

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OA) NO.1958 of 2012

Hari Mahakuda

.... **Petitioner**

Mr. M. Pratap, Adv.

-versus-

State of Odisha & Others

... **Opposite Parties**

State Counsel

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

13.09.2023

Order No

- 5.**
- 1.** This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
 - 2.** At the outset, Mr. M. Pratap, learned counsel for the Petitioner is permitted to implead Secretary, Department of Panchayati Raj and Drinking Water as Opp. Party No.7 in Court.
 - 3.** Heard learned counsel for the parties.
 - 4.** The Petitioner has filed the present Writ Petition inter alia with the following prayer.

- (i) *The Hon'ble Tribunal graciously be pleased to direct the Respondents in general and Respondent No.6 in particular to absorb/regularize the services of applicant as Khalasi w.e.f 14.07.98 with all service and Financial benefits, i.e.increments, pay fixation, seniority et. Instead of on dt.03.11.2008*
- (ii) *Further be pleased to direct to the respondents to anti-date his regular absorption as per his first regular absorption order dt.14.07.1998 which was cancelled after its implementation.*
- (iii) *And further be pleased to declare the cancellation order regarding absorption order of applicant on dt.14.07.98 as bad in law,*

5. Learned counsel for the Petitioner contended that the petitioner while continuing as NMR in the establishment of Opp. Party No.6, he was regularized as a Khalasi vide office order dt.14.07.1998 under Annexure-4.

5.1. It is contended that the said regularization was provided to the Petitioner in terms of the direction issued by the Government in the Department of Housing and Urban Development vide letter dt.17.06.1998 under Annexure-3. However, after being extended with the benefit of regularization when the same was withdrawn by the Opp. Party No.6 vide the office order dt.17.02.1999 under Annexure-5, the matter was challenged before the Tribunal in OA No.761/1999. The Tribunal vide its order under Annexure-8 while disposing the matter passed the following order.

“Keeping all these in mind, this O.A is disposed of with a direction that attempts be made to obtain clearance from the Finance Department for operation of those posts and as and when clearance for operation of posts of Khalasi, Choukidar and Helper is received by Opp. Party No.1, the applicants should be given priority over other NMR/DLR employees and adjusted in the posts in which they had been appointed vide Annexure-3. However, if any post is required to be utilized for implementation of a previous court order of the Tribunal or the High Court then such post may be left out. While issuing orders of appointment their inter se seniority amongst themselves should also be kept in mind. The above exercise be completed by 31.12.2003.”

5.2. It is contended that the order passed by the Tribunal was challenged before this Court and thereafter before the Hon'ble Apex Court by the Opp. Parties. After confirmation of the order passed by the Tribunal by this Court as well as by the Hon'ble Apex Court, the Petitioner was again regularized vide order dt.03.11.2008 under Annexure-13.

5.3. It is the case of the Petitioner that since in terms of Annexure-3, Petitioner was regularized vide order dt.14.07.1998 and pursuant to the order passed by the Tribunal under Annexure-8 so confirmed by this Court as well as by the Hon'ble Apex Court, the Petitioner was again regularized vide order dt. 03.11.2008, the same was to be given effect to from 14.07.1998 i.e. from the date the order under Annexure-4 was passed. It is accordingly contended that necessary direction be issued to opp. parties to extend the benefit of regularization from the date when Annexure-4 was issued.

6. Mr. B. Panigrahi, learned Addl. Standing Counsel though made his submission basing on the stand taken in the counter affidavit, but fairly contended that in the order under Annexure-13, nothing has been indicated as to whether order of regularization is prospective or retrospective in nature. Therefore, the Petitioner be permitted to move the authority seeking extension of the benefit of regularization from the date Annexure-4 was issued.

7. Having heard learned counsel for the parties and after considering the submissions made, this Court while disposing the writ petition permits the Petitioner to move appropriate application before Opp. party No.7 seeking extension of the benefit of regularization from the date the order under Annexure-4 was issued.

7.1. It is observed that if any such a application is filed by the Petitioner ventilating his grievances as permitted, the same shall be considered and disposed of by Opp.

party No.7 in accordance with law within a period of three months from the date of receipt of such application.

7.2. It is further observed that while taking such a decision, the decision issued by the Government in the Department of Housing and Urban Deptt. on 17.06.1998 under Annexure-3 shall be taken into consideration as well as the date of sanction accorded by the Finance Deptt. in terms of the order passed by the Tribunal on 15.01.2003 under Annexure-8.

The Writ Petition is accordingly disposed of.

sangita



(Biraja Prasanna Satapathy)
Judge

Signature Not Verified

Digitally Signed
Signed by: SANGITA PATRA
Reason: AUTHENTICATION OF ORDER
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 18-Sep-2023 14:46:54

