

HIGH COURT OF ORISSA: CUTTACK

WPC (OA) No.1979 OF 2017

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

Sri Somanath Barik ... **Petitioner**

- Versus -

State of Odisha and Others ... **Opposite parties**

For Petitioner ... M/s. Dr. J.K. Lenka &
P.K. Behera

For Opposite Parties ... Mr. Y.S.P. Babu,
Additional Government Advocate.

CORAM:

THE HONOURABLE SHRI JUSTICE BIRAJA PRASANNA SATAPATHY

Date of hearing: 08.09.2022

Date of order : 21.10.2022

Biraja Prasanna Satapathy, J.

1. I have heard Dr. J.K. Lenka, learned counsel appearing for the Petitioner and Mr. Y.S.P. Babu, learned Additional Government Advocate appearing for the State-Opposite Parties.

2. The present writ petition has been filed by the Petitioner challenging the order dated 20.06.2016 passed by the Opposite

Party No.1- Principal Secretary to Government, Rural Development Department, Government of Odisha, Secretariat Building, Bhubaneswar under Annexure-14 to the writ petition wherein the claim of the Petitioner for his regularization has been rejected on the ground that the Petitioner was initially engaged as a Data Entry Operator through outsourcing basis.

3. It is submitted by Dr. J.K. Lenka, learned counsel appearing for the Petitioner that the Petitioner was initially engaged as a Date Entry Operator w.e.f. 1.5.2006. It is submitted that while so continuing and basing on the creation of 38 nos. of posts of Date Entry Operator in Rural Water Supply & Sanitation Organization to be filled up on contractual basis vide order dated 25.01.2007 under Annexure-1 to the writ petition, the Petitioner and similar situated Data Entry Operators working in Rural Water Supply & Sanitation Organization were allowed to continue as contractual Data Entry Operator and received their salary on contractual basis w.e.f. 19.7.2007. It is further submitted that out of the 38 posts created by the Government vide its order under Annexure-1 Series, not only 38 persons were appointed on contractual

basis, but also 30 of them were regularized at different point of time. It is further submitted that rest 8 nos. of Data Entry Operators, which includes the Petitioner when were not regularized, the Chief Engineer, Rural Water Supply & Sanitation, Odisha, Bhubaneswar vide his letter dated 9.8.2011 under Annexure-1 Series moved the Government with a request to move the Finance Department for concurrence for regularization of the rest 8 nos. of Data Entry Operators. In the said communication dated 9.8.2011, the name of the Petitioner is indicated at Serial No.8 with his date of engagement as 19.7.2007. It is also submitted that subsequently vide another communication issued on 23.11.2011 under Annexure-2 to the writ petition, the Chief Engineer, Rural Water Supply & Sanitation, Jal-O-Parimal Bhawan, Bhubaneswar once again moved the Government by justifying the regularization of rest 8 no. of Data Entry Operators. It is also submitted that subsequently vide communication dated 29.05.2012 under Annexure-3 to the writ petition, not only the Chief Engineer, RWS&S but also Superintending Engineer, RWS&S, Cuttack vide his letter dated 10.07.2012 under Annexure-4 requested

the Government to regularize the services of 5 nos. of Data Entry Operators remaining out of the balance 8. In the said communication dated 10.7.2012 under Annexure-4, the Petitioner is placed at Serial No.4 with his first date of engagement as 10.9.2007.

4. It is further submitted by the learned counsel for the Petitioner that in the meantime, basing on the request made by the Chief Engineer and Executive Engineer of RWSS Division, Bhadrak vide his letter dated 9.5.2013 under Annexure-6 to the writ petition submitted the required information in the prescribed proforma and in the said communication, the name of the Petitioner was reflected at Serial No.2. It is also submitted that in spite of all such communications made by the department, when the Petitioner was not regularized in his service, the Petitioner moved the Government seeking his regularization. It is also submitted that vide order dated 24.02.2014 under Annexure-10 to the writ petition, the said representation of the Petitioner was forwarded to the Chief Engineer, RWS&S-I, Odisha, Bhubaneswar for taking appropriate action at his level. It is also submitted that in spite

of such request made by the Petitioner for his regularization and the fact that the Petitioner's claim for regularization is covered by the resolution of the Government issued by the G.A. Department dated 17.09.2013 and 16.01.2014, but when no steps was taken to absorb the Petitioner in the regular establishment, he approached before the learned Tribunal in O.A. No.496 of 2016. It is submitted that learned Tribunal vide its order dated 16.03.2016 under Annexure-13 to the writ petition disposed of the said Original Application with the observation that the Opposite Party No.1 to take a decision on the Petitioner's claim. It is submitted that Opposite Party No.1 without proper appreciation of the nature of engagement of the Petitioner and the regularization of similar situated Data Entry Operators appointed along with the Petitioner after creation of the posts, rejected the Petitioner's claim vide the impugned order dated 20.6.2013 under Annexure-14 to the writ petition. It is also submitted that only on the ground that the Petitioner is engaged through outsourcing, the claim of the Petitioner was rejected vide the impugned order under Annexure-14 to the writ petition. It is submitted that the Petitioner at no point of time

was engaged through outsourcing. It is also submitted that the Petitioner was initially engaged on contractual basis and payment was made through hand receipt and subsequently when 38 posts are created in terms of the communication issued by the Government on 25.1.2007 under Annexure-1 Series to the writ petition, all the said 38 sanctioned posts were filled up. Out of those 38 posts, which were created and filled up, 30 persons similarly situated were regularized in their services and taking that thing into account, the authorities moved the Government time and again to absorb the Petitioner and the rest 8 nos. Data Entry Operators in the regular establishment. It is also submitted that in none of the communications made by the Chief Engineer and Superintending Engineer as well as the Executive Engineer, the Petitioner was ever shown to have been engaged through outsourcing. Therefore, it is submitted that Opposite Party No.1 without proper appreciation of the matter and the nature of appointment of the Petitioner as well as the regularization extended in favour of 30 nos. of similarly situated Data Entry Operators, rejected the claim vide the impugned order.

Accordingly, it is submitted that the said order needs interference of this Court with a direction on the Opposite Parties to absorb the Petitioner in the regular establishment.

5. Mr. Y.S.P. Babu, learned Additional Government Advocate, on the other hand, made his submission basing on the stand taken in the counter affidavit. It is submitted that since the Petitioner was engaged through outsourcing in the RWS&S Division, Bhadrak, he is not entitled for his absorption in the regular establishment and no illegality has been committed by the O.P. No.1-Principal Secretary to Government, Rural Development Department, Government of Odisha, Secretariat Building, Bhubaneswar in rejecting his claim.

6. Perused the materials available on record. This Court, after going through the same, finds that the Petitioner was initially engaged on contractual basis w.e.f. 01.05.2006 and he received his payment through hand receipt. This Court further finds that basing on the communication issued by the Government on 25.01.2007 under Annexure-1 Series to the writ petition, not only 38 posts were created and filled up on contractual basis, but also the Petitioner was engaged as

against one such post. This Court further finds that out of 38 persons appointed basing on the order dated 25.01.2007 under Annexure-1 to the writ petition, since 30 persons were regularized, the Chief Engineer, Rural Water Supply & Sanitation, Jal-O-Parimal Bhawan, Bhubaneswar moved the Government under Annexure-3 to the writ petition seeking absorption of the rest 8 nos. of contractual employees which also includes the Petitioner. From the communication made by the Executive Engineer, RWSS Division, Bhadrak under Annexure-6 and 7 to the writ petition, it is quite apparent that the Petitioner was appointed initially through HR basis and subsequently he was paid consolidated salary on his appointment w.e.f. 19.7.2007. Therefore, the rejection of the claim of the Petitioner vide the impugned order on the ground that the Petitioner was engaged through outsourcing is not based on record.

7. Since the Petitioner was engaged as against the sanctioned post and more than 30 persons similar situated have been regularized in the meantime, this Court is inclined to quash the impugned order dated 20.06.2016 under

Annexure-14 to the writ petition. While quashing same, this Court directs the Opposite Party No.1-Principal Secretary to Government, Rural Development Department, Government of Odisha, Secretariat Building, Bhubaneswar to absorb the Petitioner in the regular establishment on completion of 6 years of his engagement on contractual basis or at least from the date similarly situated contractual employees were so regularized. While directing so, this Court directs the Opposite Party No.1-Principal Secretary to Government, Rural Development Department, Government of Odisha, Secretariat Building, Bhubaneswar to sanction and release the financial benefits as due and admissible in favour of the Petitioner. The entire exercise shall be completed within a period of three months from the date of receipt of this order.

8. With the aforesaid observations and directions, the writ petition is disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
The 21st October, 2022/D. Aech, PA.