

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.34299 OF 2021

(An application under Articles 226 and 227 of the Constitution of India)

Jitu Sahu

....

Petitioner

-versus-

***Director General of Employment &
Training, Ministry of Labour and
Employment, Govt. of Odisha, New
Delhi and others.***

....

Opposite Parties

Appeared in this case:

For Petitioner

:

Mr. Niranjana Lenka,
Mr.H.K. Mohanta, Mr. N. Lenka
and Mr. P.K. Barik

For Opposite Party No.1

:

Mr. Debabrata Rath,
Central Govt. Council

***For Opposite Party
Nos.2 to 4***

संयुक्त न्याये

Mr. D. Mund,
Additional Govt. Advocate

CORAM:

JUSTICE A.K. MOHAPATRA

JUDGMENT

07.01.2022

A.K. Mohapatra, J.

1. This matter is taken up through Video Conferencing mode.
2. By filing the present writ petition, the Petitioner has approached this Court seeking for a direction to the Opposite Parties to appoint the Petitioner as contractual ATO on PTGI

basis in government ITI, Boudh against Fitter Trade and for a further direction to the effect that after completion of contractual service as ATO, he should be regularized in the aforesaid establishment with all service benefits. Petitioner has further prayed for quashing of the notice dated 08.07.2021 issued by the Opposite Party No.5 including all actions taken pursuant to the said notice so far it relates to ATOs.

3. The factual backdrop of the case, bereft of unnecessary details, is that in the State of Orissa the Government in ITIs used to impart training to the trainees through the Training Officers (TO) who is the head of the concerned Trade and they are assisted by the Assistant Training Officer (ATO) of different Trades. Initially the posts of ATOs were filled up on regular basis at least since 1995, the appointment of regular ATOs has been completely stopped. Thereafter, the ATOs are being appointed on contractual basis. The appointment of ATOs on contractual basis also continued for a very short duration of time thereafter the same was also stopped.

4. While the matter stood thus, to streamline and regulate the contractual ATOs, a guideline was issued fixing requisite qualification for contractual appointment of ATOs. In the said guidelines, it was indicated that the candidates must have passed NTC/NAC in the relevant Trade with a further stipulation that preference shall be given to NTC holder with Diploma. Further as per the said guidelines, the contractual ATOs shall receive monthly remuneration of Rs.4,000/- and such appointment shall

be renewed annually. It is apt to mention here that the remuneration of such contractual ATOs has been enhanced to Rs.15,000/- per month subsequently.

5. Although the guidelines was prepared for engagement of ATOs, however the Authorities asked the concerned ITIs to constitute Institutional Management Committee System (IMC) to appoint the ATOs in the designation of guest lecture. Thereafter, the designation of most lecturers were changed to the designation as part time lecturers and finally as PTGIs. Learned counsel for the Petitioner further submits that such appointment started at least since 1995 is still continuing.

6. So far as the process of selection and engagement of ATOs/PTGIs are concerned, the IMC used to publish advertisement and conduct both written and viva-voce tests and thereafter selected the candidates on the basis of their inter se merit.

7. Initially the PTGIs were getting a meager amount of Rs.25/- and Rs.7.50/- per hour for theory and practical classes respectively, but by order dated 12.01.2010 of the Government of Odisha, such remuneration has been enhanced to Rs.150/- and Rs.80/- per classes w.e.f. 22.12.2009 subject to a maximum of ceiling of Rs.9,300/-, i.e. at par with monthly remuneration of contractual teacher.

8. Institutional Management Committee (IMC) of Government I.T.I., Boudh in the year 2014 issued an

advertisement inviting application from the eligible candidates for appointment/engagement as ATO on PTGI basis in different trades in government I.T.I., Boudh including Fitter trade. Petitioner, who has passed the National Trade Certificate (NTC) Fitter Trade issued by the State Counsel for Technical Education and Vocational Training (SCTEVT), Orissa, Bhubaneswar, offered his candidature by submitting his candidature and thereafter faced the rigorous selection process and as such, he was selected for the post in respect of Workshop, Calculation and Science Trade. Finally, the IMC appointed the Petitioner pursuant to which the Petitioner has joined in service on 11.8.2014.

9. Petitioner since the date of his initial appointment has been discharging duties to the satisfaction of all concerned, that too, without any break. Petitioner used to take classes both theory and practical as per the order of the Principal of the Institution. Petitioner has relied upon the experience certificate under Annexure-4 series to establish that he has been continuing in service since 30.07.2014.

10. It has been stated on behalf of the Petitioner that the Petitioner shall perform all the duties assigned to a regular ATOs. After continuing for sometime on PTGI basis, the Petitioner submitted several representations before the Opposite Party No.2 with a prayer to regularize his services. It has been further stated that the scenario in all the I.T.Is. in the State are similar and the duties of regular ATOs are being carried out by PTGIs appointed on contractual basis. Considering the regular nature of work, the

Government of Odisha in the Industries Department requested the Director Technical Education and Training to consider the case of PTGIs and to regularize their services. Thereafter the view of the Law Department was also sought for. The Department gave the opinion that since ORV Act is not applicable so far as PTGIs are concerned, the PTGIs should be appointed as ATOs on contractual basis. In this regard, Petitioner relies upon the letter of the Industries Department as well as the view of Law Department, which had been annexed to the writ petition as Annexures-5 series.

11. In July, 2021, the Petitioner came across a notice dated 08.07.2021 issued by the Opposite Party No.5 informing the concerned person/authority for conducting main written examination for appointment of fresh ATOs pursuant to an advertisement issued in the year 2016, where after the Petitioner approached the Authorities with a request that his services should be regularized as contractual ATO as because he has requisite qualification and more than six years service experience as ATO. It has been further stated that since the Petitioner has completed six years of continuous services, he is entitled to be regularized in accordance with law before going for fresh recruitment from the open market.

12. Heard Mr. Niranjana Lenka, learned counsel for the Petitioner and Mr. D. Mund, learned Additional Government Advocate for the State-Opposite Party No.2, 3 and 4 and Mr. D.

Rath, learned Central Government Council for Opposite Party No.1.

13. Mr. Lenka, learned counsel for the Petitioner submits that the Petitioner has been engaged since 30.07.2014 as PTGI at Opposite Party no.4's institution after being duly selected by a Selection Committee. Since the date of his initial appointment, the Petitioner has been assigned the duty of regular ATO in the I.T.Is. run and managed by State Government. However, after working for so many years with a meagre salary, the State Government is going to throw the Petitioner out of service. It is further submitted by Mr. Lenka that the Petitioner has the requisite qualification for being appointed as contractual ATO and for regularization of his service as a ATO in the I.T.I. It is alleged by Mr. Lenka that the State Government without first considering the case of the Petitioner for regularization, although he is working for more than six years in the Opposite Party No.2's institution, has taken a decision to recruit fresh contractual ATOs and accordingly selection process has been initiated. Mr. Lenka, learned counsel for the Petitioner lays emphasis on the ground that after completion of six years of continuous service, the Petitioner is entitled to be regularized under the State Government rules. Moreover, the State Government by virtue of the fresh recruitment process is trying to substitute a set of contractual employees like the Petitioner by another set of contractual employees, which is forbidden under law.

14. Mr. Lenka in support of his argument has relied upon a decision of this Court in ***W.P.(C) No.20232 of 2021 (Jayaguru Das vs. State of Orissa & Ors.)*** disposed of on **22.07.2021** and ***W.P.(C) No.20316 of 2021 (Himanshu Kumar Saha vs. D.G. of Employment & Training & ors.)*** disposed of on **22.07.2021**. The Single Bench of this Court in the aforesaid two writ petitions involving identical facts has come to a conclusion that the Petitioner has at least demonstrated that there was no difference between the work of ATO and PTGI and as such learned Single Judge has expressed satisfaction by showing that there is a need for creation of posts of ATO. Initially the aforesaid two writ petitions were disposed of by directing the Opposite Parties to make an enquiry to find out the nature of work that was being performed by the Petitioner and in the event it is found to be akin to that of ATO and the Petitioner possesses the required qualification and further considering the long requirement of such posts, Opposite Parties were directed to take a decision for creation of the post of ATO in I.T.Is. It was also observed in the aforesaid two writ petitions that in the event the State Government revives the posts of ATOs in I.T.I., appropriate decision shall be taken by the Opposite Parties to absorb the Petitioner against such posts. Further, it was directed that till a final decision is taken in the matter within a period of three months, Petitioner shall not be disturbed.

15. Learned counsel appearing for the Opposite Parties, however, relies upon the judgment of this Court rendered in ***WPC (OAC) No.2480 of 2015 and WPC(OAC) No.3237 of 2016*** in the

matter of (*All Odisha Govt. I.T.I. Part-Time Guest Instructor's Association & Ors. vs. Director General of Employment & Training, Ministry of Labour & Employment, Govt. of India & Ors.*) and submits that a more comprehensive writ petitions filed by the Petitioner's Association with almost an identical prayer has been dismissed by a Single Bench of this Court vide judgment dated 12.11.2021, the judgment in the aforesaid case has been delivered after taking into consideration the respective pleadings and submissions of the parties. In the operative portion of the judgment, it has been observed as follows:

“In view of the discussions/analysis made above and taking into account the nature of work rendered by the members of the petitioner association, their recruitment process and other relevant factors, which do not satisfy the requirement of the law laid down by the apex Court in the matter of regularization of services, this Court is not inclined to extend the benefit as claimed in these writ petitions, as members of the Petitioner association are discharging their duties as part-time Guest Instructors with a specified remuneration per class. Thereby, both the writ petitions devoid of merits and the same are hereby dismissed. However, there shall be no order as to costs.”

16. The decision relied upon by Mr. Lenka, learned counsel for the Petitioner in two writ petitions have been delivered by an order of the Court. On perusal of the above referred order, it does not reveal that the learned Single Judge in that case has delivered the order after hearing the Opposite Parties. Moreover, no definite finding has been arrived at, rather learned Single Judge has directed the Authorities to consider the case of the Petitioner. On the other hand, the judgment delivered in WP(C)(OAC) No.2480

of 2015 and WPC (OAC) No.3237 of 2016, is a judgment delivered after hearing the counsel for both sides and after taking into consideration several judgments of the Hon'ble Supreme Court and after a thorough scrutiny of the position of law in the present context.

17. Since this Court has earlier considered the issue involved in the present case and decided the same by a judgment delivered by a coordinate Bench of this Court in WP(C)(OAC) No.2480 of 2015 and WPC(OAC)3237 of 2016 on 12.11.2021, the same is binding on this Court by applying the principle of *constructive res judicata* to the facts of the present case. Moreover, in furtherance of judicial discipline and decorum that is required to be maintained by Constitutional Courts while adjudicating matters, this Court has no other option than to follow the judgment of this Court dated 12.11.2021 delivered in the aforesaid two writ petitions and in my considered view the present writ petition filed by the Petitioner is squarely covered by the ratio laid down by this court in W.P.(c) (OAC) No.2480 of 2015 by judgment dtd.12.11.2021. Accordingly, the present writ application filed by the petitioner is devoid of any merit and the same is hereby dismissed.

18. Before parting, this court while declining to issue any writ in the matter here by observes that it is open for the Opp. Parties to examine the nature of duties that is being performed by the petitioner and if they come to a conclusion that the duties and responsibilities that are being performed by the petitioner are akin

to the duties and responsibilities that is being performed by other regular employees in the Govt. ITIs, in such event, keeping in view the length of service rendered by the petitioner, the Opp. Parties may consider the case of petitioner, subject the petitioner having the eligibility and required qualification, either to reengage the petitioner against contractual posts and subject to their suitability and availability of posts may even absorb them in the regular establishment, if there is no other legal impediment.

19. There shall be no order as to cost.

As the restrictions due to resurgence of COVID -19 situation are continuing, learned counsel for the parties may utilize a print out of the judgment/order available in the High Court's website, at par with certified copy, subject to attestation by the concerned Advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020, modified by Court's Notice No.4798, dated 15th April, 2021, and Court's Office Order circulated vide Memo Nos.514 and 515 dated 7th January, 2022.

(A.K. Mohapatra)
Judge

U.K. Sahoo/PA-cum-Secy.