

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**WPC(OAC) Nos.3387, 3388, 3389 & 3390 of 2015**

In the matter of an application under Section 19 of the  
Administrative Tribunal's Act, 1985.

.....

**Sadhu Charan Paltasingh**

....

**Petitioner**

*-versus-*

**State of Odisha & Ors.**

....

**Opposite Parties**

**For Petitioner :** M/s. Durgesh Narayan Rath and  
Mr. P.K. Rout

**For Opp. Parties :** Mr. M.K. Balabantaray  
Standing counsel

**PRESENT:**

**THE HON'BLE JUSTICE BIRAJA PRASANNA SATAPATHY**

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**Date of Hearing: 08.07.2022 and Date of Order: 28.07.2022**  
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***Biraja Prasanna Satapathy, J.***

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

2. Since claim in all the aforesaid writ Petitions are similar and the order under challenge is also similar, all the matters were heard analogously and disposed of vide the present common order.

3. Heard Mr. J.K. Rath, learned Sr. Counsel for the Petitioners and Mr. M.K. Balabantaray learned standing counsel appearing for the State-Opp. Parties.
4. All these writ Petitions have been filed challenging the initiation of the proceeding against the Petitioners vide memorandum dtd.19.08.2015 under Annexure-8.
5. It is submitted that all the Petitioners were appointed temporarily as Gardener under the Director of Horticulture, Odisha with regular scale of pay vide order dtd.30.06.1999 under Annexure-1.
6. It is further submitted that while continuing as such and pursuant to the order passed by this Court on 11.05.1999 in OJC No.4665 of 1999, an inquiry was conducted with regard to irregularity in the selection and deputation of candidates as gardener during the year 1999. It is submitted that on verification of the records, it was found that out of 62 candidates six were found to have been selected irregularly, which includes the present four petitioners vide order dt.24.04.2001 under Annexure-2
7. Mr. Rath further submitted that challenging the order issued on 24.04.2001 under Annexure-2 all the Petitioners approached the learned Tribunal in O.A. No. 1144(C) of 2001, 1181(C) of 2001, 1374(C) of 2001 and 1435(C) of 2001.
8. It is submitted that learned Tribunal vide its order dtd.13.09.2006 disposed of all the original applications by quashing the order dtd.24.04.2001 issued under Annexure-2. Paragraph 18 of the said Order is quoted hereunder:-

*“In the result, all the original Applications are allowed in the circumstances without cost. the impugned order dated.24.04.2001 (Annexure-8 in O.A.1144(C)/01, in Anx.-9 in O.A. 1181(C)/01, annexure-8 in O.A. 1374(C)/01 and Annex.-6 in O.A. No.1431(C)/01 dispensing/terminating the services of the applicants are hereby quashed.*

*The respondents are directed to reinstate the applicants in their posts and grant consequential benefits including 50% of the in salary and allowances etc. from the date of termination till their reinstatement in services. The above exercise shall be completed within six weeks from the date of receipt of copy of this order.”*

**9.** Mr. Rath, learned Sr. Counsel submitted that challenging the aforesaid order passed by the learned Tribunal on 13.09.2006, the State-Opp. Parties approached this Court in W.P.(C) No. 3527, 3528, 3529 and 3445 of 2007. It is submitted that this Court vide its Judgment dtd.05.12.2009 under Annexure-4 while upholding the order passed by the learned Tribunal on 13.09.2006 held in Paragraph 8 of the said Judgment as follows:-

*“Apart from the above, as rightly observed by the Tribunal that all these opposite parties were regularly appointed by order dated 30<sup>th</sup> June, 1999 against the substantive vacancies and continued as such almost for two years. Therefore, they are protected under Article 311(2) of the Constitution of India as well as Rule 15 of the O.C.S(CCA) Rules, 1962 and their services could not have been terminated without a notice to show cause. The Tribunal, which holding such, also relied upon a decision of the Hon’ble Supreme Court as well as a decision of this Court.”*

**10.** Mr. Rath, learned Sr. Counsel submitted that after passing of the order by this Court in its Judgment dtd.05.12.2009, Govt. vide Annexure-5 dtd.10.03.2010 decided not to file Special Leave Petitions before the Hon’ble Apex Court against the order passed by this Court upholding the order passed by the learned Tribunal on 13.09.2006 under Annexure-3.

**11.** It is further submitted that thereafter vide Office order dtd.26.03.2010 under Annexure-6 all the Petitioners in the above noted writ Petitions, who were earlier terminated basing on Order dtd.24.04.2001 were reinstated in service and were also allowed consequential benefits from the date of termination till their reinstatement in service.

**12.** It is also submitted that subsequent to their reinstatement vide order under Annexure-6, the Petitioners were also promoted to the post of Horticulture Extension Worker vide different orders issued by the Director of Horticulture in the year 2013 under Annexure-7. Mr. Rath submitted that while the matter stood thus and on the self same reason, for which the Petitioners were earlier terminated vide Order dtd.24.04.2001, when proceedings were initiated by the self same Director of Horticulture against all the Petitioners vide memorandum dtd.19.08.2015 under annexure-8, the Petitioners approached the learned Tribunal in O.A. No. 3387(C) of 2015, 3388(C) of 2015, 3389(C) of 2015 and 3390(C) of 2015.

**13.** It is submitted that learned Tribunal while issuing notice of the matter vide Order dtd.15.10.2015 passed the following interim order:-

*“So far as the prayer for interim order is concerned, let the enquiry as per the memorandum of charge vide Annexure-8 may proceed, but no final order shall be passed without leave of the Tribunal.”*

**14.** Mr. Rath, learned Sr. Counsel submitted that the Petitioners were terminated from their services vide order dtd.24.04.2001 under Annexure-2 on the ground that the Petitioners were irregularly selected vide order dtd.30.06.1999 under Annexure-1. The said order of termination was challenged before the learned Tribunal and learned Tribunal vide order dtd.13.09.2006 allowed the same by quashing the order of termination dtd.24.04.2001 under Annexure-2.

**15.** Challenging the order passed by the learned Tribunal State-Opp. Parties approached this Court in different writ Petitions and this Court vide its Judgment dtd.15.12.2009 while upholding order passed by the learned Tribunal dismissed all the writ Petitions.

**16.** In the said Judgment, this Court also held that the services of the Petitioners could not have been terminated without notice to show cause as they are protected under Article 311(2) of the Constitution of India as well as Rule 15 of the OCS (CCA) rules, 1962.

**17.** After passing of the said order passed by this Court, the State Opp. Parties did not choose to challenge the same before the Hon'ble Apex Court and reinstated the Petitioners vide orders issued on 26.03.2010 under Annexure-6.

**18.** Not only the Petitioners were reinstated but also they were given promotion to the next higher post vide different office orders issued in the year 2013. Therefore, in view of the order passed by the learned Tribunal and confirmed by this Court, there is no occasion on the part of the Opp. Parties to initiate the proceeding vide memorandum dtd.19.08.2015 under Annexure-8 on the self-same charges that the Petitioners were irregularly appointed in the year 1999.

**19.** Perusal of the article of charges under Annexure-8 clearly shows that the Petitioners were charged for the violation of the recruitment procedure for selection of pre-service Gardeners Training and thereby hampering equality of opportunity in public employment which amounts to gross misconduct.

**20.** It is submitted that since the issue in question is already decided by this Court while upholding the order passed by the learned Tribunal, no proceeding should have been initiated against the Petitioners on self-same allegations.

**21.** Accordingly, it is prayed that the initiation of the proceeding against the Petitioners vide Memorandum dt.19.08.2015 is illegal and liable to be interfered with by this Court. Even though notice of the writ Petitions were issued on 15.10.2015, but no counter affidavit is filed by the State-Opp. Parties challenging the grounds taken in the Petition.

**22.** Mr. Balabantaray, learned Standing Counsel submitted that since this Court while upholding the order passed by the learned Tribunal held that the services of the Petitioners are covered under Article 311(2) of the Constitution of India as well as Rule 15 of the OCS (CCA) Rules, 1962 and their services could not have terminated without issuing any show cause, the impugned proceeding was initiated basing on the said observation of this Court. Accordingly, it is submitted that no illegality has been committed in initiating the proceedings against the Petitioners and no interference is called for by this Court.

**23.** Heard learned counsel for the Parties. Perused the materials available on record. This Court after going through the same finds that basing on the order passed by this Court in OJC No.4665 of 1999, six (6) numbers of candidates out of sixty two (62) candidates appointed in the year 1999 were found to have been irregularly selected and the Petitioners are coming within those six (6) candidates.

**24.** Basing on such finding, the Petitioners were issued with the order of termination on 24.04.2001 under Annexure-2. As stated hereinabove, the said order of termination was not only quashed by the learned Tribunal vide order under Annexure-3, but the same was upheld by this Court vide Judgment dtd.05.12.2009 under Annexure-4. The State-Opp. Parties also did not prefer to challenge the Judgment passed by this Court before the Hon'ble Apex Court as reflected in the letter dtd.10.03.2010 under Annexure-5. After taking such a decision not to challenge the order, the Petitioners were reinstated vide order dtd.26.03.2010 under Annexure-6 and were also given promotion vide different orders issued in the year 2013 under Annexure-7.

**25.** Therefore, as per the considered view of this Court the grounds on which the proceeding under Annexure-8 has been initiated, cannot stand legal scrutiny. This Court clearly held in its Judgment dtd.05.12.2009 that there is

no illegality in the recommendation of the Director, Horticulture selecting these four(4) Petitioners for the purpose of training, he being the higher Authority than the Authority competent to so. Not only that this Court also affirmed the finding of the learned Tribunal that all these Petitioners were regularly appointed.

**26.** This Court, therefore prima facie is of the view that the charges framed against the Petitioners in the impugned memorandum dt.19.08.2015 is similar to the ground on which the Petitioners were earlier terminated vide Order under Annexure-2.

**27.** As stated above, since the issue has already been decided by this Court while upholding the order of learned Tribunal under Annexure-4, the initiation of proceedings against the Petitioner vide memorandum dtd.19.08.2015 is not tenable in the eye of law. Therefore, this Court has got no hesitation in quashing the said proceeding initiated against the Petitioners vide memorandum dtd.19.08.2015 under Annexure-5. While quashing the same, this Court allows these writ Petitions.

**28.** The writ Petitions are accordingly disposed of and there shall be no order as to cost.

**(Biraja Prasanna Satapathy)**  
**Judge**

Orissa High Court, Cuttack  
Dated the 28<sup>th</sup> of July, 2022/Sneha