

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No.1033 of 2019

In the matter of an application under Article 226 & 227 of the Constitution of India.

Bhabagrahi Nayak

...

Petitioner(s)

Versus

State of Odisha & Ors.

...

Opposite Parties

For Petitioner

...

M/s. Dayananda Mohapatra,
M.R.Pradhan, J.Barik and
P.K.Singh Deo.

For Opposite Parties

...

Mr. S.Mishra, Addl.Standing
Counsel.

J U D G M E N T

PRESENT:

THE HONOURABLE JUSTICE BISWANATH RATH

Date of Hearing and Judgment: 07.12.2022

Biswanath Rath, J. This petition involves the following relief:

“In view of the facts stated above in para-6, the applicant prays for the following relief(s)

- i. To direct the respondents to regularize the service of applicant under work charge establishment in any group-c post treating his date of engagement as 16.9.91 from the date when juniors are brought under work charge establishment.
- ii. To direct the respondents to grant all service and consequential benefits consequent upon regularization of the service of applicant under work charge establishment when juniors are brought under work charge establishment.
- iii. To direct the respondents to regularize the services of applicant.
- iv. And pass such other order/orders as may be deemed fit and proper for the interest of justice.
- v. To direct the Opposite parties to correct the gradation list at Annexure-2 in respect of date of engagement of petitioner as 16.9.1991 in place of 16.9.1996 and further direct the Opposite Parties to include the name of the petitioner in the Gradation list

of NMR/H.R. working under PH. Division No.II, Cuttack up to 12.4.1993.”

2. Background involved herein and as pleaded, petitioner claimed to have been engaged prior to 12.12.1992 while also admitting that he did not possess the appointment letter, if any. Taking this Court to Annexure-1 at page 14 of the brief, an attempt is made that since the petitioner was continuing as N.M.R. under stores P.H. Section, Cuttack was directed to work in Division Office on deployment basis. Taking this Court to Annexure-2, a document at page 15 of the brief, plea has again been advanced by virtue of this letter to the extent that the petitioner was further attached to confidential branch and such communication was issued on 16.11.1992. In reference to document at Annexures-4 and 5, Mr.Mohapatra, learned counsel claims that for the document of Department itself, there is clear disclosure to have the reference of letter dated 12.02.1992 finds place at page-14 in the internal communication of the department. Again, taking this Court to document at Annexure-14, running page-96 of the brief, and the recommendation of the competent authority for his eligibility for being posted against work-charge post and through the document at running page 98 appended to the rejoinder affidavit, it is here taking this Court to the document at page 92 issued on 31.08.2009, on the basis of information therein, Mr.Mohapatra, learned counsel for the petitioner claims through this document that NMRs engaged prior to 12.04.1993 since absorbed in work-charge establishment, petitioner being an employee prior to February, 1992 should have been included in the list prepared therein. It is at this stage, finding non-inclusion of the name of the petitioner in the list appended at page-29, petitioner was constrained to make a representation to the competent authority vide Annexure-3, running

page-19 of the brief. Finding no response, petitioner was constrained to file the present litigation in the Tribunal and on defunct of the Tribunal, the matter was transferred to this Court and taken up for hearing.

3. It is in the above view of the matter, Mr. Mohapatra, learned counsel for the petitioner claims that there should be a direction to the competent authority to bring in correction in the list of employees by showing petitioner an appointee prior to February, 1992 and as a consequence to include the name of the petitioner in the list at page 29 of the brief and consider the petitioner to be a work-charge employee being appointed by virtue of document issued at page- 29 and providing him all benefits flowing from such development.

4. Mr.Mishra, learned Additional Standing Counsel appearing for the State however taking this Court to the counter averments through paragraphs-5, 6 and 10 contends there was in fact no availability of correspondences referred to in running pages 14 and 15. The opposite parties have raised doubt in existence of such letter. Further, taking this Court to the development through Annexure-A/5, the document appended to the counter affidavit at running page-61 of the brief, a claim is made that at some point of time the petitioner himself indicated to have been continuing since 1997. It is in the above circumstance and for there is no foundation in the claim of the petitioner on his appointment prior to 12.04.1993, Mr.Mishra, learned Additional Standing Counsel claims for rejection of the petition involved herein.

5. Considering the rival contentions of the parties, this Court on examination of the averments and counter averments further the support through the rejoinder affidavit finds there is no clear

averments through paragraphs- 6 or 10 on the existence of document at Annexure-1 series, running pages-14 and 15 of the brief. However, reading through the departments letter at Aannexure-4 being issued on 20.12.2008, this Court finds the Junior Engineer writing this letter to the Assistant Engineer while indicating there is no trace of the actual date of engagement even after adequate search also recommends for considering the date of joining of the petitioner based on Office Order No.7 dated 12.02.1992 issued by the then Junior Engineer. Observation herein of the Junior Engineer makes it clear that there is at least bringing attachment to Office Order No.7 dated 12.02.1992 being a foundation to the petitioner's continuing prior to February, 1992. Further, looking to the document of the Establishment, itself a correspondence between Executive Engineer to the Superintending Engineer finds place at page-21 of the brief as Annexure-5, this document at least establishes the observation of the Executive Engineer that Sri Nayak was attached to Confidential Branch to assist the Junior Stenographer for undertaking assigned work vide Office Order No.6457 dated 16.11.1992 even enclosing copy of such letter in his correspondence dated 19.11.2009, which again confirms while continuing he was given further assignment by the letter dated 16.11.1992. It is in the circumstance and for enclosure of the copy of Office Order 6457 dated 16.11.1992 in the issuing of the correspondence by the Executive Engineer to the Superintending Engineer on 19.11.2009, this Court finds there is clear admission of the Executive Engineer making correspondence vide Office Order No.6457 dated 16.11.1992 admitting therein the fact that Sri Nayak was attached to Confidential Branch to assist the Junior

Stenographer in November, 1992 again clearly establishing petitioner was an employee prior to 12.04.1993 and thus becomes eligible to be brought to work-charge establishment. To add to this, this Court again finds another correspondence issued by the Executive Engineer to the Superintending Engineer issued on 20.10.2014. The Executive Engineer in attending to the call for correction of date of engagement in the gradation list has a clear observation in reference to the Office Order No.7 dated 12.02.1992 requesting the Superintending Engineer for consideration of the case of the petitioner and issuing suitable direction for follow up action at their level. This document finds place at page-98 of the brief appended as part of Annexure-14 series accompanied to the rejoinder affidavit of the petitioner.

6. It is next looking to the material brought through rejoinder affidavit, this Court taking into account a correspondence by the Superintending Engineer to the Engineer-in-Chief, wrote on 02.07.2020, a part of Annexure-14, running pages-96-97, this Court finds the Superintending Engineer had the following observation:

“In this connection, it is to further intimate that Sri Nayak, HR was deputed to work under P.H. Division-1, Cuttack vide memo No.5132 dt.22.07.1992 of the then Executive Engineer and subsequently he was attached to confidential branch vide his memo No.6457 dt.16.11.1992 and No.7 dt.12.02.1992 of Junior Engineer, Store P.H. Section, Cuttack (copy attached). Besides the representation of Sri Bhabagrahi Nayak, HR regarding correction of date of engagement in the gradation list was also forwarded and again by the Executive Engineer, P.H. Division-II, Cuttack vide letter No.4904 dt.19.11.2009 and letter No.9266 dt.20.10.2014 for imparting suitable instruction in this regards (copy attached). In view of the aforementioned facts, suitable action may kindly be taken regarding the disposal of para wise comments.”

7. This Court finds, while making above correspondence, the Superintending Engineer even enclosed the copy of Order No.7 dated 12.02.1992, Copy of Memo No.5132 dated 22.07.1992 while requesting the Engineer-in-Chief in considering the case of the petitioner following his request to be brought to work-charge

establishment along with similarly situated persons. All the correspondences hereinabove while not disclosing non-availability of the Order No.7 dated 12.02.1992, Memo dated 22.07.1992 and the order dated 16.11.1992, this Court finds strange in the submission of counter affidavit for the first time indicating that there is no trace of the above documents. This Court finds strange in the novel attempt of the department to object the claim of the petitioner. The plea taken in paragraphs-6, 7 and 10 of the counter affidavit remains completely contrary to the stand of their own correspondences issued by none else than the Executives engineer and Superintending Engineer even one issued by the Junior Engineer. In the circumstance and for clear admission of the Executive Engineer as well as Superintending Engineer on the availability of all such documents, this Court finds the petitioner herein has a clear case for being taken as a work-charge employee along with his counterparts from the date of their engagement at least bringing a chance in his date of appointment since February, 1992 at least in the gradation list. Attending to the stand of contesting opposite parties in reference to Annexure-A/5 appended to the counter, this Court finds there is declaration by petitioner to have been working as H.R. from 1997 cannot override the official admission through all the documents indicated hereinabove which all goes to show that petitioner is at least continuing as N.M.R prior to February, 1992.

8. Accordingly, allowing this petition, this Court directs the opposite parties herein to immediately correct the date of engagement of the petitioner in the gradation list, if no offer of appointment letter available at least taking into consideration the date 12.02.1992 appearing at page 14 of the brief to be the

appointment of the petitioner in the minimum by making necessary correction in the gradation list accordingly. Following the correction in the date of engagement of the petitioner at list bringing him to the date 12.02.1992, there should be follow up action in issuing appropriate order in treating the petitioner to have been engaged in work-charge establishment since 31.08.2009 along with similarly situated employees as communicated vide Order No.5169 finds place at running page- 29, Annexure-7 series, in bringing the petitioner in the cadre of work-charge since 31.08.2009 along with his counterparts taking into account that petitioner is to be treated as work-charge establishment by virtue of this judgment. In the above circumstance, the petitioner shall also entitled to all increases and or increment made entitled to work-charge employees so engaged pursuant to page-29 document in the meanwhile, which shall be calculated within one month of making necessary correction in the gradation list and bring the petitioner to the work-charge establishment by working out at least within one month hence. After the calculation is made, while considering the entire period notionally for the purpose of seniority and or promotion whatsoever be paid at least 50 of such arrear within a further period of one month. Failure of payment by above period, petitioner will be entitled to interest @ 6% per annum on 50% arrear from the date of entitlement.

9. In the result the writ petition succeeds. No cost.

.....
Biswanath Rath, J.

*Orissa High Court, Cuttack.
 Dated the 7th day of December, 2022/SKS*