

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OA) No.1967 of 2016

Sridhar Pradhan ***Petitioner***
Mr. B. Triparthy, Advocate
-versus-
State of Odisha and others ***Opposite Parties***
Mr. Y.S.B. Babu, A.G.A.

WPC(OA) No.1968 of 2016

Santosh Kumar Mohapatra ***Petitioner***
Mr. B. Triparthy, Advocate
-versus-
State of Odisha and others ***Opposite Parties***
Mr. Y.S.B. Babu, A.G.A.

WPC(OA) No.1969 of 2016

Dhiraj Kumar Mohapatra ***Petitioner***
Mr. B. Triparthy, Advocate
-versus-
State of Odisha and others ***Opposite Parties***
Mr. Y.S.B. Babu, A.G.A.

WPC(OA) No.1970 of 2016

Rabindranath Moharana ***Petitioner***
Mr. J.N. Panda, Advocate
-versus-
State of Odisha and others ***Opposite Parties***
Mr. Y.S.B. Babu, A.G.A.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

Order No.

Date of hearing : 23.03.2022 | Date of Order : 31.03.2022

01.

1. These matters are taken up through Hybrid Arrangement (Virtual /Physical Mode).

All the aforesaid Original Applications were initially filed before the Odisha Administrative Tribunal by the petitioners with a prayer to regularize their services and with further prayer to quash the impugned decision of the authorities to disengage the services of the PTGI pursuant to order dated 19.04.2016 and 01.08.2016. Since the factual background of all the above noted cases are similar and the reliefs sought for are identical, the above noted four cases, which have been transferred to this Court after abolition of Odisha Administrative Tribunal, are being taken up together analogously for hearing and are being disposed of by this common order.

WPC(OA) No.1967 of 2016

The petitioner, who is having a Diploma qualification, was appointed as Part Time Guest Instructor (in short 'the PTGI') by the order of the Principal, Gapabandhu ITI, Ambaguda dated 07.12.2013 in the **Trade of Fitter** w.e.f the Session 2014-15.

WPC(OA) No.1968 of 2016

The petitioner, who is having a Diploma qualification, was appointed as Part Time Guest Instructor (in short 'the PTGI') by the order of the Principal, Gapabandhu ITI, Ambaguda dated 07.12.2013 in the **Trade of Electrician** w.e.f the Session 2014-15.

WPC(OA) No.1969 of 2016

The petitioner, who is having a Diploma qualification, was appointed as Part Time Guest Instructor (in short 'the PTGI') by the order of the Principal, Gapabandhu ITI, Ambaguda dated 07.12.2013 in the **Trade of Draughtman** w.e.f the Session 2014-15.

WPC(OA) No.1970 of 2016

The petitioner, who is having a Diploma qualification, was appointed as Part Time Guest Instructor (in short 'the PTGI') by the order of the Principal, Gapabandhu ITI, Ambaguda dated 07.12.2013 in the **Trade of Fitter** w.e.f the Session 2014-15.

2. Since the facts are identical, the pleadings in the first case, i.e. WPC(OA) No.1967 of 2016 is being taken up for consideration by this Court to decide the common question of law involved in all the aforesaid four matters.

3. As stated above, the petitioner having Diploma qualification was initially appointed as Part Time Guest Instructors (in short 'the PTGI') at Government I.T.I., Ambaguda vide order dated 07.12.2013 in the trade of Fitter w.e.f. the Session 2014-15. The petitioner was regularly taking classes and imparting education to the students in both Theory and Practical papers on contractual basis against the vacant sanctioned post of Assistant Training Officer (A.T.O.)

4. It is further pleaded on behalf of the petitioner that several similarly situated (PTGIs) had earlier approached the Odisha Administrative Tribunal by filing series of Original Applications. The Odisha Administrative Tribunal while directing for regular appointment of ASTOs, simultaneously directed the State respondents for regularization of services of the PTGIs, who are

continuing in service for several years and discharging the very same duties and functions successfully and diligently. It was also stated that many similar cases were also pending before the Tribunal by the time the same was abolished and in most of the cases, Odisha Administrative Tribunal had granted interim protection by directing the respondents to maintain status quo and not to take any coercive action against the petitioner. The petitioner has given a specific reference of O.A. No.1571 (C) of 2016 filed by one **Ashok Kumar Parida and six others** wherein the Odisha Administrative Tribunal as an interim measure had directed not to take any coercive action against the petitioners. The present Original Application, which was admitted vide order dated 12.09.2016 by the Odisha Administrative Tribunal. By virtue of the very same order, as an interim measure, the Odisha Administrative Tribunal had also directed the authorities not to take any coercive action against the petitioners till filing of the counter affidavit. On careful scrutiny of records, it is seen that the Opposite Parties have not filed any counter affidavit till date and as such the interim order passed initially by the Odisha Administrative Tribunal continues to be in force even till now.

5. Upon further scrutiny of the pleadings of the petitioners, it is seen that the Government of Odisha through Director, Technical Education and Training, Odisha vide letter dated 19.04.2016 instructed all the Principal of Government I.T.Is. to disengage the services of the existing PTGIs after completion of current academic semester i.e. 2nd, 4th and 6th and further directed not to make any appointment of new PTGI. In the aforesaid letter dated 19.04.2016, it has also been mentioned that there shall be no automatic continuance of PTGI/PTGF.

6. Learned counsel for the petitioner referring to the letter dated 19.04.2016 submits that apprehending non-continuance in services, the petitioner along with similar other persons had approached the Odisha Administrative Tribunal at the first instance with a prayer for regularization of their services. He further submits that the language and tenor of letter dated 19.04.2016 reveals that the petitioner should be disengaged from his service after his contract comes to an end and he shall not be re-engaged by the Principal of all the I.T.Is. Therefore, apprehending disengagement from services and engagement of a new set of contractual employees in their places, the petitioner had approached the Tribunal with a prayer for regularization of their services.

7. It is further submitted by learned counsel for the petitioner that pursuant to the direction given by the Odisha Administrative Tribunal as well as on the recommendation of several people's representative, the Government of Odisha is considering the proposal for regularization of service of all the PTGIs, who are currently in the I.T.Is. by evolving a special scheme/policy for their regularization, which is otherwise known as rationalization of services of the PTGIs/PTGFs.

8. It is further submitted that pursuant to such rationalization process, the Principal, Government I.T.Is. have already submitted the details recommending the cases of the petitioner and similarly situated persons in proper format to the Government. He further submits that the action of the Government in substituting a set of existing contractual employees by another set of contractual employees is illegal and untenable in law in view of the judgments delivered by this Court as well as by Hon'ble Supreme Court of

India. It is further submitted that the action of the Government in continuously engaging Instructor/Faculties on contractual basis against sanctioned post for a paltry consolidated sum amounts to exploitation of work force in the hands of model employer like State of Odisha. He further submits that the action and decision of the Government to disengage the petitioner and similarly placed persons and to engage another set of contractual employees against sanctioned / regular post is grossly illegal, arbitrary and discriminatory.

9. In the aforesaid context, it would be profitable to refer to a judgment of the Hon'ble Supreme Court in the case of **State of Haryana and others-vrs.-Piara Singh** and others reported in (1992) 4 SCC 118 at paragraph at paragraphs 47, 48 and 49 has observed as under:

“25. xx xx The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employees by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee,

Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee: he must be replaced only by a regularly selected employee. This is necessary to avoid

arbitrary action on the part of the appointing authority.”

(Emphasis supplied by this court)

Therefore, in view of the aforesaid clear and unambiguous pronouncement of law by the Hon’ble Supreme Court which has been followed by many High Courts including this Court, the law on the subject is no more *res integra*. This Court has followed the above discussed principle of law evolved in Piara Singh’s Case (Supra) in ***Dilip Kumar Baral Vs. BPUT & Others*** : reported in **2013 (II) OLR 210** and in ***Kartik Chandra Panda Vs. State of Odisha & Ors*** : reported in **2017 (II) OLR 545**.

10. In the aforementioned two matters i.e. Dilip Kumar Baral (Supra) and Kartik Chandra Panda (Supra), the Biju Pattnaik University of Technology published advertisement to recruit a set of contractual employees substituting an existing set of contractual employees. In Dilip Kumar Baral’s Case a Division bench of this Court and in Kartik Chandra Panda’s case a Single Judge Bench of this Court quashed the impugned advertisement relying on the judgment of the Hon’ble Supreme Court in Piara Singh’s Case (Supra) and holding that a set of contractual employees cannot be substituted by another set of contractual employees. The factual background of the both the above mentioned case somewhat similar to the facts of the present case i.e. BPUT (University) was making an attempt to replace a set of contractual teachers by another set of contractual teachers.

10. Learned counsel for the petitioner on instruction further submits that by virtue of interim protection granted by the Odisha Administrative Tribunal, the petitioner is continuing in service and

discharging his duties to the utmost satisfaction of the authorities. The duties which have been performed by the present petitioner are perennial and regular in nature. As such, it is further submitted that the conduct of the Government in engaging contractual employees against the regular sanctioned post is highly illegal and arbitrary. It is further submitted that the action of the Government in directing the Principal of all the I.T.Is. vide letter dated 11.08.2016 to all the Principal of Government I.T.Is. calling upon them for fresh engagement of PTGIs is illegal and arbitrary.

11. Learned counsel for the petitioner further questions the action of the Principal of Gopabandhu I.T.I., Ambaguda for issuance of advertisement dated 29.08.2016 in the website of the institute inviting application for fresh engagement of PTGIs. Further such action has confirmed the apprehension of the petitioner that he will be disengaged from services and in his place a new set of adhoc/temporary/contractual employees are going to be engaged.

12. Per contra, learned counsel for the State although had not filed any counter affidavit in the matter submits that the petitioner was engaged on contractual basis, therefore, the petitioner and similarly placed persons cannot claim for regularization of their services. It is further submitted by learned counsel for the State that the contractual appointment as has been done in the case of the petitioner to continue in service against the regular sanctioned posts, therefore, the claim of the petitioner for regularization of his service is vague, baseless and untenable in law. Accordingly, it was urged by learned counsel for the State that the present application filed by the petitioner seeking regularization of his service is not maintainable in

law and as such, the same should be dismissed,

13. Having heard the rival contentions advanced by the parties in the present case, this Court is of the considered view that the petitioner and similarly placed persons were engaged on contractual basis as PTGIs against the vacant sanctioned posts. However, due to failure on the part of the opposite parties to select and appoint regular Instructors/Faculties, the petitioner was allowed to continue on adhoc/temporary/contractual basis for a long time. It is also not disputed by the parties that the petitioner and similarly placed persons were getting a paltry consolidated sum for the services rendered by them while they were engaged and continuing in service in the above noted I.T.Is.

14. Considering the aforesaid facts and circumstances and particularly, the conduct of the Opposite Parties in allowing the petitioner and similarly placed persons to continue on adhoc/temporary/contractual basis against regular sanctioned posts attached with duties of regular and perennial nature, this Court disapproves the conduct of the Government and deprecates the practice of engaging employees on adhoc/temporary/contractual basis against the regular sanctioned posts for a duration running into several years. No doubt, it is open for the particular institutions to engage employees on adhoc/temporary/contractual basis to meet the requirement of staff shortfall in the institution in question, absence of staff or vacancy arising due to retirement. However, it is not appropriate and desirable that the Government, being a model employer, after engaging Instructors/Faculties on temporary basis and continues to extend their services for several years and thereafter, finally taking a decision to throw them out according to

their sweet will and to engage a different set of adhoc/ temporary employees in place of existing adhoc and temporary employees. Such a practice, according to the considered view of this Court, is neither a healthy practice nor the same is in conformity with the law laid down by this Court as well as Hon'ble Apex Court.

15. The role of the State as a model employer has come up for consideration on numerous occasions both by the Hon'ble Supreme Court of India as well as this Court. The Supreme Court of India in ***Balram Gupta v. Union of India*** reported in ***1987 Supp SCC 228*** had observed in paragraph 13 of the judgment as follows;

"13.... As a model employer the Government must conduct itself with high probity and candour with its employees."

Similarly in ***Bhupendra Nath Hazarika and another vs. State of Assam and Others*** : reported in ***(2013) 2 SCC 516***, in paragraphs 61 of the judgment the Hon'ble Supreme Court of India has observed as follows;

"61. Before parting with the case, we are compelled to reiterate the oft stated principle that the State is a model employer and it is required to act fairly giving due regard and respect to the rules framed by it. But in the present case, the State has atrophied the rules. Hence, the need for hammering the concept."

Similarly in Piara Singh's Case (Supra), the Hon'ble Supreme Court has elaborated the role of the State as a model employer and in paragraph 10 of the judgment it has been held as follows;

"10.The main concern of the Court in such matters is to ensure the Rule of law and to see that the executive acts fairly and gives a fair deal to its

employees consistent with the requirements of Articles 14 and 16. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. As is often said, the State must be a model employer. It is for this reason, it is held that equal pay must be given for equal work, which is indeed one of the directive principles of the Constitution. It is for this very reason it is held that a person should not be kept in a temporary or ad hoc status for long. Where a temporary or ad hoc appointment is continued for long, the Court presumes that there is need and warrant for a regular post and accordingly directs regularization."

In ***Mehar Chand Polytechnic v. Anu Lamba*** : reported in (2006) 7 SCC 161 the Supreme Court of India has observed that public employment is a facet of right to equality as envisaged under Article 16 of the Constitution of India and that the recruitment rules are framed with a view to give equal opportunity to all the citizens of India entitled for being considered for recruitment in the vacant posts.

This Court in a very recent judgment has taken a similar view so far the role of State as a model employer is concerned. The judgment was delivered by a coordinate bench in ***Amar Kumar Behera Vs. State of Odisha and Ors. (WPC (OAC) No. 1493 of 2018 : Decided On: 25.02.2022)***.

16. Having heard learned counsel for the parties and considering the peculiar facts and circumstances of the present case, this Court is of the considered view that the Opposite Parties shall do well to abandon the current practice of engaging adhoc/temporary employees for a duration running into several years instead they

should engage regular employees Instructor/Faculties against the sanctioned posts by following a due procedure of selection particularly where the nature of work to be performed is regular and perennial in nature. Moreover, the temporary/adhoc engagement not exceeding one academic session or a maximum period of one year be adopted in case of necessity. Resultantly, considering the difficulties faced by the petitioners and the entire future as well as the age factor of the petitioner and the similarly placed persons.

17. Finally, taking a holistic view of the matter and keeping in view the principles of law discussed here in above, this court is of the considered view that the impugned advertisement for fresh contractual/adhoc/temporary recruitment is bad in law and accordingly the same is hereby quashed and the State Govt. is directed to formulate a policy as discussed here in above, if the same has not been framed already in the meanwhile and accordingly the existing PTGIs/PTGFs or contractual employees in any other name working continuously for several years in Govt. ITIs be put under a screening process by a duly constituted screening committee and subject to their suitability and availability of regular posts, the petitioner and similarly placed other persons be selected and appointed against regular vacant posts by either absorbing them/regularizing their services in the light of the direction issued by the Odisha Administrative Tribunal. The petitioners are directed to approach the Director, Technical Education Training, Odisha (Opposite Party No.2) by filing a detailed representation highlighting their grievances along with supporting documents/policy decision/judgments in support of their cases within a period of four weeks from today. In the event such a representation is filed, the

same shall be considered by the Opposite Party No.2 in accordance with law and keeping in view the directions given hereinabove and the Opp. Party No.2 shall do well to dispose of the representations filed by PTGIs/PTGFs by passing a reasoned and speaking order within a period of three months from the date of receipt of a certified copy of this order. It is further directed that the petitioner shall not be disengaged or be substituted by another set of adhoc/temporary contractual employees, i.e. petitioner shall be allowed to continue in duty till regular appointments are made to the sanctioned/regular posts by following a due selection/screening process.

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

Jagabandhu

