

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No.1151 of 2014

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

Akshaya Kumar Mishra

....

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: 11.5.2022 & Date of Order: 18.05.2022

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. This Writ Petition has been filed by the Petitioner with the following prayer:-

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“(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

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xxx”

4. It is submitted by Mr. Tripathy, learned counsel appearing for the Petitioner that the Petitioner was appointed as Seasonal Mazdoor-cum-Gauge reader and Wireless Messenger-cum-Phone Attendant vide order of appointment issued on 27.6.95 under Annexure-1. It is also submitted that though the Petitioner was engaged in the aforesaid work for the flood season of the year 1989, but he was allowed with regular scale with usual D.A and H.R.A per month. It is also submitted that the petitioner was 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 the petitioner in different projects vide Annexures-3,4 & 5. It is also submitted that without considering the claim for regularization, he was 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 Petitioner was 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 But the said Writ Petition was wrongly withdrawn by the engaged counsel without the knowledge and consent of the petitioner herein.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 petitioner to file a fresh Writ Petition. 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 Petitioner 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 Petitioner filed Original Application before the learned Tribunal and learned Tribunal passed an interim order by protecting the interest of the Petitioner 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 Petitioner was once again threatened with termination, he filed an interim application in the Original Application and learned Tribunal vide order dated 11.3.2015 once again protected the interest of the Petitioner. It is also submitted that pursuant to such order passed by the learned Tribunal, the Petitioner is continuing in their work till date. It is further submitted that during continuance of the Petitioner, 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.

5. Mr. Tripathy, learned counsel appearing for the Petitioner 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 petitioner moved before Opp. Party No.3 for regularization of the services by filing representation, the application was 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 petitioner, but also recommended for the absorption of the Petitioner 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 Petitioner. It is accordingly submitted that in spite of such communications issued under Annexures-18 & 19, the claim of the Petitioner 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 Petitioner and for his 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.

6. Mr. Balabantaray, learned Standing Counsel appearing for the State on the other hand submitted

that the petitioner is working as seasonal worker and he is continuing as such during different flood seasons. It is also submitted that even though the petitioner was allowed regular scale of pay with usual D.A and A.D.A, but the petitioner is not working throughout the year and accordingly, his claim for absorption in the regular establishment is not maintainable.

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

8. Mr. Tripathy, learned counsel appearing for the Petitioner while countering the submission made by the learned Standing Counsel submitted that though the Petitioner is treated as seasonal worker, but in fact, he is working throughout the year since 1989. It is also submitted that taking into account the long continuance of the Petitioner 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 Petitioner for his 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 Petitioner that in view of availability of the vacancies, the petitioner can be absorbed as against such vacancies.

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

10. After going through the same, this Court finds that even though the Petitioner is engaged as seasonal workers from the year 1989, but he is 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 Petitioner for his absorption in the regular establishment needs favourable consideration by Opp. Party Nos.1 & 2. Not only that in view of such continuance of the Petitioner as seasonal workers since 1989, he has accrued a right for consideration of his claim for regular absorption. The claim of the Petitioner 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.**

11. 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 Petition with a direction on Opp. Party Nos.1 & 2 to take a lawful decision on the claim of the Petitioner for his 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 petitioner, no coercive action shall be taken against the Petitioner.

12. With the aforesaid observations and directions, the Writ Petition is disposed of.

13. 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 18th of May, 2022/sangita

