

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.4184 of 2012

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

.....

Subhashree Dei

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s.D.K.Panda, G.Sinha &
A.Mishra.

For Opp. Parties : Standing Counsel
Mr. N.K.Praharaj.

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 02.05.2022 and Date of Order:12.05.2022

Biraja Prasanna Satapathy, J.

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

“In view of the facts stated above the applicant humbly prays that the Hon’ble Tribunal may graciously be

pleased to direct the respondents more particularly the respondent No.3 to reconsider the regularization of the application from the date when she had completed six years of continuous service as contractual Staff Nurse as has been done in case of the contractual Staff Nurses of the Rayagada as well as Sundargarh districts.

And further be pleased to direct the respondents more particularly the respondent no.3 to ante-date the regularization of the applicant as Staff Nurse w.e.f. 04.07.2009, when she had completed six years”.

4. It is submitted by Mr. Mishra, learned counsel for the Petitioner that pursuant to the instruction issued by the Director of Health Services, Odisha on 23.12.2002 and as per the merit list prepared by the Selection Committee, the Petitioner was appointed as a Staff Nurse on contractual basis vide Order No.11108 dated 13.06.2003 of the C.D.M.O, Ganjam, Berhampur-Opposite Party No.3.

5. It is submitted that pursuant to such appointment the Petitioner was posted as a Staff Nurse in CHC-II, Jagannath Prasad under Medical Officer-in-charge, Jagannath Prasad, CHC.

6. It is further submitted that while continuing as a contractual Staff Nurse w.e.f. 13.06.2003, the Government in the Health and Family Welfare Department vide Resolution Dated 27.12.2008 resolved to regularize the services of such Staff Nurse appointed on contractual basis and who have completed six years of uninterrupted and continuous service.

7. It is submitted that subsequent to the the resolution issued on 27.12.2008 under Annexure-2, the Department vide Office Memorandum dated 20.01.2009 under Annexure-3 created 535 posts of Staff Nurses to fill up on regular basis, the eligible contractual Staff Nurses, who

have completed six years of uninterrupted continuous service. It is also indicated in the said Office Memorandum that these 535 posts will be over and above the normal sanctioned strength.

8. It is also submitted that subsequent to issuance of Annexures-2 and 3, the Department vide letter dated 09.02.2009 issued certain clarification with regard to regularization of such contractual Staff Nurses and the said letter was communicated to all the C.D.M.Os and Superintendent of Medical Colleges of the State.

9. Mr. Mishra, learned counsel for the Petitioner submitted that pursuant to the resolution issued under Annexure-2 and the Office Memorandum issued under Annexure-3, the Office of C.D.M.O., Rayagada and C.D.M.O., Sundargarh though regularized similarly situated Staff Nurses appointed on contractual basis just on completion of six years of uninterrupted service vide Office order dated 10.02.2009 under Annexure-5 and 22.05.2009 under Annexure-6, but the Petitioner was only regularized vide office order dated 04.03.2010 under Annexure-7. In the said order dated 04.03.2010 issued by the Opposite Party No.3 under Annexure-7, the Petitioner was regularized as a Staff Nurse and his name is reflected at Sl. No.22.

10. It is submitted that since basing on the resolution issued under Annexure-2 and office Memorandum issued under Annexure-3 similarly situated contractual Staff Nurse working under C.D.M.O, Rayagada and C.D.M.O., Sundargarh were regularized just after completion of six years of engagement as a contractual Staff Nurse, the

Petitioner was only regularized vide office order dated 04.03.2010 under Annexure-7.

11. Mr. Mishra accordingly submitted that in view of the benefit extended in favour of the similarly situated contractual Staff Nurse working under C.D.M.O, Rayagada and C.D.M.O., Sundargarh, the Petitioner is also eligible for his absorption in the regular establishment just after completion of six years of engagement, which falls due on 12.06.2009. Accordingly, Mr. Mishra, submitted that appropriate order be passed by directing the Opposite Parties to absorb the Petitioner in the regular establishment on completion of six years of continuous service and to ante-date the date of regularization of the Petitioner.

12. Mr. Praharaj, learned Standing Counsel for the Opposite Parties made his submission relying on the stand taken in the counter filed by the Opposite Parties.

13. It is submitted that pursuant to the resolution issued under Annexure-2 and the office memorandum issued under Annexure-3 and Staff Nurses working under OHSDP, a meeting was held on 13.11.2009 in the office of the Chamber of Joint Secretary to Government Health and Family Welfare Department and in the said meeting it was clearly mentioned that some of the C.D.M.Os are taking into account the post of Staff Nurses under OHSDP for regularization, whereas some C.D.M.Os have not done the same. Accordingly, it was decided that regular appointment will be counted prospectively. Basing on such decision, in the meeting held on 26.02.2010 under the Chairmanship of C.D.M.O, Ganjam, a decision was taken to regularize the

Staff Nurse working under OHSDP and the order of regularization accordingly was issued vide order dated 04.03.2010 under Annexure-7.

14. It is accordingly submitted that no illegality or irregularity has been committed by the Opposite Party No.3 in absorbing the Petitioner in the regular establishment vide order under Annexure-7 and the Petitioner is not entitled to get the benefit of regularization from the date similarly situated Staff Nurses working under C.D.M.O., Rayagada and Sundargarh were absorbed in the regular establishment.

15. It is accordingly submitted that the prayer made by the Petitioner is not maintainable and the Writ Petition be dismissed.

16. Heard learned counsel for the Parties at length.

17. Perused the materials available on record. It is not disputed that pursuant to the resolution issued under Annexure-2 and the office Memorandum issued under Annexure-3, the Petitioner became eligible for her absorption in the regular establishment on completion of six years of continuous service as a contractual Staff Nurse. It is also not disputed that the Petitioner was appointed as a contractual Staff Nurse on 13.06.2003. It is also found that the Opposite Party in Para-9 of the counter has also taken a stand that while some of the CDMOs regularized the Staff Nurse working under their establishment, some of the CDMOs have not done the same. In the case of the Petitioner, Opposite Party No.3 only decided to absorb the Petitioner in the meeting held on 26.02.2010 under Annexure-D. Since similarly situated contractual Staff

Nurses working under CDMO, Rayagada and Sundargarh got the benefit of regularization on completion of six years of contractual engagement, this Court taking into account the pleadings made in Para-6.8 of the Writ Petition directed the State Counsel to obtain instruction on the same vide order dated 17.02.2022. But in spite of further opportunities given to the learned State Counsel, no instruction was provided and accordingly the matter was heard. In Para-6.8 of the Writ Petition, the Petitioner has taken a specific stand with regard to the benefit extended in favour of similarly situated contractual Staff Nurse working in the establishment of C.D.M.O, Rayagada and C.D.M.O, Sundargarh and the discriminatory action of the Opposite Party No.3. In the office order issued by C.D.M.O., Rayagada under Annexure-5 and the C.D.M.O., Sundargarh under Annexure-6, the resolution issued by the Department under Annexure-2 and the Office Memorandum issued on 20.01.2009 under Annexure-3 were followed and similarly situated contractual Staff Nurses were absorbed just after completion of six years of uninterrupted service. But in the case of the Petitioner, since the Opposite Party No.3 did not consider the claim of the Petitioner in terms of Annexures-2 and 3 and took a delayed decision on 26.02.2010 vide Annexure-D, the Petitioner was absorbed only vide office order dated 4.3.2010 under Annexure-7. Taking into account the benefit extended in favour of similarly situated contractual staff nurse working in the establishment of C.D.M.O, Rayagada and Sundargarh, this Court is of the considered view that the Petitioner being similarly situated is also eligible and entitled for his absorption in the regular

establishment w.e.f. the date i.e. on completion of six years of engagement.

18. Accordingly, this Court directs the Opposite Party No.3 to extend the benefit of regularization in favour of the Petitioner on completion of six years of engagement i.e. 12.06.2009 and pass appropriate order thereon within a period of three months from the date of receipt of this order.

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

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 12th of May, 2022/Subrat

