

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 28514 of 2019

Bigyana Kumar Swain

.....

Petitioner

Mr. S.B.Jena , Advocate

Vs.

State of Odisha and others

.....

Opposite parties

State Counsel

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE GOURI SHANKAR SATAPATHY

ORDER

16.08.2022

Order No.

05

This matter is taken up through hybrid mode.

2. Heard Mr. S.B. Jena, learned counsel for the petitioner and Mr. S. Rath, learned Additional Standing Counsel for the State opposite parties.

3. The petitioner has filed this writ petition seeking to quash the order dated 09.05.2019 passed by the Orissa Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 4249(c) of 2014 under Annexure-8 and further to issue direction to the opposite parties to antedate the regularization of his service w.e.f. 23.11.1995 or the date when the similarly situated persons, namely, the applicants in T.A. No.56(c) of 1993 have been regularized, and to disburse the arrear w.e.f. 2001 till 2008 at an early date.

4. Mr. S.B. Jena, learned counsel for the petitioner contended that the petitioner, having has passed H.S.C Examination, joined in service on 26.11.1987 as DLR Helper in the office of Opp. Party No.3. While continuing as such, he was discharging his duties to the utmost satisfaction of his authorities and at no point of time his services were adversely commented upon.

5. While he was so continuing, similar circumstanced persons, who were continuing in the office of opposite party no.3, filed

O.J.C.No.4311/1989 before this Court for regularization of their services. But due to establishment of Orissa Administrative Tribunal, the said case was transferred to the Tribunal and renumbered as T.A No.56(c)/1993, which was disposed of vide order 23.11.1995, wherein the Tribunal directed the opposite parties to prepare a scheme within 6 months from the date of receipt of a copy of the order to absorb the existing casual skilled and high skilled employees by phases within 3 years so that they will retire as regular employees to get the benefits of their services. The Tribunal further directed that till their continuation as casual employees, they shall be paid minimum scale of pay applicable to such posts in similar organization and also directed to work out the said decision within a period of 3 months.

6. Pursuant to order of the Tribunal, a scheme was prepared and though the services of the petitioner were regularized w.e.f. 10.10.2008, but not retrospectively with effect from 1995. Therefore, the petitioner filed intervention petition in C.P. No.308(C) of 2013 before the Tribunal and the Tribunal vide order dated 09.12.2013 granted liberty to the intervener-petitioner to file individual O.A., as was directed by the Tribunal in its order dated 23.11.1995. Accordingly, the petitioner filed O.A. No.4249(C) of 2013, which was dismissed, vide order dated 09.05.2019 stating that there was gross delay in approaching the Tribunal and, as such, the service of the petitioner having been absorbed as per the scheme, he cannot claim retrospective service benefit from the year 1995. Therefore, it is contended that the Tribunal has committed gross error in passing the order impugned dated 09.05.2019 in O.A. No.4249(C) of 2013, which cannot be sustained in the eye of law and is liable to be quashed.

7. Mr. S. Rath, learned Additional Standing Counsel for the State Opposite parties contended that if the petitioner was aggrieved by his regularization of his services w.e.f. 10.10.2008, he should have

approached the Tribunal immediately within the time stipulated as per Orissa Administrative Tribunal Act. Instead of doing so, he filed intervention petition clandestinely in C.P. No.308(C) of 2013 (arising out of T.A. No.56(C) of 1993). The Tribunal should not have entertained the said petition vide order dated 09.12.2013 permitting the petitioner to file individual O.A. Thereafter, the petitioner filed O.A. No.4249(C) of 2013, which was dismissed by the Tribunal vide order dated 09.05.2019. Thus the Tribunal, by the impugned order, has rightly rejected the said O.A. on the ground of delay in approaching the Tribunal and the same should not be quashed.

8. Considering the contentions raised by learned counsel for the parties and after going through the records, it appears that the petitioner had joined as DL Clerk on 26.10.1987 on fixed remuneration on 44 days basis as a temporary employee. Similarly situated persons working under O.P No.3, i.e, Joint Director, Survey and Map Publication had filed OJC No.4311 of 1989 before this Court, which was subsequently transferred to the Tribunal and renumbered as T.A No.56(C)/1993 and the same was disposed of on 23.11.1995, wherein the Tribunal directed the opposite parties to prepare a scheme within six months to absorb the existing casual skilled and highly skilled employees by phases within three years and till then continue as casual employee, they be paid minimum scale of pay applicable to such post in similar organization. It was further observed that if no scheme is prepared within six months and the applicants are not paid emoluments, which will be equal to the minimum scale of pay, the individual applicants shall have the liberty to approach the Tribunal under section 19 of the Act, so that each grievances can be examined independently depending on the facts and circumstances of the case.

9. One Bijaya Kumar Gocchayat had approached the Tribunal by

filing O.A No.726(C)/1996, who was similarly placed as the applicant in T.A. No. 56(C)/1993, and the Tribunal disposed of the said O.A. vide order dated 14.3.1996 stating that the order passed in T.A No.56(C)/1993 is applicable to him and therefore, directed the authorities to examine his case and pass necessary orders within three months. These petitioners had approached the Tribunal in O.A No. 935/1999 seeking their regularisation of services and for grant of minimum wages as per the direction in T.A NO.56(C)/1993 and the Tribunal in its order dated 30.4.1999 disposed of the O.A directing the O.Ps to grant all benefits as granted to similarly situated persons and also pointed out that they are entitled to the benefits in pursuance of the order dated 23.11.1995 passed in T.A. NO.56(C)/1993. Thereafter, the opposite parties regularized the services of the petitioner and 38 others vide letter No.43444 dated 10.10.2008 against the existing vacancies. If the petitioner is aggrieved by the said order, he should have approached the Tribunal immediately within the time specified, but the petitioner remained silent. Subsequently, in C.P. No.308(C) of 2013, he filed intervention petition, which was disposed of vide order dated 09.12.2013 granting liberty to the petitioner to file O.A., as was directed by the Tribunal vide order dated 23.11.1995 in T.A. No.56(C) of 1993. Therefore, the Tribunal has committed error in C.P. No.308(C) of 2013 entertaining the intervention petition and granting liberty to the petitioner to approach the Tribunal by filing O.A. because C.P. case is the matter between the petitioner and the Court. Therefore, the Tribunal has acted excess of its jurisdiction and as such, the same cannot be sustained in the eye of law.

10. In pursuance of the order dated 09.12.2013, the petitioner filed O.A. No.4249(C) of 2013 claiming regularization of his service with retrospective effect. The Tribunal, while adjudicating the matter, has

taken note of the order dated 23.11.1995 passed in T.A. No.56(C) of 1993 and stated that in compliance of the said order, a scheme was prepared and on that basis the services of the petitioner were regularized w.e.f. 10.10.2008 and if he was aggrieved by such order, he should have approached the Tribunal well within the time. But subsequently at a belated stage, he approached the Tribunal by filing O.A. No.4249(C) of 2013. Thereby, the Tribunal is well justified in dismissing the said O.A. vide order dated 09.05.2019 on the ground of barred by limitation.

11. In that view of the matter, this Court is not inclined to entertain this writ petition, which is accordingly dismissed.

Alok/Subha

(DR. B.R. SARANGI)
JUDGE

(G.S.SATAPATHY)
JUDGE

