.07 as per order at Annexure-8.
8. Accordingly, the O.A. is allowed to the extent that the services of the applicants be regularized and they be treated as regular Staff Nurse with effect from 18.6.2003 the date on which the stay order was vacated as has been done in the case of the Pharmacists and they be extended with all service benefits including pension with effect from the said date. However, they will not be entitled to actual financial benefit and regular scale of pay while they were continuing under the contractual service, but their seniority shall be counted for service benefits including pensionary benefits under the OCS (Pension) Rules, 1992 and accordingly, the O.A. is disposed of.”

7. The learned counsel for the Petitioner submits that the Petitioner in the instant case is also appointed as Staff Nurse on contractual basis and subsequently, her service was regularized and therefore, she is entitled to all consequential service and monetary benefits in terms of the order dated 25.09.2014 passed by the Odisha Administrative Tribunal as referred to (supra).

8. Mr. Dhal, learned counsel for the Petitioner also relied on a co-ordinate bench decision of this Court in the case of ***Manjulata Sahoo –v- State of Odisha and others (WP.C. (OAPC) No.18 of 2016)***, which came to be disposed of vide order dated 14.07.2022. In the said case, this Hon'ble Court has been pleased to direct as follows:-

“xx xx xx xx

4. *Considering the submission made and without expressing any opinion on the merits of the case, the Petitioner is directed to make a fresh representation before the Opposite Party No.3 by enclosing all the relevant documents and citations in support of his claim, if any, within a period of three weeks hence.*

5. *It is observed that if such a representation is filed within the aforesaid period, the Opposite Party No.3 shall do well to dispose of the representation within a period of three months. The decision so taken by the Opposite Party No.3 be communicated to the Petitioner within that time.*

xx xx xx xx”

9. The aforesaid position is not disputed by Mr. Samantaray, learned Additional Government Advocate.

10. The present writ petition stands disposed of in the same terms as contained in the order dated 14.07.2022 passed by this Court in WPC (OAPC) No.18 of 2016.

Issue urgent certified copy as per rules.

(M.S. Raman)
Judge

Jyostna