

THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OA) No.1909 of 2015

Srikanta Panda *Petitioner*
Mr. S.N. Pattanaik, Advocate
-versus-
State of Odisha and others *Opposite Parties*
Mr. P.C. Das, A.S.C.

WPC(OA) No.1971 of 2016

Selina Sahu *Petitioner*
Mr. B. Triparthy, Advocate
-versus-
State of Odisha and others *Opposite Parties*
Mr. P.C. Das, A.S.C.

WPC(OA) No.1972 of 2016

Hemanta Kumar Mohapatro *Petitioner*
Mr. B. Triparthy, Advocate
-versus-
State of Odisha and others *Opposite Parties*
Mr. P.C. Das, A.S.C.

WPC(OAC) No.2736 of 2017

Sambit Kumar Nayak *Petitioner*
Mr. S.B.Jena, Advocate
-versus-
State of Odisha and others *Opposite Parties*
Mr. P.C. Das, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER
22.04.2022

Order No.

01.

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

Though all the matters are identical and similar in natures listed under the heading of ‘order’, which are taken up analogously for disposal by a common order at the stage of admission on consent by learned counsels for both the parties.

2. Heard Mr. S.N. Pattanaik, learned counsel for the petitioner and Mr. P.C. Das, learned Additional Standing Counsel for the State.

3. All the aforesaid Original Applications were initially filed before the Odisha Administrative Tribunal by the petitioners with a prayer to regularize their services to the posts as Instructor in Electronic Machines Trade by taking his past experience into account in the said institution.

4. On perusal of the order-sheet of the Odisha Administrative Tribunal reveals that while admitting the O.A. by order dated 07.05.2008, as an interim measure, the tribunal had directed that status quo as on today i.e. 07.05.202008 afternoon be maintained if no retrenchment order has been issued and if the application has worked from September, 2007, the salary for the period he has performed his duty be paid to him. Further by order dated 15.07.2015, the above noted O.A. was transferred from Cuttack Bench to Principal Bench, Bhubaneswar and was renumbered as O.A. No.1909 of 2015. Thereafter, upon abolition of the Odisha Administrative Tribunal, the matter has been transferred to this Court

and has been renumbered as WPC(OA) No.1909 of 2015.

5. The factual back ground of the case in brief is that the applicant on being selected duly constituted selection committee was appointed by the Principal I.T.I.(W) Anandapur as a part time instruction in R & T.V. Trade, which has now been re-designated as Part Time Instruction in Electronics Machines Trade on remuneration basis till a regular Instructor is joined. Initially the petitioner appointed by an appointment letter dated 22.11.1995. The service of the petitioner was duly approved by the D.T.E & T, Odisha, Cuttack on 20.11.1995. Pursuant to the appointment letter, the petitioner joined in duty 24.11.1995. Since the date of initial appointment, the application discharging his duty to the satisfaction of the authority without any interpretation i.e. the petitioner has been discharging his duty without any interruption since 1995.

6. After working for more than two decades continuously, the services of the petitioner has not been regularized as of now. Although sanctioned vacant posts are available in the institution, the petitioner's service has neither been regularized nor has been absorbed against such sanctioned regular posts.

7. In the year 2008, the petitioner came to know from reliable sources that the authorities are going to retrench him. Therefore, the petitioner was compelled to approach before the Odisha Administrative Tribunal by filing O.A. After hearing the said issue of the petitioner, Odisha Administrative Tribunal was pleased to protect the service of the petitioner by directing the authorities to maintain status quo with regard to service of the petitioner. The appointment letter of the petitioner reveals that he was appointed on remuneration basis till regular instructor is joined. However, no

efforts whatsoever in the shape of advertisement calling names of the Employment Exchange etc. was made to fill up the post on regular basis.

8. A counter affidavit has been filed on behalf of the respondents/opposite parties. In the said counter affidavit, the opposite parties have not disputed the fact that the petitioner was appointed as a part time instructor due to shortage in the post of regular A.T.Os. and that the petitioner had applied for the post pursuant to advertisement displayed in the notice board of I.T.I., Anandapur. It has also been stated in the court affidavit that contrary to the association of the petitioner, the petitioner service was discontinued intermittently and the applicant has been paid the remuneration for the classes he had taken.

9. In the counter affidavit, it has also been stated in the context of filling up of posts that the Odisha Staff Selection Commission has been entrusted the responsibility of selecting 489 posts of contractual Assistant Training Officers in different trades including the trade of the present petitioner vide notification dated 31.07.2013. After publication of the final merit list on 31.07.2014, the selected candidates were given appointment in different Government T.I.Is. in the State of Odisha, which was challenged by some of the Part Time Guest Instructors by filing O.A. No.3016(C) of 2013 and a batch of other cases. The Odisha Administrative Tribunal vide order dated 09.03.2015 disposed of the said batch of O.As. with the observation that the State Government is at liberty to take decision in the matter of regularization of CATOs/PTGIs as per rules. It is further stated in the counter affidavit that the petitioner might not have applied for the post of contractual ATOs, which was advertised by the Staff Selection Commission in the year 2013, however, the

applicant may apply for the post of contractual ATO in future when the same is advertised by the Odisha Staff Selection Commission.

10. Learned counsel for the petitioner submits that the petitioner was initially appointed in the year 1995 as Part time Instructor at I.T.I., Anandapur and since that date he has been discharging his duties as such. After working so many years continuously, the authorities are now going to throw out the petitioner and similarly situated other persons out of service, which is highly illegal, arbitrary and unreasonable on the part of the authorities. While adjudicating the cases of similarly situated persons in O.A. No.3061(C) of 2013 and batch of other cases, which has been filed before this Court at the instance of the opposite parties and marked as Annexure-B to the counter affidavit. Paragraph-19 of the judgment delivered by the O.A.T in the above noted O.A. reads as follows:-

“Since the respondents have admitted that they have taken steps for absorption of PTGIs and while engaging the contractual ATOs recruited through OSSC, Bhubaneswar the part time engagement of existing PTGIS shall not be affected, we are not inclined to interfere with the impugned advertisement.”

Further in paragraph-20 of the judgment, the Tribunal has observed as follows:-

“The State respondents are at liberty to take a decision in the matter of regularization of CATOs/PTGIs as per rules, for which we express no opinion as the writ petitions claiming for payment of monthly remuneration and change of nomenclature of engagement are sub-judice in the Hon’ble High Court and in pursuance of the orders of the Hon’ble Court the applicants are continuing in their respective posts.”

11. Learned counsel for the petitioner further submits that

pursuant to the judgment of the Tribunal, particularly the observations made in paragraphs-19 and 20 of the said judgment, the State Government has not taken any action for regularization/absorption of the petitioner and similarly situated persons, who have been watching as PTGIs /CATOs on temporary basis for decades that too for a paltry sum of fixed remuneration. Such conducts of the opposite parties are highly illegal, arbitrary and the same also amounts to exploitation of work force in the hands of so-called model employment i.e. State of Odisha. He further submits that after working for so many years, the petitioners are become age barred and as such, they cannot even participate in any recruitment tests. Further learned counsel for the petitioner contends that the petitioners were initially appointed pursuant to the advertisement and after going through the proper selection process. Therefore, it cannot be said that the petitioner and similarly situated persons do not have eligibility criteria to be appointed against regular sanctioned posts.

12. Learned counsel for the State, on the other hand, opposed the prayer made by the petitioner for regularization on the ground that the petitioner and similarly situated other persons were engaged on adhoc basis, therefore, they have no vested right to claim for regularization of their services or to be absorbed in a regular post. Learned Additional Standing Counsel relying upon a judgment of this Court in the matter of ***Odisha Government I.T.I. Part Time Guest Instructor's Association and others vrs. Director General of Employment & Training Ministry Labour & Employment, Government of India and others*** in WPC(OAC) No.2480 of 2015 and WPC(OAC) No.3237 of 2016 decided on 12.11.2021 argues that the petitioners have no right to be regularized in service.

13. Having heard learned counsel for the parties and upon perusal

of the record as well as various judgments/orders relied upon by the respective parties, this Court is of the considered view that the Government of Odisha keeping in view the service provided by the petitioners and similarly situated persons for a long time should have come up with some criterion and policy to regularize/absorb the Instructors, who have been discharging their duties for decades to the satisfaction of the authorities. It is also important to note that Odisha Administrative Tribunal in its judgment has also taken note of the said fact. Further while disposing of the batch of O.A. cases, the O.A.T. has taken note of the submissions made on behalf of the opposite parties that the Government of Odisha have been taking steps for absorption of PTGIs and that while engaging contractual instructors through Odisha Staff Selection Commission (OSSC), the services of the existing PTGIs including the petitioner shall not be disturbed. This Court, after hearing the parties, is convinced that the petitioners although have been appointed Part Time Guest Instructors, in fact, they have been discharging their duties on regular basis as is being done by the ATOs holding regular and sanctioned posts. The very fact that the petitioner and similarly situated persons were allowed to continue in service for such a long time and their services were retrenched / dispensed with clearly establishes the facts that the services of the petitioner and similarly situated persons are required on regular basis to manage and run the I.T.Is by the State Government. The decision of this Court in the matter of ***Odisha Government I.T.Is. Part time Guest Instructors Association and others*** (supra) relied upon by the learned Additional Standing Counsel to oppose the prayer of the petitioner, it is seen that the petitioner in that case, was an association of Part Time Guest Instructors which had approached this Court seeking regularization of services of all its members, who are basically Part Time Gust

Instructors. It is well settled position of law that each case has to be considered in the factual background of that particular case and that the facts of each case varies from person to person. This Court while examining the aforesaid judgment found that the facts of individual cases have not been pleaded in that writ petition. Moreover, a coordinate Bench of this Court while considering the issue of regularization from a general perception and has accordingly come to a conclusion that the said Bench was not inclined to extend the benefit as claimed by the petitioner's association in that case. Therefore, the ratio decided in the facts pleaded in that case cannot be strictly made applicable to the facts of the present case. Accordingly the judgment relied upon by the learned Additional Standing Counsel can be distinguished on facts.

14. So far the facts of the present case are concerned, the petitioner, no doubt, was appointed as Part Time Guest Instructor in the year 1995 and he was working continuously with some intermittent breaks and was taking regular classes like the regular ATOs. However, after working for more than two and half decades it would be a very harsh decision to simply throw them out of service at this stage of their life thereby forcing the petitioner and his entire family into an uncertain future. One of the major distinguishable feature between the judgment in the case of Odisha government I.T.I PTGI association case (supra) and the present case is that while considering the claim for regularization in the case filed by the association the coordinate Bench found that the Instructors were appointed irregularly without following due selection process. However, in the present case in the counter affidavit filed by the State, it has been specifically stated that pursuant to an advertisement, the petitioner was selected and appointed. Thereafter

the petitioner was taking classes regularly with some intermittent breaks. Further the fact that the petitioners' services were not dispensed / retrenched in the meanwhile proves that their services were satisfactory and as such, they were allowed to continue against the sanctioned vacant posts on payment of paltry remuneration every month. Hence, the background scenario as presented before this Court is completely different than the one in Association's Case (Supra). Therefore, the ratio laid down in the Association Case (Supra) may not be strictly applicable to the facts of the present case.

15. On the other hand, this Court in the matter of ***Sridhar Pradhan vrs. State of Odisha and others*** in WPC(OA) No 1967 of 2016 and a batch of other cases, disposed of by order dated 31.03.2021 after taking into consideration the factual background, which is identical to the facts of the present case has come to a conclusion and directed the State Government to formulate a policy / Scheme under which contractual employees like the petitioner, who are working for several years continuously, be put under a screening process by duly constituted screening committee and subject to their suitability, availability of regular posts, the petitioner and the similarly situated persons may be absorbed in service or their services may be regularized against the sanctioned vacant post. The view taken by this Court in the case of ***Sridhar Pradhan vrs. State of Odisha and others*** squarely applies to the facts of the present case as the factual back grounds of both the cases are almost identical. In such view of the matter, it would be in the interest of justice that the cases of Part Time Guest Instructors / contractual instructors /PTGIs/CATOs, be considered by the State Government for regularization/absorption subject to the direction given in ***Sridhar Pradhan vrs. State of Odisha and others*** (supra).

16. In view of the analysis made by this Court hereinabove and considering the facts and circumstances, nature and length of service rendered by the petitioner, this Court deems it proper to direct the petitioner and similarly situated persons to approach the Director, Technical Education and Training, Odisha, Cuttack-Opposite Party No.1 by way of filing a fresh representation stating therein all the grounds available to them in support of their claim within a period of four weeks from today along with certified copy of this order. In the event such representations are filed, the Opposite Party No.1 i.e. Director, Technical Education and Training, Odisha, Cuttack or any other competent authority of the State Government shall consider the case for regularization/absorption of the case of the petitioner and similarly situated persons in the light of the direction issued by this Court in the case of ***Sridhar Pradhan vs. State of Odisha and others*** (supra) within a period of four months from the date of receipt of such representation along with certified copy of this order.

17. Further the petitioners are directed to provide a certified copy of the order delivered in the case of ***Sridhar Pradhan vs. State of Odisha and others*** (supra) along with certified copy of the order of the present case. It is further directed that the decision shall be taken on the representation of the petitioners and they shall not be disengaged from service as they are discharging their services.

18. With the aforesaid observation, these writ petitions stands disposed of. However, there shall no order as to cost.

Urgent certified copy of this order be granted on proper application.

(*A.K. Mohapatra*)
Judge

Jagabandhu

