

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C). No.39394 of 2021

Moti Dei *Petitioner*

-versus-

State of Odisha and Ors. *Opp. Parties*

Advocates appeared in the case:

For Petitioner : *Mr. Rabinarayan Nayak, Adv.*

-versus-

For Opp. Parties : *Mr. Biplaba Mohanty, SC*
(for S & ME Deptt.)

CORAM:
DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-06.09.2022

DATE OF JUDGMENT:-20.09.2022

Dr. S.K. Panigrahi, J.

1. The Petitioner, in this Writ Petition, challenges the inaction of the Opposite Parties in not regularizing her Service though she has rendered more than 25 years of service as Class-IV employee (Peon) in M.S. High School, Baramba and Government Girls High School, Badamba on ad hoc

basis without getting any benefits as released in favour of other equally placed employees.

I. Facts of the case.

2. The Petitioner was initially appointed as a Class-IV employee (Peon) on ad hoc basis in M.S. High School, Badamba, District- Cuttack by the then Inspector of Schools, Cuttack Circle, Cuttack vide his office order No.9097, dated 12.06.1996. The said ad hoc appointment was made for 44 days term with one day gap between two spells of appointment in the scale of pay of Rs.750-12-870-EB-14-940/- with admissible D.A. with effect from the date on which she joins the appointment vide Sri I. Jena adjusted.
3. The Petitioner is now continuing in ad hoc service on 44 days basis with one day gap in between two spells of appointment since the date of her appointment. While the Petitioner was continuing as a peon on ad hoc basis her name was recommended for grant of revised scale of pay 1998 by the Head Master of M.S. High School, Baramba vide his Letter No. 453 dated 13.12.1999. While the Petitioner was continuing as Peon in M.S. High School, Badamba on ad hoc basis, she was transferred to Government Girls' High School, Badamba vide Office Order No. 6101, dtd.23.04.2001 issued by the Inspector of Schools, Cuttack Circle, Cuttack.

4. In a similar matter one Biswa Bijaya Mohanty was also appointed as Peon in High School, Chandrasekharpur, Bhubaneswar in the same term of 44 days on ad hoc basis with one day gap within two spells of appointment vide office order No.14001 dated 29.09.1997 issued by the then Inspector of Schools, Khurda Circle, Khurda. The said Biswa Bijaya Mohanty who was appointed on the same term on ad hoc basis as of the present Petitioner was allowed to continue in the said post without any break in service vide Letter No.18979 dated 31.12.1997 and office order No.8464 dated 23.06.1998 issued by the C.I. of Schools, Khordha. The said person was appointed as peon after one year of appointment of the Petitioner.
5. In view of the regularization of services of the peon of Chandrasekharpur Government High School under the Inspector of School, Khurda Circle, Khurda, the present Petitioner submitted a representation on 27.02.2009 to the Opposite Party No.3/ District Education, Cuttack through the Head Mistress, Government Girls High School, Badamba ventilating her grievances for regularization of her services like that of the afore cited person. In spite of her representation and a number of subsequent representations submitted for redressal of her grievances, the Opposite Party No.3 did not take any action to redress the grievances

of the Petitioner. However, the Opposite Party No.3 vide his Memo No.2155 dated 07.02.2011 allowed the Petitioner receive her initial pay of Rs.4440/- in the revised scale of pay under the O.R.S.P. Rules, 2008 with effect from 21.10.2010 although the said ORSP Rule, 2008 was made applicable to the State Government Employee with effect from 11.01.2008. In the said order, the Opposite Party No.3 has stated that the Petitioner is not entitled to get any periodical increment and arrear benefits until further orders which are in violation of principle of natural justice and Service Rules. The order is also discriminatory in nature as the benefits granted to other employees have not been granted to the Petitioner.

6. The Petitioner submitted her last representation to the Opposite Party No.3/District Education Officer, Cuttack on 02.11.2020 ventilating her grievances regarding regularization of her service and pay scale at an early date. Since no action has been taken by the authority on the grievance of the Petitioner, the Petitioner had earlier approached this Court vide W.P.(C) No.34279 of 2020 seeking a direction to the Opposite Parties to regularize her service from the date of her initial joining in the post of Peon on ad hoc basis with effect from 12.06.1996. This Court vide order on 11.12.2020 directed the Opposite Party No.3 to take

a decision on the grievance of the Petitioner and pass appropriate order in accordance with law within a period of 3 months from the date of production of certified/authenticated copy of that order by the Petitioner. On production of the said order of this Court by the Petitioner on 17.12.2020, the Opposite Party No.3 disposed of the said representation vide his order No.8420 dated 28.04.2021 rejecting the claim of the Petitioner mainly on the following grounds:

“(a) That the then Inspector of Schools Cuttack (at present designated as District Education Officer) appointed the petitioner and allowed her to Continue in Service in a nonexistent post without prior permission of higher authority.

It is really ridiculous to the service of the petitioner for the reason for which she is no way responsible.

(b) That the petitioner continued in service beyond the yard stick for Govt. Schools.

But when the petitioner has been continuing in an existing vacancy (as stated in Annexure-2) how it could be stated by the Opp. Party No.3 that it was a non-existent post and beyond yard-stick?

(c) That the then Inspector of Schools Cuttack and the Head Master of the School, Badamba paid the salary of the petitioner without authority and without prior permission from Govt.

It is also absurd to state that the Head Master and the C.I. of Schools have disbursed the

salary of the petitioner without authority for long 25 years and also are continuing such action!

(d) That there is non-following of recruitment rules to fill up the Group-D post and due procedure was not followed at the time of appointment.

In the relevant time there was no specific recruitment rules prevailing for the appointment of School Peon."

7. The Petitioner was allowed grade pay of Rs.1500/- and 1700-as per the ORSP Rules 1998 and 2008 and also allowed the scale of pay under the ORSP Rules, 2017, which is not applicable to the Petitioner as stated by the Opposite Party No.3 in his order dated 28.04.2021. Due to such action of the Opposite Party No.3, the Petitioner is constrained to approach this Court in the instant Writ Petition.

I. Submissions of the Petitioner:

8. Learned counsel for the Petitioner submits that it is an undisputed fact that the Petitioner has completed more than 25 years of service on ad hoc basis in 44 days terms with one day break in between two spells. It could be seen that the break of one day after each 44 days term is a straight violation of natural justice as the Petitioner did not remain absent even for one day after completion of 44 days term. In fact, she has been rendering services uninterruptedly for more than 25 years. But one day break has been deliberately

mentioned in the terms of service just to deprive her from regularization of her service with the plea of break of continuity. Besides, as other similarly appointed persons have been allowed to continue in service subsequent to their appointment on 44 days on ad hoc basis with one day break. So, the action of the Opposite Parties is discriminatory against the Petitioner in violation of natural justice.

9. He, further, submitted that as stated by the Opposite Party No.3, the petitioner was appointed in a non-existent post is completely incorrect and misleading, as it has been specifically mentioned in the order that the petitioner has been transferred and allowed to continue in Government Girls' High School, Badamba against the existing vacancy until further orders, which otherwise means that the post of peon was also available in the transferee school on the date of the order i.e. 23.04.2001. So the reason mentioned therein that the Petitioner was continuing in a non-existent post is wholly incorrect.

10. It was also submitted that the appointment and subsequent continuance of service in the post of school Peon, the Petitioner has no role. It is the appointing authority who has given appointment to the Petitioner in a Government Service is entirely responsible for the same. But, admittedly, the Petitioner has been continuing in service for more than

25 years and has been deprived of regularization even after such a long tenure of service is a gross violation of principles of natural justice.

11. He further submitted that in the case of contractual service where regular scale of pay is not allowed are being regularized in service after completion of 6 years of service. But the Petitioner was appointed on regular time scale of pay from the beginning. Hence, rejection of the prayer of the Petitioner to regularize her services even after completion of 25 years of service is not sustainable in law. He further submitted that the Opposite Party No.3 has arbitrarily rejected the prayer of the petitioner to regularise her services in spite of her long tenure of service in a Group-D post.

12. He further submitted that similarly appointed office peon in the district of Khordha after one year of appointment of the Petitioner has been regularised in service vide Annexure-4. Therefore, the discriminatory action of the Opposite Parties on the Petitioner in not regularising her services is nothing but violation of natural justice. Hence, the Petitioner is also entitled to regularization of her service from her initial date of joining.

III. Submissions of Opposite Party No.3/ District Education Officer:

13. Learned counsel for the State submitted that the Petitioner has filed the above Writ Petition challenging the Office Order No.8420 dated 28.04.2021 under Annexure-11 issued by the Opposite Party No.3/ District Education Officer, Cuttack and prayed for a direction to the Opposite Party No.3 to take appropriate action to regularize her services from the date of her initial joining in the post of peon on ad hoc basis with effect from 12.06.1996.

14. He further submitted that the Petitioner is now working as Ad hoc Peon in Government Girls High School, Baramba in the district of Cuttack. She was appointed on adhoc basis 44 days in Mohan Subudhi High School, Badamba on 12.06.1996 in scale of pay of Rs.750/- to Rs.940/-. He also submitted that though the Petitioner was adjusted in Government Girls' High School, Badamba on 23.04.2001, she has prayed for regularization of her service with effect from her initial date of joining.

15. He further submitted that the Petitioner had earlier filed a Writ Petition before this Court bearing W.P.(C) No.34279 of 2020 with self same ground which was disposed of on 11.12.2020 with a direction to Opposite Party No.3 *"to take decision on the representation filed by the petitioner vide*

Annexure-8 and pass appropriate order in accordance with law within a period of three months from the date of production of certified/authenticated copy of this order by the petitioner."

16. It is also submitted that on receipt of order dated 11.12.2020 passed by this Court, the Opposite Party No.3 considered the grievance of the Petitioner and after examination of the record available, passed a speaking order in accordance with law and rejected the same vide order No.8420 dated 28.04.2021 citing the observation made in the representation of the Petitioner. Now, the Petitioner has challenged the said order on self same ground based on the order passed by the Circle Inspector of School, Khurda.

17. He further submitted that the Petitioner who is an outsider was initially appointed as Adhoc Peon on 44 days basis by the Inspector of School on 27.06.1996 with one day break between two spells of appointment and continued as such till 23.04.2001. The petitioner was reengaged in Government Girls' High School, Badamba from Mohan Subudhi High School, Badamba against a non-sanctioned post without prior permission of Higher Authority and her continuance in service is beyond the yardstick prescribed by the Government. Thereby the appointment of the Petitioner is illegal and void. The appointment of the Petitioner and

continuance in the service against a non-sanctioned post is beyond the rules and no procedures have been followed to appoint, to fill up the Group-D post. The Petitioner was appointed on 44 days basis and it was extended time to time with one day break and received salary meant for the adhoc peon post. She also received Revised Scale of Pay in minimum scale under ORSP Rule-2008 as per Finance Department Resolution dated 21.10.2010.

18. It was further submitted that continuance of service of the Petitioner is beyond the rules. The petitioner's service cannot be regularized as the appointment made dehors of rules and not coming under ratio of the judgment decided in the case of **State of Karnataka Vrs. Uma Devi and others**¹. The illegal and irregular appointment cannot be regularized in view of the above quoted judgment of the Supreme Court.

19. He further submitted that regularization of service is a policy decision of the Government. The prayer of the Petitioner is beyond the purview/ jurisdiction of the present Opposite Party No.3 who has already considered her case in pursuance to the order passed by this Court in the earlier Writ Petition filed by her. Therefore, he submitted that the

¹ (2006) 4 SCC 01

present Writ Petition is not maintainable in law and liable to be dismissed being devoid of merits.

IV. Court's Reasoning and order:

20. Heard learned Counsel for the parties. The Petitioner is an outsider and she was initially appointed as Ad hoc Peon on 44 days basis by the Inspector of Schools, Cuttack on 12.06.1996 with one day break between two spells of appointment and continued as such till 23.04.2001. Later, the Petitioner was reengaged in Government Girls' High School, Badamba from Mohan Subudhi High School, Badamba in place of a non-sanctioned post without prior permission of Higher Authority and her continuance in service is beyond the yardstick prescribed by the Government. Hence, it appears from the record that the appointment of the Petitioner is illegal. The appointment of the Petitioner and continuance in the service in non-sanctioned post is beyond the rules and no procedures have been followed to appoint in order to fill up the Group-D post. The Petitioner was appointed on 44 days basis and it was extended from time to time with one day break and received salary meant for the ad hoc peon post. She also received Revised Scale of Pay in minimum scale under ORSP Rule-2008 as per Finance Department Resolution dated 21.10.2010. The position in law has been reaffirmed in

catena of judgments after *Umadevi (supra)*, hence, the continuance of service of the Petitioner is beyond the rules. Hence the Petitioner's service cannot be regularized. If the appointment is illegal, the principles laid down in *State of Karnataka Vs. Uma Devi and others* (supra) cannot come to the aid of the Petitioner. This Court has, however, no doubt in its mind that the Constitution Bench deprecated appointment through side door/back door being contrary to the Constitutional Scheme of equality.

21. The decision of regularization of service is a policy decision of the Government. The prayer of the Petitioner is beyond the purview/ jurisdiction of the present Opposite Party No.3 who has already considered her case in pursuance to the order passed by this Court in the earlier Writ Petition filed by her. Therefore, the present Writ Petition is liable to be dismissed being devoid of merits.

22. Accordingly, this Writ Petition is disposed of being dismissed.

(*Dr. S.K. Panigrahi*)
Judge

Orissa High Court, Cuttack,
Dated the 20th September, 2022/B.Jhankar