

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C)(OA) No.1968 of 2017

Sahadev Behera

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

19.09.2022

Order No

01.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.

2. Heard Mr. U.C. Mohanty, learned counsel for the Petitioner as well as Mr.Y.S.P.Babu, learned Addl. Government Advocate appearing for the State-Opp. Parties.

3. The present Writ Petition has been filed by the petitioner with the following prayer:-

“(i) Issue appropriate writ direction or order quashing Annexure-11.

“(ii) Direct the Respondents to allow the applicant to count his past service w.e.f. 09.04.1992 to 01.07.2002 for pension & other service benefits.

“(iii) And pass any order(s) as may be deemed fit and necessary”.

4. Learned counsel for the Petitioner submitted that by passing due recruitment process, the Petitioner was selected and appointed as a Junior Stenographer vide Office Order dated 6.4.1992 under Annexure-1.

5. It is submitted that the Petitioner was appointed on contractual basis basing on the communication issued by the Government in the Harijan and Tribal Welfare Department dated 16.01.1992 under Annexure-2.

6. It is submitted that even though the Petitioner was appointed as against a regular vacancy on contractual basis, the Petitioner claiming extension of the benefit of the scale of pay as applicable to the regular post when approached learned Tribunal in O.A. No.586(C)/1996, learned Tribunal in its order dated 28.02.1996 under Annexure-3 directed the Opposite Party No.3 to take step to give the Petitioner the scale of pay as per the rules and giving chance for recruitment on regular basis if it is not possible to give such scale of pay to the Petitioner.

7. It is submitted that pursuant to the said order passed by the learned Tribunal on 28.02.1996 under Annexure-3, Petitioner was allowed the scale of pay as applicable to the part in question vide Office Order dated 10.05.1996 of the Opposite Party No.3 under Annexure-5.

8. It is further submitted that while so continuing on contractual basis, vide Office Order dated 7.7.2002 under Annexure-6, the Petitioner was absorbed in the regular establishment w.e.f. 1.7.2002.

9. It is submitted that since the Petitioner was duly selected and appointed by passing due recruitment process as a contractual junior Stenographer vide order under Annexure-1 and he was allowed the scale of pay as applicable to a regular employee vide order dated 10.05.1996 under Annexure-5, the Petitioner claiming

extension of the service benefit from 9.4.1992 to 1.7.2002 when approached the Opposite Parties under Annexure-9, the same was rejected vide the impugned communication dated 26.07.2017 under Annexure-11.

10. Mr. Mohanty, learned counsel for the Petitioner submitted that since the Petitioner was appointed as against a regular vacancy though on contractual basis vide order dated 6.4.1992 under Annexure-1 and he was allowed to scale of pay as applicable to the said post vide order dated 10.05.1996 under Annexure-5 and was ultimately regularized w.e.f. 1.07.2002 under Annexure-6, the period of service rendered by the Petitioner from 6.4.1992 to 1.7.2002 is required to be treated as pensionable service.

11. Mr. Mohanty, learned counsel for the Petitioner in support of the aforesaid submission relied on the decision of the Hon'ble Apex Court in the case of ***The Direct Recruit Class-II Engineering Officers' Association and Others vrs. State of Maharashtra and Others*** reported in AIR 1990 SC-1607. In the said reported decision, Hon'ble Apex Court in Para-44(A) & (B) held as follows:-

44. To sum up, we hold that:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularization of his service in

accordance with the rules, the period of officiating service will be counted”.

12. Mr. Babu, learned Addl. Government Advocate on the other hand made his submission basing on the counter filed by the Opposite Parties.

13. It is submitted that in view of the Finance Department Resolution issued on 15.05.1997, the date of regularization is to be reckoned as the first date of appointment for the purpose of pension and other service benefits.

14. Accordingly, it is submitted that the Petitioner is not entitled to get the benefit for the period from 9.4.1992 to 1.07.2002 as prayed for in the Writ Petition.

15. Heard learned counsel for the Parties.

16. Perused the materials available on record. This Court after going through the same finds that the Petitioner basing on the communication issued on 16.01.1992 under Annexure-2 was appointed by passing due recruitment process as a Junior Stenographer on contractual basis vide order dated 6.04.1992 under Annexure-1, where he joined on 9.4.1992. This Court further finds that the Petitioner basing on the order passed by the learned Tribunal in O.A No.586(C)/1996 was allowed to draw the regular scale of pay as applicable to the post of Junior Stenographer vide order dated 10.05.1996 under Annexure-5. The Petitioner subsequently was absorbed in the regular establishment as against the said post of Junior Stenographer vide order dated 1.7.2002 w.e.f. 1.7.2002. Since the Petitioner was appointed as against a regular vacancy and was allowed to draw the regular scale of pay

vide order dated 10.05.1996 under Annexure-5, in view of the nature of appointment and the continuance of the Petitioner read with the decision of the Hon'ble Apex Court as cited (supra), this Court finds that the claim of the Petitioner as made in the Writ Petition is a genuine claim.

17. Accordingly, while quashing the order of rejection communicated vide the impugned communication dated 26.07.2017 under Annexure-11, this Court directs the Opposite Parties to count the period of service rendered by the Petitioner from 9.4.1992 to 1.7.2002 as pensionable service for all purposes. Necessary order to that effect be passed by the Opposite Party No.1 within a period of two months from the date of receipt of this order.

18. With the above observations and directions, the Writ Petition stands disposed of.

19. Issue urgent certified copy as per rules.

(Biraja Prasanna Satapathy)
Judge

Subrat