

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.1096 of 2013

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

.....

Subash Chandra Sharma

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s.R.N.Parija & B.S.Behera.

For Opp. Parties : Standing Counsel
Mr. N.K.Praharaj.

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

संघर्षित नयने

Date of Hearing: 02.05.2022 and Date of Order:30.06.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. R.N.Parija, learned counsel for the Petitioner and Mr. N.K.Praharaj, learned counsel for the State-Opposite Parties.
3. The present Writ Petition has been filed with a prayer to quash the order dated 20.06.2012 under Annexure-10 and with a further prayer to allow the Petitioner to continue

as driver to drive the Ambulance Vehicle bearing Registration Nos.OR15D-6760 and OR15D-7466 and with a further prayer to take steps for regularization of the service of the Petitioner in terms of the decision of the Government available at Annexure-11.

4. It is submitted by Mr. Parija, learned counsel for the Petitioner that pursuant to the decision taken by the Government in the Health & Family Welfare Department on 15.02.1999 under Annexure-1, the Petitioner not only faced the selection process but also was appointed as a driver on daily wages basis vide order dated 06.12.2000 under Annexure-3-Series. The Petitioner after the said order was appointed and posted to Zilla Swasthya Samiti to drive the ambulance vehicle bearing Registration No.OR15D-7466 until further orders subject to the condition that he will not claim seniority and permanent appointment in future.

5. It is submitted that pursuant to the said order under Annexure-3-Series, Petitioner joined as a driver. It is further submitted that pursuant to his joining as a driver as per the order under Annexure-3, the Petitioner was allowed to continue on daily wages basis and the said fact was also intimated by the Opposite Party No.2 in his letter addressed to the Director of Family Welfare, Odisha, Bhubaneswar under Annexure-8.

6. Mr. Parija, further submitted that while so continuing and taking into account the Ambulance driven by the Petitioner since was made off road w.e.f. 24.01.2012, the Petitioner was disengaged vide Officer Order dated 07.03.2012 of Opposite Party No.2.

7. It is further submitted that subsequently, vide order dated 20.06.2012 when the Petitioner was again re-engaged for a period of 59 days, the Petitioner apprehending his disengagement once again after completion of 59 days filed the present Writ Petition.

8. It is submitted by Mr. Parija, learned counsel for the Petitioner that since the Petitioner was duly selected and appointed as a driver on daily wages basis pursuant to the decision of the Department under Annexure-1, the Petitioner should have been allowed to continue and absorbed in the regular establishment in due course of time.

9. Accordingly, Mr. Parija, prayed for interference of this Court and for passing of an appropriate order with regard to the prayer made in the Writ Petition.

10. Mr. Praharaj, learned counsel for the State-Opposite Parties made his submission relying on the stand taken by the Opposite Party No.2 in his counter.

11. It is submitted that even though the Petitioner was engaged as a daily wages driver vide order under Annexure-3, but due to off road of the Ambulance bearing Registration No. OR15D-6760 and the repair undertaken to the other ambulance bearing Registration No. OR15D-7466, one Dilip Kumar Singh appointed vide office order dated 13.12.1994 of the Opposite Party No.2 was utilized in the District Head Quarter, Hospital, Jharsuguda.

12. It is also submitted that the said Dilip Kumar Singh was a regular driver of Kolabira CHC coming under

Opposite Party No.2 and was driving an Ambulance bearing Registration No.OR-23-C-5948.

13. It is also submitted that due to such appointment of Dilip Kumar Singh, the Petitioner's service was no more required and accordingly his services was not extended beyond the period indicated in the order dated 20.06.2012 under Annexure-10.

14. It is also submitted that after expiry of the said period of 59 days from 20.06.2012, the Petitioner is not under employment in the Office of Opposite Party No.2.

15. Mr. Praharaj accordingly submitted that in view of the stipulation contained in the order of appointment under Annexure-3, the prayer of the Petitioner is not maintainable and no direction be issued by this Court.

16. In the rejoinder affidavit filed by the Petitioner to the counter filed by Opposite Party No.2, it was submitted that since the Petitioner was duly selected and engaged as a driver on daily wages basis, he should have been allowed to continue without taking on deputation the services of Dilip Kumar Singh from Colabira CHC to operate the Ambulance.

17. It is also submitted that since in the communication dated 02.11.2009 under Annexure-8, the Petitioner was shown engaged as a contractual driver, his claim for absorption in the regular establishment is covered as per the resolution issued by the Government in the G.A. Department on 17.09.2003.

18. Accordingly, it is submitted by Mr. Parija, learned

counsel for the Petitioner that the Opposite Parties instead of absorbing the Petitioner in the regular establishment did not extend his engagement beyond the period indicated in the order under Annexure-10.

19. Heard learned counsel for the Parties.

20. Perused the materials available on record. Even though in the communication dated 02.11.2009 of Opposite Party No.2, the Petitioner was shown as a contractual driver, but no documents showing such engagement of the Petitioner as a contractual driver in the establishment of Opposite Party No.2 is available in the case record. While filing the rejoinder affidavit to the counter, no document was also annexed showing his appointment as a contractual driver. But in the document annexed vide Annexure-14 to the Writ Petition, it was clearly indicated that the Petitioner was appointed on daily wages basis and he has been disengaged since 07.03.2012. While issuing notice of the matter vide order dated 02.07.2013 though it was observed that pendency of the matter shall not be a bar for appointment of the Petitioner on contractual basis, but the Petitioner after 07.03.2012 was never re-engaged either on daily wages basis or on contractual basis. Since the Petitioner admittedly is out of engagement since 07.03.2012 beyond the period indicated in Annexure-10, no direction can be issued to the Opposite Parties to absorb him in the regular establishment and the prayer made to that effect is held not maintainable. But as reflected in Annexure-14, since some posts of driver are lying vacant in the establishment of Opposite Party No.2, the said Opposite

Party if approached by the Petitioner within a period of three weeks hence seeking his engagement as an Ambulance driver as against such vacancies, this Court directs the Opposite Party No.2 to take a lawful decision on the same within a further period of three months.

21. It is also observed that in view of the continuance of the Petitioner as an Ambulance driver for a petty long period, Opposite Party No.2 while considering the claim of the Petitioner for his re-engagement may take a lenient view and pass appropriate order accordingly.

22. With the aforesaid observations and directions, the WPC(OAC) stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 30th of June, 2022/Subrat