

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No. 609 of 2013

Niranjan Bhuyan

....

Petitioner

Mr. P.K. Mohanty, Advocate

- Versus -

State of Odisha & Others

.... Opposite Party

Mr. N.K.Praharaj, Standing Counsel

**CORAM:
JUSTICE BIRAJA PRASANNA SATAPATHY**

**ORDER
20.05.2022**

**Order No.
2.**

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioner and learned Addl. Standing Counsel for the State.
3. As per order dated 16.03.2022, learned State Counsel has obtained necessary instructions and files an additional counter affidavit on behalf of opposite parties no. 1 and 3 after serving copy on learned counsel for the petitioner. The same be kept on record. On consent of learned counsel for both parties, the matter is heard finally.
4. The petitioner has filed this application with prayer to set aside the letter under Annexure-5, whereby, it was inter alia directed that there shall be no engagement of daily wage labourers in the opposite party establishment.
5. The brief facts of the case are that the petitioner was engaged as Contingent Labourer in the Directorate of Mining and Geology on 03.08.1994. He was initially paid Rs. 25/- per day, which was enhanced to Rs.150/- per day. As per the direction issued by the Government of Odisha in Department of Steel and Mines

Department in their letter dated 20.04.2012, the Director of Geology (opposite party no.3) was directed to furnish the status of the D.L.R. employees engaged after 12.04.1993 for regularization of their services. Pursuant to such direction, the opposite party no.3 furnished the status of the contingent paid labourers as D.L.Rs. engaged after 12.04.1993 in his letter dated 20.04.2012, which is annexed as Annexure-3 to the writ petition. Subsequently, the Government in Finance Department vide resolution dated 04.09.2012 granted temporary status and absorption of casual/daily wage labourers engaged in different Govt. establishments prior to 12.04.1993 against regular Group-‘D’ vacancies. While the matter stood thus, the opposite party no.3 vide letter dated 20.02.2013, which is enclosed as Annexure-5 to the writ petition, passed an order that there shall be no engagement of daily wage labourers in any store/laboratory by officers of Headquarters and sub-ordinate offices without prior approval of the authority/Government after February, 2013. Apprehending that he may be disengaged on the basis of such letter of opposite party no.3, the petitioner approached the erstwhile Odisha Administrative Tribunal in O.A. No. 609(C) of 2013, which has since been transferred and registered as the present writ petition.

6. A counter affidavit has been filed by opposite parties no. 1 and 3. While admitting the fact of engagement of the petitioner w.e.f. 03.08.1994, it is stated that he was engaged on “No work No pay” basis and that he was not paid wages on government holidays and on the dates he remained absent from work. The averment that

the petitioner was continuing against the regular vacant post was denied.

7. Heard Mr. P.K. Mohanty, learned counsel for the petitioner and Mr. H.K. Panigrahi, learned Addl. Standing Counsel for the State.

8. In course of hearing, it is brought to notice of the Court by Mr. Mohanty that after a policy decision was taken by the Government to fix a cut off date for absorption of all casual workers, i.e., 12.04.1993, the opposite party no.3, vide letter dated 12.04.2012, which is enclosed as Annexure-B to the counter affidavit, specifically recommended the case of the petitioner and six other similarly placed labourers for their regularization in service on humanitarian ground since they had been engaged after the cut-off date, i.e., 12.04.1993. Mr. Mohanty has referred in particular to the observation made by opposite party no.3 in the said letter to the effect that the labourers have gained experience in performing different official works entrusted to them. In the additional counter affidavit filed by opposite parties no. 1 and 3, a document has been enclosed under Annexure-F thereto, which is a communication made by opposite party no.3 to the Additional Standing Counsel. In the said communication it is stated that in so far as the recommendation made for absorption of the petitioner and six others as per letter dated 12.04.2012 is concerned, the same has not yet been considered at the Government level. It is further stated that the petitioner is presently being paid remuneration as per minimum wages, as revised by the Government from time to time.

9. From the communication enclosed as Annexure-F to the

additional counter, it is evident that the Government has not yet taken a decision on the recommendation made by the opposite party no.3 in his letter dated 12.04.2012. Being the competent authority, it is for the Government in the appropriate department to first take a decision regarding the recommendation so made by opposite party no.3.

10. For the foregoing reasons, therefore, this Court deems it proper to dispose of the writ petition by directing the concerned authority, i.e., opposite party no.1 to take a decision on the recommendation made in respect of the petitioner under letter dated 12.04.2012 of opposite party no.3 regarding his absorption in the regular establishment. A decision in this regard shall be taken in accordance with law within a period of two months from the date of communication of this order or on production of certified copy thereof by the petitioner.

11. The writ petition is disposed of accordingly.

(Biraja Prasanna Satapathy)
Judge

Subrat