

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.4178 of 2013

An application under Section 19 of the State Administrative Tribunal's Act, 1985.

.....

Babula Mishra

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s. Mr.D.K.Patnaik,
T.Mishra & J.Sahoo.

For Opp. Parties : M/s. N.K.Praharaj,
Standing Counsel.

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

संस्थानिक न्यायो

Date of Hearing:10.05.2022 and Date of Order:19.05.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. D.K.Pattnaik, learned counsel for the Petitioner and Mr. N.K.Praharaj, learned Standing counsel for the State-Opposite Parties.
3. The present Writ Petition has been filed by the Petitioner with the following prayer:-

(i) direct the respondents to regularize the service of the applicant in the post of Homeopathic Assistant from the initial date of service;

(ii) direct the respondents not to disengage the applicant till he is absorbed in the post of Homeopathic Assistant;

(iii) give the applicant all financial and consequential benefits;

(iv) and may pass such other order / orders as deemed just and proper

And for this act of kindness, the applicant shall as in duty bound ever pray”.

4. It is submitted by Mr. Patnaik, learned counsel for the Petitioner that the Petitioner was initially engaged as a Part Time Sweeper-cum-Night Watchman on daily wages basis, where he joined on 09.03.1992.

5. It is submitted that even though the Petitioner was engaged as a Part Time Sweeper-cum-Night Watchman on daily wages basis, but he was allowed to discharge his work as Homeopathic Assistant.

6. It is further submitted that even though the Petitioner was allowed to continue on daily wages basis with discharging of his duty as an Homeopathic Assistant, but the Opposite Parties when did not take any step to absorb him in the regular establishment, he moved an application under Annexure-5 before the Opposite Party No.1 seeking his regularization.

7. It is submitted that similarly situated Part Time Sweeper-cum-Night Watchman continuing for more than three years in different Homoeopathic dispensaries in the State were appointed as a Homeopathic Assistant vide order dated 29.01.1992 of the Director of Indian Medicine & Homoeopathy, Orissa under Annexure-4.

8. It is submitted that the claim of the Petitioner for his absorption is similar to that of the persons who were appointed vide the aforesaid order dated 29.01.1992.

9. It is accordingly submitted that necessary direction be issued to the Opposite Parties to consider the case of the Petitioner for his absorption as Homeopathic Assistant or in any Class-III post.

10. It is submitted that the Petitioner has the requisite qualification to hold the Post of Homeopathic Assistant and he is otherwise eligible to hold the said post.

11. Mr. Praharaj, learned Standing Counsel for the State- Opposite Parties on the other hand submitted that the Petitioner was engaged as a Part Time Sweeper-cum-Night Watchman under District Ayurvedic Medical Officer, Dhenkanal and such engagement is purely temporary in nature.

12. It is also submitted that as per the criteria issued by the Government, 5% of the vacancies in a recruitment year shall be filled up by Class-IV employees having Matriculation qualification or equivalent and they must have rendered 5 years of service in Government

Homeopathic or Ayurvedic Dispensary or any other Government Institutions of similar nature. But it is submitted that Night Watchman and Sweepers are not eligible for such appointment as against those 5% vacancies.

13. Heard learned counsel for the Parties.

14. Taking into account the nature of claim made in the Writ Petition and the submissions made by the learned counsel appearing for both the Parties, this Court while disposing the Writ Petition directs the Opposite Party No.1 to take a lawful decision on the prayer made by the Petitioner in his representation under Annexure-5 on its own merit. But it is however observed that while taking such a decision, the order passed under Annexure-4 be taken into consideration. The Opposite Party No.1 is directed to take a final decision within a period of three months from the date of receipt of this order.

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

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 19th of May, 2022/Subrat