IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.5403 of 2023
CNR No.ODHC010137472023

Hrusikesh Panigrahi .... **Petitioner**
Mr. R.K. Sahu, Adv.

-versus-

State of Odisha and Others .... **Opposite Parties**
Mr. C.K. Pradhan, AGA

CORAM:
JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER
04.11.2026

Order No

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

2. Heard learned counsel for the parties.

3. The present Writ Petition has been filed inter alia with the following prayer:-

> *"It is therefore prayed that this Hon'ble Court may graciously be pleased to admit this writ petition issue notice to the Opp. Parties call for records and after hearing the parties issue writ/writs in the nature of mandamus/certiorari or any other writ to quash the order dated 23.02.2022 and allow the application dated 06.05.2003 of petitioner and direct to the Opp. Party No.2 to appoint him retrospectively from date of his application and give him all consequential benefit for the interest of justice;*
>
> *And the Hon'ble Court may pass any order/ direction may be deem feet and proper."*

4. It is contended that petitioner though made his application to get the benefit of appointment under the Rehabilitation Assistance Scheme, but in consideration of the same, petitioner vide order dated 20.02.2019 under Annexure-6, was provided with

appointment as against the post of Peon on contractual basis, instead of being appointed as a regular Peon.

4.1. It is contended that on being so provided with appointment on contractual basis, petitioner raised a grievance under Annexure-7, with a prayer to provide him appointment as a regular Peon w.e.f. 06.05.2003 i.e. the date when he made application to get the benefit under Annexure-1. However, such claim of the petitioner was rejected vide the impugned order dated 23.02.2022 under Annexure-8.

4.2. Learned counsel for the petitioner contended that since there is no such provision to provide appointment on contractual basis under OCS(R.A) Rules, 1990, petitioner could not have been appointed on contractual basis so appointed vide order dated 20.02.2019 under Annexure-6 relying on the Resolution of the G.A. Department dtd.12.09.2017, in which a direction was issued to provide all such appointment as against Group-D post on contractual basis. In support of his aforesaid submission, reliance was placed to a decision of the Hon'ble Apex Court in the case of ***State of Maharashtra vs. Jagannath Achyut Karandikar*** reported in AIR 1989 SC 1133. Hon'ble Apex Court in the said reported decision has held as follows:-

> *"Under the 1955 Rules, the Government preserved power to dispense with, or relax the requirements of any rule regulating "the conditions of service of government servants; or of any class thereof". In the exercise of this power, the Government could dispense or relax the operation of any rule, if it causes undue hardships in any particular case. It is need- less to state that this power includes the power to relax the conditions prescribed for promotion since promotion is a condition of service. There is no restriction as to the exercise of the power or discretion. The High Court, however, has observed that the scope of this power has been*

constrained by the circular dated 15th January, 1962. The circular states that the 1955 Rules permitting relaxation cannot be utilized to relax the rules which regulate conditions of service. It further states that the scope of the Rules should be limited only to matters relating to travel- ling allowance, leave, etc. But this appears to be an exercise in vain. The circular is an executive instruction whereas the 1955 Rules are statutory since framed under the proviso to Article 309 of the Constitution. The Government could not have restricted the operation of the statutory rules by issuing the executive instruction. The executive instruction may supplement but not supplant the statutory rules. The High Court was in error in ignoring this well accepted principle".

4.3. In support of his submission, learned counsel for the Petitioner also relied on the decision of the Hon'ble Apex Court in the case of ***Mukesh and another v. State of Bihar*** reported in ***AIR 2017 SC 1727*** as well as the decision of this Court passed in W.P.C(OAC) No.410 of 2017 in the case of ***Anil Kumar Pradhan vs. State of Odisha & Others.*** Hon'ble Apex Court in Para-4 of the decision in the case of ***Mukesh*** has held as follows:-

"4.*For the foregoing reasons, we direct that the Appellants who were recommended for appointment to Class III or Class IV posts prior to 01.07.2006 will either be appointed on Class III or Class IV posts on regular basis or will be entitled for continuance as Teachers on a regular pay scale. The other Appellants who were appointed after 01.07.2006 will not be entitled for the relief of regular pay scales. However, we grant them liberty to approach the State Government for suitable relief in terms of the order passed in SLP (C) No.29655 of 2010".*

Similarly, this Court in its order dated 26.08.2022 in the case of ***Anil Kumar Pradhan*** in Para-6 has held as follows:-

"6*. This Court after going through the materials available on record finds that similarly situated persons whose names were recommended in the self-same proceeding dt.22.5.2014 were appointed on regular basis vide order dated 26.07.2014 under Annexure-7series. Therefore, there was no occasion on the part of the opp. party No.3 to appoint the petitioner on contractual basis. Hence, this Court while interfering with the matter directs opp. party No.3 to issue a fresh order of appointment appointing the petitioner on regular basis from the date the petitioner was originally appointed vide order dated 10.02.2016. Such exercise shall be completed by the opp. party no.3 within a period of one month from the date of receipt of this order".*

4.4. It is however contended that petitioner does not intend to raise his claim to provide him appointment on regular basis from the date he made the application on 06.05.2003 and in the alternate, petitioner will have no grievance if the order of appointment issued on 20.02.2019 under Annexure-6, will be treated as a regular order of appointment with extension of all consequential service and financial benefits.

4.5. It is accordingly contended that with quashing of the impugned order dated 23.02.2022 under Annexure-8, Opp. Party No.1 be directed to treat the petitioner to have been appointed on regular basis from the date office order dated 20.02.2019 under Annexure-6 was issued, with all consequential service and financial benefits.

5. Learned Addl. Govt. Advocate on the other hand made his submission basing on the stand taken in the counter affidavit so filed. It is contended that petitioner since was appointed on contractual basis vide order dated 20.02.2019 under Annexure-6, in terms of the provisions contained under Sub-Rule-2 of Rule-4 of the Odisha Group-B, Group-C and Group-D Posts (Repeal and Special Provisions) Rules, 2022, petitioner was treated as a regular employee with extension of the financial benefit w.e.f. 17.10.2022 vide office order dated 13.03.2023 under Annexure-H/2.

5.1. It is also contended that since during the relevant point of time there was no provision for appointment on regular basis in view of the Notification issued by the G.A. and P.G. department on 12.09.2017, petitioner was given appointment on contractual basis vide order dated 20.02.2019 under Annexure-6.

5.2. It is accordingly contended that since petitioner has already been treated as regular employee with extension of the financial benefit w.e.f. 17.10.2022 vide office order dated 13.03.2023 under Annexure-H/2, petitioner has no further grievance and the Writ Petition be disposed of accordingly.

6. Having heard learned counsel for the parties and considering the submission made, it is found that on the death of the deceased employee, petitioner made the application to get the benefit of appointment under the Rehabilitation Assistance Scheme on 06.05.2003 under Annexure-1. Such claim of the petitioner when was rejected vide order dated 09.02.2004 under Annexure-3, matter was carried to the Tribunal by filing O.A. No.1445 of 2007.

6.1. Pursuant to the order passed by the Tribunal on 29.04.2017 under Annexure-5, petitioner was appointed as a contractual Peon vide order dated 20.02.2019 under Annexure-6. As found, petitioner was treated as a regular employee with extension of the financial benefit w.e.f. 17.10.2022 vide order dated 13.03.2023 under Annexure-H/2.

6.2. However, it is the view of this Court that since there is no such provision to provide appointment on contractual basis under OCS(RA) Rules, 1990, relying on the Resolution issued by the G.A. Department on 12.09.2017, Petitioner could not have been appointed on contractual basis. Placing reliance on the decisions of the Hon'ble Apex Court in the case of ***Jagannath Achyut Karandikar*** and ***Mukesh Kumar and another*** and of this Court in the case of ***Anil Kumar Pradhan*** so cited (supra), this Court is

of the view that appointment of the petitioner so issued on 20.02.2019 should have been made on regular basis.

6.3. Accordingly, while holding so and inspite of the order passed on 13.03.2023 under Annexure-H/2, this Court directs Opp. Party No.1 to treat the petitioner to have been appointed on regular basis w.e.f. 20.02.2019, with extension of all service and financial benefits as due and admissible. This Court directs Opp. Party No.1 to complete the entire exercise within a period of 2(two) months from the date of receipt of this order.

7. The Writ Petition stands disposed of accordingly.

(Biraja Prasanna Satapathy)
Judge

Basudev

Signature Not Verified
Digitally Signed
Signed by: BASUDEV SWAIN
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 09-Nov-2026 10:33:21