

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C)(OAC) No.707 of 2019

Satyanarayan Mishra

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

14.10.2022

Order No

02.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.

2. Heard Mr. L.P. Dwivedy, learned counsel for the Petitioner and Mr. M.K. Balabantray, learned counsel for the State-Opposite Parties.

3. This Writ Petition has been filed by the Petitioner seeking a direction to the Opposite Parties to absorb him on regular basis as against the Post of Field Man Demonstrator (FMD) w.e.f.26.08.1997.

4. It is submitted by Mr. Dwivedy, learned counsel for the Petitioner that vide office order issued on 26.08.1997 under Annexure-1, the Petitioner was engaged as a FMD on ad hoc basis.

5. It is further submitted by Mr. Dwivedy that on being so engaged on ad hoc basis, the Petitioner was allowed to continue as such vide

order issued on different dates by the Office of Opposite Party No. 2.

6. It is also further submitted by Mr. Dwivedy that seeking absorption in the regular establishment though the Petitioner approached the learned Tribunal in O.A. No.428 of 2002 and the learned Tribunal disposed of the matter vide order dated 27.07.2005 passed an order that Petitioner is allowed to compete along with others for regular recruitment to the post and until such regular appointment is made, the post in which the Petitioner is continuing on ad hoc basis be allowed to continue.

7. It is further submitted by Mr. Dwivedy that vide order dated 27.07.2005 under Annexure-2, learned Tribunal while disposing the O.A. No.428 of 2002, though directed the Opposite Parties to consider the candidature of the Petitioner for his regular appointment as and when such process is initiated by the Opposite Parties, but no regular selection process was ever initiated to fill up the posts.

8. Accordingly, Mr. Dwivedy, learned counsel for the Petitioner taking into account the long continuance of the Petitioner as FMD on ad hoc basis and the inaction of the Opposite Parties in going for regular selection as directed by the learned Tribunal prayed for absorption of the Petitioner in the regular establishment.

9. Mr. Dwivedy in support of the claim relies on the decisions of the Hon'ble Apex Court reported in the case of *Secretary, State of Karnataka vs. Uma Devi (3)*, (2006) 4 SCC-1, *State of Karnataka vs. M.L.Keshari*, (2010) 9 SCC 247, *Nihal Singh & Others vs. State of Punjab & Others*, 2013 (14) SCC 65 and *Amkant Rai vs. State of Bihar & Others*, 2015 (8) SCC 265.

10. Mr. Dwivedy, learned counsel for the Petitioner also brought to the notice of this Court, the judgment of this Court passed on 01.08.2017 in OJC No.11051 of 2000 in the case of ***Rajendra Kumar Nayak vs. Orissa Mining Corporation Ltd., & Others*** reported in ***2007 (II) ILR-CUT-912***.

11. It is submitted by Mr. Dwivedy, learned counsel for the Petitioner taking into account similar continuance on ad hoc basis, this Court in ***Rajendra Kumar Nayak's*** case relying on the decision of the Hon'ble Apex Court, directed for regularization of the Petitioner therein.

12. Per contra, Mr. Balabantray, learned counsel for the State- Opposite Parties relying on the stand taken in the counter submitted that in view of the disengagement of the Petitioner for certain period, the Petitioner is not covered by the decision of this Court as relied on by Mr. Dwivedy, learned counsel for the Petitioner.

13. It is further argued by Mr. Balabantray that the Petitioner because of his continuance on ad hoc basis is getting the basic pay and other benefits and he is no way prejudiced by the inaction of the opposite parties in not regularizing him.

14. After hearing the parties at length and in view of the long continuance of the Petitioner on ad hoc basis w.e.f.26.08.1997 with some break in service, for which no fault can be found to the Petitioner and the decision relied on by Mr. Mohanty, more specifically the decision of this Hon'ble Court rendered in OJC No.11051 of 2000 in the case of ***Rajendra Kumar Nayak vs. Orissa Mining Corporation Ltd. & Others***, this Court is of the prima-facie view that Petitioner is entitled for his absorption in the regular establishment.

15. Accordingly, while disposing the Writ Petition, I direct the Opposite Parties to take effective steps to regularize the service of the Petitioner in the post in which he is continuing at present. I also direct that the entire exercise with regard to regularization of the Petitioner be completed within a period of three months from the date of production of the certified copy of this order.

16. With the aforesaid observation and direction the Writ Petition (OAC) is disposed of. There shall no order as to costs.

17. Issue urgent certified copy of the order as per rules.

Sneha



(Biraja Prasanna Satapathy)
Judge