

HIGH COURT OF ORISSA AT CUTTACK

W.A No.932 & 933 of 2021

1. W.A No.932 of 2021

(Arising out of WP(C) No. 32708 of 2021 passed by the Learned
Single Judge on 29.10.2021)

Narayan Behera

.... ***Appellant***

-versus-

State of Odisha and Others

.... ***Respondents***

2. W.A. No.933 of 2021

(Arising out of WP(C) No. 32712 of 2021 passed by the Learned
Single Judge on 29.10.2021)

Sudarsan Ganda

.... ***Appellant***

-versus-

State of Odisha and Others

.... ***Respondents***

Advocates appeared in both the cases through Hybrid Mode

For Appellant(s)

:Mr. Krishna Chandra Sahu

For Respondent(s)

:Mr. M. K. Khuntia, AGA

CORAM:

JUSTICE JASWANT SINGH

JUSTICE M.S. RAMAN

ORDER

29.07.2022

Order No.

02. This matter is taken up through hybrid arrangement.

1. The present two intra-court appeals have been preferred by the appellants aggrieved by the common order dated 29.10.2021 passed by Hon'ble Single Judge in Writ Petition No. W.P. (C) No.32708 of 2021 wherein the

appellant in W.A. No.932 of 2021 was the Petitioner has been dismissed. Further, the other Writ Appeal No. W.A. No.933 of 2021 arising out of W.P.(C) No.32712 of 2021 was dismissed based upon the reasoning provided under W.P. (C) No.32708 of 2021(common order).

2. The brief facts of the Writ Appeal No.932 of 2021 emerging from pleadings are that the appellant No. 1 i.e. Mr. Narayan Behera belonging to SC Category was appointed as a Multipurpose Health Worker Malaria (MHW) on purely contractual basis at Talarimaha sub-centre under G. Udaygiri, Common Health Centre (CHC) vide order dated 28.02.2009 by the Medical Officer. He was transferred to Kurmingia under CHC of G. Udaygiri vide order dated 12.06.2015 passed by the Medical Officer. Further on 26.04.2016, the appellant/Narayan was again transferred to Kotogarh under CHC Subarnagiri. The appellant joined the Government hospital at Kotogarh on 12.05.2016 wherein he was deputed to attend an enquiry on 29/30.06.2016. After attending the said deputation, he never returned back to his headquarter at Kotogarh to continue his job and consequently remained on unauthorized absence.

2.1 A letter was issued to the appellant to explain his absence; however, no reply was received. Finally, the CDM & PHO sent a letter to the appellant dated 30.03.2019 vide which the appellant was **retrospectively disengaged from**

April, 2017. Relevant portion of the letter dated 30.03.2019 is reproduced below:

“On going through the official records, it is observed that, you have remained unauthorized absent since April 2017 to till date, but you have not joined in your duty.

*Hence, **you are hereby disengaged from your service retrospectively with effect from April, 2017 since you have remained unauthorized absent from your duty and as such you have been disengaged and relieved from contractual service.**”*

2.2 Upon being aggrieved by the disengagement letter, the appellant preferred a Writ Petition before this Hon’ble High Court numbered **W.P.(C) No.22385 of 2019**. The learned Single Judge disposed of the matter vide order dated 20.11.2019 with the observation that a decision on the disengagement of the petitioner should be taken by the CDM & PHO, Kandhamal only upon considering his representation.

2.3 In compliance of the direction passed by the learned Single Judge in W.P.(C) No.22385 of 2019, the CDM & PHO, Kandhamal, vide order dated 31.04.2020 rejected the grounds taken by the appellant No. 1 and did not interfere with the earlier decision of disengagement after due consideration of the representations.

2.4 The order of CDM & PHO, Kandhamal dated 31.04.2020 was challenged by the appellant herein before this Court numbered W.P.(C) No.32708 of 2021. The learned Single Judge vide order dated 29.10.2021 observed that no illegality or irregularity is committed by the CDM & PHO, Kandhamal in its aforesaid order and hence

dismissed the Writ Petition. The relevant portion of the order dated 29.10.2021 is reproduced below:

“4.....Thereafter, a letter was issued to the petitioner for non-submission of the explanation on 25.08.2016, but the petitioner did not respond the same. Consequentially, since the petitioner, who was engaged on contractual basis, was disengaged from service on 25.03.2017 and from the date onwards, he was not in employment. But to circumvent the delay, the petitioner has filed a representation before the authority and approached this Court by filing W.P.(C) No.22385 of 2019 alleging that the same has not been considered by the authority and this Court, vide order dated 20.11.2019, disposed of the writ petition directing the authority to consider the representation of the petitioner. As such, on consideration of same, the grievance of the petitioner has been considered and rejected by the authority vide order dated 31.04.2020 under Annexure-9.

3. In the above view of the matter, this Court is considered view that no illegality or irregularity has been committed by the authority in passing the order impugned. Consequentially, the writ petition merits no consideration and the same is hereby dismissed.”

3. The Writ Appeal No.933 of 2021 shares an identical fact with that of Writ Appeal No.932 of 2021 and only the relevant facts are briefly mentioned. In this case, the appellant i.e. Mr. Sudarsan Ganda belonging to the SC Category was appointed as a MPHW (Malaria) on 10.03.2009 on purely contractual basis at Dimirikhole Sub-Centre under CHC, Khajuripada. It is his claim that he was in service in the month of January, 2018 and attended a Basic Health Service Provider's Training on RI at DHH, Phulbani from 09.01.2018 to 10.01.2018.

However, the CDMO and PHO, Kandhamal vide letter dated 30.03.2019 retrospectively disengaged the appellant

from December, 2017. The relevant portion is reproduced below:-

“On going through the official records, it is observed that you have remained unauthorized absent since December-2017 to till date, but, you have not joined in your duty.

Hence, you are here by disengaged from your service retrospectively with effect from December-2017, since you have remained unauthorized absent from your duty and as such you have been disengaged and relieved from contractual service.”

3.1 The disengagement order was challenged by the appellant before this Court, which was disposed of by this Court by learned single Judge vide order dated 20.11.2019 with a direction to the CDMO & PHO, Kandhamal to decide upon the disengagement of the appellant only after considering his representation.

The CDMO & PHO, Kandhamal after considering the representation made by the appellant and by order dated 06.03.2020 decided not to interfere with the disengagement order. The relevant portion of order dated 06.03.2020 is reproduced below:-

“Whereas Sri Ganda, MPHWM has joined on duty on dated 22.10.2012 as per the CDM & PHO, Kandhamal order No.1126 dated 19.10.2012 and he performed Govt. duty from dated 22.10.2012 to 31.01.2013. Moreover he has submitted an undertaking for not doing such type of mistake in future and doing his work sincerely. The CDM & PHO, Kandhamal considering his representation & under taking submitted by Sri Ganda, he has been repositioned at SC Dimirikhole under CHC Khajuripada with a warning to rectify his behavior for such type of unauthorized absence henceforth, otherwise he will be terminated from his contractual service.

Whereas Sri Ganda, MPHWM after joining at CHC, Khajuripada he has again repeated same type of mistake and remained unauthorized absence from 01.08.2017 onwards as reported by the BPHO, CHC Khajuripada. In connection with as per contractual term and condition laid down by Govt. he has been disengaged from his contractual service vide this office letter No.4173 dated 30.03.2019 by CDM & PHO, Kandhamal.

3.2 The order dated 06.03.2020 passed by the CDMO & PHO, Kandhamal was challenged before this Hon'ble Court in W.P.(C) No.32712 of 2021. The learned Single Judge by order dated 29.10.2021 relied upon the case of **Narayan Behera v. State of Odisha and Others** in W.P.(C) No.32708 of 2021 and dismissed the Writ Petition. The relevant portion of order dated 29.10.2021 is reproduced below:-

*"4. It is agreed by learned counsel for the parties that the issue involved in this case is analogous to one involved in W.P.(C) No.32708 of 2021 (**Narayan Behera v. State of Odisha and others**), which has been disposed of today, i.e. 29.10.2021 by this Court.*

*5. Therefore, in view of the reasons stated in the detailed order dated 29.10.2021 passed in W.P.(C) No.32708 of 2021(**Narayan Behera v. State of Odisha and others**), this writ petition stands dismissed."*

4. On being aggrieved by the common order of **Narayan Behera v. State of Odisha and others in W.P.(C) No.32708 of 2021** dated 29.10.2021 the two appellants have preferred their aforesaid respective Writ Appeals.

5. Heard the learned counsels for the parties at length and by their able assistance perused the pleadings.

6. The appellants in the present case have preferred their appeals to interfere with the order passed by the

learned Single Judge. The scope of interference against the Order of the learned Single Judge, has been explained by this Court in the case of **Anindita Mohanty Vrs. The Senior Regional Manager, H.P. Co. Ltd. Bhubaneswar & Ors., 2020 (II) ILR - CUT- 398**, the relevant portion of which is reproduced below:

*“Let us first examine the power of the Division Bench while entertaining a Letters Patent appeal against the judgment/order of the Single Judge. This writ appeal has been nomenclatured as an application under Article 4 of the Orissa High Court Order, 1948 read with Clause 10 of the Letters Patent Act, 1992. Letters Patent of the Patna High Court has been made applicable to this Court by virtue of Orissa High Court Order, 1948. Letters Patent Appeal is an intra-Court appeal where under the Letters Patent Bench, sitting as a Court of Correction, corrects its own orders in exercise of the same jurisdiction as vested in the Single Bench. (Ref: (1996) 3 Supreme Court Cases 52, Baddula Lakshmaiah Vrs. Shri Anjaneya Swami Temple). **The Division Bench in Letters Patent Appeal should not disturb the finding of fact arrived at by the learned Single Judge of the Court unless it is shown to be based on no evidence, perverse, palpably unreasonable or inconsistent with any particular position in law. This scope of interference is within a narrow compass. Appellate jurisdiction under Letters Patent is really a corrective jurisdiction and it is used rarely only to correct errors, if any made.***

In the case of B. Venkatamuni Vrs. C.J. Ayodhya Ram Singh reported in (2006) 13 Supreme Court Cases 449, it is held that in an intra-Court appeal, the Division Bench undoubtedly may be entitled to reappraise both questions of fact and law, but entertainment of a letters patent appeal is discretionary and normally the Division Bench would not, unless there exist cogent reasons, differ from a finding of fact arrived at by the Single Judge. Even a Court of first appeal which is the final Court of appeal on fact may have to exercise some amount of restraint. Similar view was taken in the case of Umabai Vrs. Nilkanth Dhondiba Chavan reported in (2005) 6 Supreme Court Cases 243. In the case of Commissioner of Income Tax Vrs. Karnataka Planters Coffee Curing Work Private Limited reported in (2016) 9 Supreme Court Cases 538, it

is held that the jurisdiction of the Division Bench in a writ appeal is primarily one of adjudication of questions of law. Findings of fact recorded concurrently by the authorities under the Act concerned (Income Tax Act) and also in the first round of the writ proceedings by the learned Single Judge are not to be lightly disturbed.

Thus a writ appeal is an appeal on principle where the legality and validity of the judgment and/or order of the Single Judge is tested and it can be set aside only when there is a patent error on the face of the record or the judgment is against established or settled principle of law. If two views are possible and a view, which is reasonable and logical, has been adopted by a Single Judge, the other view, howsoever appealing may be to the Division Bench; it is the view adopted by the Single Judge, which would, normally be allowed to prevail. If the discretion has been exercised by the Single Judge in good faith and after giving due weight to relevant matters and without being swayed away by irrelevant matters and if two views are possible on the question, then also the Division Bench in writ appeal should not interfere, even though it would have exercised its discretion in a different manner, were the case come initially before it. The exercise of discretion by the Single Judge should manifestly be wrong which would then give scope of interference to the Division Bench.”

7. It is important to note that on 08.03.2019 the Health and Family Welfare Department, Government of Odisha published a notification titled the Odisha Multipurpose Health Worker (Male) Service (Method of Recruitment and Conditions of Service) Rules, 2019 vide which the MHW were to be regularized subject to them completing satisfactory contractual service for six (06) years among other modalities. Hence, the appellants have prayed for setting aside the impugned order (s) dated 29.10.2021 passed by the learned Single Judge and also to re-instate them in service as MPHWS (M) along with all consequential service and financial benefits as available under the Odisha

Multipurpose Health Worker (Male) Service (Method of Recruitment and Conditions of Service) Rules, 2019.

8. On a conjoint reading of all the facts relevant to these appeals and the judgment of the learned Single Judge, it is clear that both the appellants were engaged on purely contract basis as Multipurpose Health Worker Malaria (MHW) with consolidated salary of Rs.6,000/- per month under World Bank Project for posting under CDMO, Kandhamal and thus had no right to hold the post on which they were working and also could be terminated without assigning any reason keeping in view the nature of their appointment. We find both of them were rightly disengaged from their services w.e.f. April, 2017 and December 2017 respectively due to their unauthorized absence. In our considered view, it would actually amount to abandonment of their services. It is also evident that they never made any effort to rejoin their services or made any grievance regarding their disengagement from 2017 till lapse of two years. It was only upon issuance of the notification dated 08.03.2019 whereby employees working on contract basis on similar posts as that of the appellants were regularized upon fulfilling certain criteria, the appellants made effort to join their services. This sustained inaction by the appellants was not explained and cannot be rewarded by acceding to their prayers apart from having no right whatsoever to claim reinstatement. Further, the limited scope of interference involved in these appeals preclude us from disturbing the finding of fact arrived at by

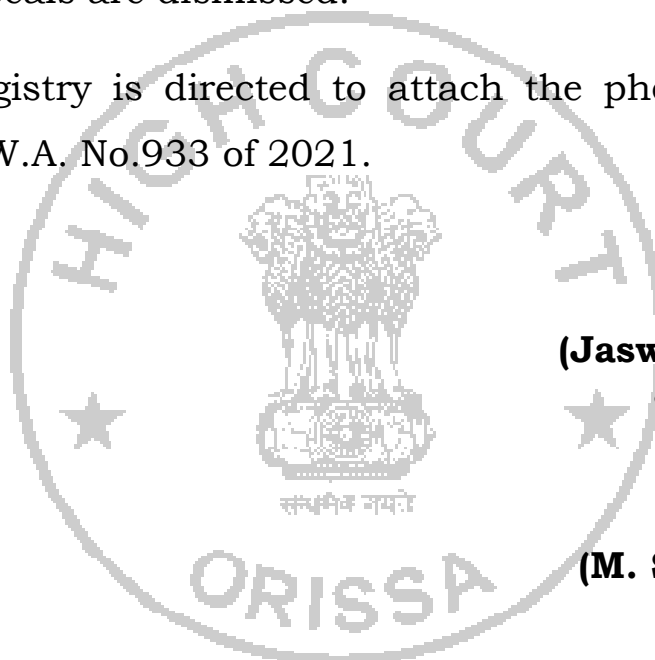
the learned Single Judge of the Court unless it is shown to be based on no evidence, perverse, palpably unreasonable or inconsistent with any particular position in law which the appellants have failed to do so.

9. In view of the afore-mentioned points, we find that the appellants do not have any right to seek reinstatement of their services with the consequential benefits, which were concededly on contract basis and hence, these intra-court appeals are dismissed.

Registry is directed to attach the photocopy of the order in W.A. No.933 of 2021.

(Jaswant Singh)
Judge

(M. S. Raman)
Judge



Sipun

29th July, 2022
Cuttack