

IN THE HIGH COURT OF ORISSA AT CUTTACK
WPC(OAC) NOS.1042,1046,1047,1048,1051,
1053,1054, 1141 & 2996 OF 2014

W.P.(C) No.1042 of 2014

In the matter of an application under Section 19 of
the Administrative Tribunals Act, 1985

Hrudananda Pradhan

....

Petitioner

-versus-

State of Odisha & Others

....

Opp. Parties

For Petitioner : M/s. A. Tripathy, Advocate

For Opp. Parties: M/s.M. K. Balabantaray, S.C

PRESENT:
THE HON'BLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 18.4.2022 & Date of Order: 09.05.2022

1. This matter is taken up by video conferencing mode.
2. Heard Mr. Arabinda Tripathy, learned counsel appearing for the Petitioners and Mr. Balabantaray, learned Standing Counsel appearing for the State- Opposite Parties.
3. These Writ Petitions have been filed by the Petitioners with the following prayer:-

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XXX

“(i) Why the impugned order dt.03.01.2014 and 04.01.2014 passed by Executive Engineer, Main Dam Division, Burla Respondent NO.5 will be declared illegal and quashed.

(ii) Why the Respondents will not be directed to regularize the service of applicant in regular post within stipulated period.

XXX

XXX

XXX”

4. Since the issue involved in all these Writ Petitions are similar, all are taken up together for the sake of convenience and brevity and disposed of by this common order.

5. It is submitted by Mr. Tripathy, learned counsel appearing for the Petitioners that the Petitioners along with 79 other persons were appointed as Seasonal Mazdoor-cum-Gauge reader and Wireless Messenger-cum-Phone Attendant vide order of appointment issued on 6.6.1989 under Annexure-1. It is also submitted that though the Petitioners were engaged in the aforesaid work for the flood season of the year 1989, but they were all allowed with regular scale with usual D.A and H.R.A per month. It is also submitted that the petitioners were allowed to work as such in different flood seasons every year. It is also submitted that while continuing as such and when vacancies arose, Opp. Party Nos.4,5 & 6 requested Opp. Party No.2 to take steps to regularize the service of all the petitioners in different projects vide Annexures-3,4 & 5. It is also submitted that without considering their claim for regularization, they were issued an order of retrenchment, which was challenged before this Court in W.P.(C) No.14902 of 2010. Pursuant to the interim order passed by this Court, the Petitioners were allowed to continue in the said work. But the said Writ Petition was wrongly withdrawn by the engaged counsel without the knowledge and consent of the petitioners herein. On coming to know about such

withdrawal of the Writ Petition, even though a restoration petition vide CMAPL No.111 of 2013 was filed, but the same was not entertained with a direction to the petitioners to file a fresh Writ Petitions. It is also submitted that pursuant to such liberty of this Court, W.P.(C) No.24056 of 2013 was filed. But, this Court in view of the nature of claim involved in the matter, permitted the Petitioner to approach the learned State Administrative Tribunal. This Court while permitting so, also protected the interest of the Petitioners vide order dated 3.1.2014 under Annexure-9. It is also submitted that basing on such liberty granted by this Court and in view of the orders passed under Annexures-11 and 12, the Petitioners filed individual Original Applications before the learned Tribunal and learned Tribunal passed an interim order by protecting the interest of the Petitioners vide order dated 31.1.2014 under Annexure-10. It is further submitted that while continuing as such by virtue of such interim order when the Petitioners were once again threatened with termination, they filed an interim application in all those Original Applications and learned Tribunal vide order dated 11.3.2015 once again protected the interest of the Petitioners. It is also submitted that pursuant to such orders passed by the learned Tribunal, the Petitioners are continuing in their work till date. It is further submitted that during continuance of the Petitioners, which started from the year 1989, Government-Opp. Party No.1 issued a

circular on 13.7.2016 prescribing the guidelines for Standard Operating Procedures of Dams in the State.

6. Mr. Tripathy, learned counsel appearing for the Petitioners also brought to the notice of this Court the order passed by Opp. Party No.2 on 19.3.2016, wherein work charged employees working in different projects of the Department were brought over to the regular establishment as they were all engaged prior to 12.4.1993. On coming across such order of regularization when the petitioners moved before Opp. Party No.3 for regularization of their services by filing individual representations, all those applications were forwarded by the said Opposite Party to Opp. Party No.2 vide his letter dated 28.12.2021 under Annexure-18. In the said communication, Opp. Party No.3 not only forwarded the claim of the petitioners, but also recommended for the absorption of the Petitioners in the regular establishment. As no action was taken on such recommendation under Annexure-18, Opp. Party No.3 once again moved to Office of Opp. Party No.2 vide communication dated 9.2.2022 under Annexure-19 with a request to consider the claim of the Petitioners. It is accordingly submitted that in spite of such communications issued under Annexures-18 & 19, the claim of the Petitioners for absorption in the regular establishment is pending consideration before Opp. Parties. Accordingly, it is submitted that necessary direction be issued to the Opposite Parties to take a decision on the claim of the Petitioners and for their absorption in the regular establishment,

taking into account the recommendations made by Opp. Party No.3 on 28.12.2021 and subsequently on 9.2.2022 under Annexures-18 & 19.

7. Mr. Balabantaray, learned Standing Counsel appearing for the State on the other hand submitted that the petitioners are all working as seasonal workers and they are continuing as such during different flood seasons. It is also submitted that even though the petitioners were allowed regular scale of pay with usual D.A and A.D.A, but the petitioners are not working throughout the year and accordingly, their claim for absorption in the regular establishment is not maintainable.

8. It is also submitted that the Petitioners since 2010 are continuing by virtue of interim order passed by this Court as well as by the learned Tribunal.

9. Mr. Tripathy, learned counsel appearing for the Petitioners while countering the submission made by the learned Standing Counsel submitted that though all the Petitioners are treated as seasonal workers, but in fact, they are working throughout the year since 1989 and in the meantime all of them have crossed the upper age limit for their engagement/appointment either under the Government or under the Private Sector. It is also submitted that taking into account the long continuance of the Petitioners with effect from 1989, Opp. Party No.3 vide his letter dated 28.12.2021 and 9.2.2022, requested the Department to consider the claim of the Petitioners for their absorption in the regular/work charged establishment. It is also

submitted that because of retirement of number of employees, regular vacancies are available and the said fact is also indicated in the communication dated 28.12.2021 under Annexure-18. Therefore, it is submitted by the learned counsel appearing for the Petitioners that in view of availability of the vacancies, the petitioners can be absorbed as against such vacancies.

10. Heard learned counsel for the parties. Perused the materials available on record.

11. After going through the same, this Court finds that even though the Petitioners are engaged as seasonal workers from the year 1989, but they are continuing as such in that capacity. In view of such long continuance and in view of the recommendations made by Opp. Party No.3 on 28.12.2021 under Annexure-18, the claim of the Petitioners for their absorption in the regular establishment needs favourable consideration by Opp. Party Nos.1 & 2. Not only that in view of such continuance of the Petitioners as seasonal workers since 1989, they have accrued a right for consideration of their claim for regular absorption. The claim of the Petitioners need a consideration in view of the decisions of the Hon'ble Apex Court reported in the case of **Secretary, State of Karnataka Vs. Uma Devi(3), (2006) 4 SCC-1, State of Karnatak Vs. M.L. Keshari, (2010) 9 SCC 247, Nihal Singh & Others Vs. State of Punjab & Others, 2013 (14) SCC 65 and Amarkant Rai Vs. State of Bihar & Others, 2015(8) SCC 265.**

12. In view of such admitted position, this Court has got no hesitation in quashing the order at Annexures-11 & 12 and dispose of the Writ Petitions with a direction on Opp. Party Nos.1 & 2 to take a lawful decision on the claim of the Petitioners for their absorption, taking into account the recommendation made by Opp. Party No.3 on 28.12.2021 and 9.2.2022 under Annexure-18 and Annexure-19 and the vacancies available in the regular establishment. This Court further directs the said opposite parties to take a final decision within a period of three months from the date of receipt of this order. It is also observed that till a decision is taken and communicated to the petitioners individually, no coercive action shall be taken against the Petitioners.

13. With the aforesaid observations and directions, the Writ Petitions are disposed of.

14. The photocopy of this order be placed in the connected cases.

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B.P. Satapathy, J.

Orissa High Court, Cuttack
Dated the 9th May, 2022/sangita