

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No.234 of 2017

Khagendra Rout and others

.... ***Petitioners***
Mr. S.K. Dalai, Advocate

-versus-

State of Odisha and others

.... ***Opp. Parties***
Mr. N.K. Praharaj, AGA

CORAM:
JUSTICE A.K. MOHAPATRA

ORDER
25.11.2022

Order No.

- 03.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. Heard learned counsel appearing for the Petitioner and learned Additional Government Advocate appearing for the State-Opposite Parties.
 3. Initially the Petitioner had approached the Odisha Administrative Tribunal, Cuttack Bench, Cuttack by filing O.A. No.234(C) of 2017 with a prayer to quash the order of rejection dated 5.5.2016 under Annexure-7 and further for a direction to the Opposite Parties to grant him regular scale of pay of Rs.5,000-20,200/- with grade pay of Rs.1800/- from the date of joining in the post of Junior Fisheries Technical Assistant within a stipulated period of time. However, in the meantime, Odisha Administrative Tribunal has been abolished and the O.A. has been transferred to this

Court and it has been reregistered as WPC (OAC) No.234 of 2017.

4. It is submitted by the learned counsel for the Petitioner that the Deputy Secretary to Government of Odisha in Fisheries & A.R.D. Department submitted the requisition before the Odisha Staff Selection Commission, Bhubaneswar to fill up 112 vacant posts of Junior Fisheries Technical Assistant of Fisheries & A.R.D. Department by direct recruitment with concurrence of the Finance Department and the appointment was suppose to be made in terms of the Odisha Subordinate Fisheries Service (Recruitment and conditions of service) Rules, 2013 and F&ARD Department Resolution No.6611 dated 01.06.2011. It is further submitted that letter dated 2.5.2013 under Annexure-1 reveals that the applications were invited to fill up the aforesaid posts on regular basis against the vacancies that have been notified. Pursuant thereto the Staff Selection Commission published an advertisement dated 24.12.2013 under Annexure-3. However, the said advertisement under Annexure-3 does not reveal whether the posts are contractual or regular.

5. However, it is submitted by learned Additional Government Advocate that since the advertisement was published on 24.12.2013, it is presumed that the same was published after Odisha Group "C" and Group "D" posts (Contractual Appointment) Rules, 2013 came

into force, i.e., w.e.f. 12th November, 2013. Therefore, learned Additional Government Advocate appearing for the State-Opposite Parties submits that it presumed to have been issued under the aforesaid rules and the appointment under Annexure-3 is guided by the Rules, 2013 which is stated to be rule under Article 309 of the Constitution of India. Thereafter, the Petitioner was duly selected and appointed on contractual basis with consolidated remuneration of Rs.5,200/- plus Grade Pay of Rs.1800/- per month vide order dated 9.6.2015 under Annexure-4. Further, in the said order, it has been stated that the inter-se seniority shall be maintained as per the provisional merit list prepared by the Odisha Staff Selection Commission approved by the Government. Thereafter, the Petitioner continued to work as Junior Fisheries Technical Assistant on his place of posting and while he was continuing in his post on contractual post, this application was filed before the Tribunal seeking regularization of his service and claiming the pay scale of Rs.5200-20200 with other ancillary service and financial benefits. It is further submitted by the learned counsel for the Petitioner that now the Petitioner is being posted at different places and discharging his duties. However, recently, the Government of Odisha in General Administration & Public Grievance Department has issued a Notification dated 16th October, 2022. The said notification reveals

that in exercise of the powers conferred by proviso to Article 309 of the Constitution of India, the Governor of Odisha has been pleased to repeal the Odisha Group-B posts (Contractual Appointment) Rules, 2013 and the Odisha Group “C” and Group “D” posts (contractual Appointment) Rules, 2013 and to provide special provisions to regulate the services of the employees appointed on contractual basis under the said rules.

6. In view of the aforesaid development vide Notification dated 16th October, 2022 of the General Administration & Public Grievance Department, the ground reality has changed and the Rules, of 2013 has been repealed. Therefore, the case of the Petitioner needs to be examined afresh in terms of the Notification dated 16th October, 2022.

7. In such view of the matter, this Court thinks it proper that the impugned rejection order under Annexure-7 is hereby set aside. The matter is remanded back to the Opposite Party No.1 to consider the matter afresh in terms of Notification dated 16th October, 2022 of the General Administration & Public Grievance Department further taking into consideration Annexures-1 and 3. Further, it is directed that the Opposite Party No.1 shall do well to consider the case of the Petitioner in accordance with law and shall take a final decision within a period of two months from the date of production of

certified copy of this order.

8. With the aforesaid observation and direction, the writ petition stands disposed of.

(A.K. Mohapatra)
Judge

Debasis

