

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No.1713 of 2012

Pitabas Swain

....

Petitioner

Mr. Basudev Mishra, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. P.C. Das, ASC for State

Mr.S.K. Mohanty, Advocate

CORAM:

JUSTICE A.K.MOHAPATRA

ORDER

22.02.2022

Order No.

02. 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. Heard learned counsel for the Petitioner and learned counsel for the State.
3. The present writ petition has been filed to quash the order no.2695 dated 26.05.2012 passed by the Chief District Medical Officer, Nabarangpur, Opposite Party No.3, whereby the promotion of the Petitioner to the post of MPHWM has been cancelled abruptly without following the due procedure of law.
4. On verification of the order sheet of the learned Orissa Administrative Tribunal, it reveals that while issuing notice, vide order dated 06.06.2012, learned Tribunal had observed that as an interim measure, the opposite parties are directed to maintain status quo till filing of the counter. Therefore, it is presumed that by virtue of the interim order, the Petitioner is confirmed against the promotional post.

5. It is submitted by learned counsel for the Petitioner that pursuant to DPC, the Petitioner and other similarly placed persons were considered for promotion and subsequently, they were given promotion on the basis of the recommendation of the DPC dated 29.01.2011, vide Annexure-2 of the Original Application. Thereafter, suddenly vide order dated 26.05.2012, the promotion of the Petitioner and others were cancelled without assigning any reason, vide order dated 26.05.2012 under Annexure-3. Learned counsel for the Petitioner further submits that while taking into account the impugned letter dated 26.5.2012, no notice was issued to the Petitioner to show-cause. In other words, the principle of natural justice has not been followed although orders cancelling the promotion had adversely affected the present Petitioner. In such view of the matter, learned counsel for the Petitioner prays that the order passed by the C.D.M.O., Nabarangpur, under Annexure-3 is unsustainable in the eye of law and the same is liable to be set aside/quashed.

6. Per contra, learned counsel for the State submits that he has filed a detailed counter affidavit wherein he has taken a ground that the Petitioner and others were not possessing the eligibility criteria as prescribed by the Government, therefore, their promotions have been cancelled in the impugned letter dated 26.5.2012 under Annexure-3.

7. Having heard learned counsel for the parties, this Court is of the considered view that once the DPC has recommended the names of the Petitioner and others after scrutiny by following due procedure of law and Petitioner has already been given promotion after such recommendation, vide letter dated 29.1.2011 under

Annexure-2, the same is to be accepted as correct and final, until and unless the same is recalled by following the due process of law, i.e. the fundamental requirement under service jurisprudence of providing an opportunity of hearing to the parties, who are likely to be affected by such action of the opposite parties-Authority. However, by order dated 26.5.2012 without any prior notice/intimation, without providing any opportunity or any objection/allegation against the Petitioner, the Authority had cancelled the order of promotion of the Petitioner and others under Annexure-3, which is arbitrary and illegal exercise of power vested in such Authority. Such conduct of the Authority is unsustainable and unknown to law.

8. In such view of the matter, the order dated 26.05.2022 under Annexure-3 is hereby set aside and the matter is remitted back to the Competent Authority, i.e. C.D.M.O., Nabarangpur to deal with the same afresh after giving notice to the Petitioner and by providing an opportunity of hearing to the Petitioner and after considering the grounds that is being raised by the Petitioner, final order shall be passed in the matter. It is open for the Petitioner to file his show-cause reply in the event notice is issued by the Competent Authority taking all the grounds available to him in law.

9. With the aforesaid observation, the writ petition stands disposed of.

10. Issue urgent certified copy as per rules.

(A.K. Mohapatra)
Judge