**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No.1986 of 2013**

**Sukesh Chandra Pradhan** …. **Petitioner**

Mr. Satyajit Behera, Advocate

-Versus-

**State of Odisha & others** …. **Opposite Parties**

Mr. Satyabrata Panda, ASC

Mr. Brundaban Rout, Advocate for O.P. No.4

**CORAM:**

**MR. JUSTICE R.K. PATTANAIK**

**ORDER**

| **Order No.** | **10.04.2026** |
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| 09. | 1. Heard Mr. Behera, learned counsel for the petitioner and Mr. Panda, learned ASC for the State besides Mr. Rout, learned counsel for opposite party No.4. |
| | 2. Instant writ petition is filed by the petitioner assailing the impugned letter dated 10th January, 2013 at Annexure-11 of the Government in directing opposite party No.4 to disengage him and the consequential order dated 19th January, 2013 i.e. Annexure-12 and further to direct the opposite parties to allow discharging the duties as he was prior to the decision on disengagement and for having validly recruited by opposite party No.4 and direction to opposite party Nos.1 and 2 to regularize his service in the post of Junior Steno and to fix the pay accordingly and to grant all others service and financial benefits with respective effect on the grounds stated. |

3. Mr. Behera, learned counsel for the petitioner submits that the petitioner was appointed as a Steno-cum-Typist in the time scale of Rs.780-1160/- with usual DA as admissible under the rules vide Annexure-1. It is submitted that the post of Junior Steno was created for the NAC by order dated 25th June, 1993 by the Government in Housing and Urban Development Department i.e. Annexure-2 and it was followed by the resolutions of the NAC as per Annexures-3 and 4. The contention is that vide Annexure-5, the overage of the petitioner was condoned in terms of Rule 408(2) of the Municipal Rules, 1953 (hereinafter referred to as ''the Rules) by a decision of the Government dated 4th November, 1995. The submission is that after the engagement of the petitioner with the initial appointment having taken place on 9th June, 1992, it was alleged to be illegal with complaint received in that regard communicated to the NAC by the Government vide Annexure-6. The submission is that notwithstanding the complaint received, the NAC recommended the case of the petitioner for continuance in service as per Annexure-8. It is submission that the NAC in response to the complaint against the petitioner responded vide Annexure-8 and intimated the Government that the petitioner was appointed as Steno-cum-Typist officer by order dated 9th June, 1992 against the post created by the Council in its resolution (No.7 dated 20th April, 1992) in pursuance of the decision of the Selection Committee on temporary basis and accordingly he joined and subsequently, proposal for sanction to the creation of post was submitted to the Government in Housing and Urban

Development Department through the District Magistrate, Sambalpur to regularize the appointment and at last, upon receiving sanction, his service was regularized against the post of Junior Steno, whereafter, the overage was condoned in view of Annexure-5. Notwithstanding, the aforesaid development, Mr. Behera, learned counsel submits that the Government insisted upon removal of the petitioner and finally, it was followed by the impugned order i.e. Annexure-2 by opposite party No.4. Mr. Behera, learned counsel would submit that the petitioner was allowed to continue in the said post despite Annexure-12 in view of the Court's interim order dated 1st February, 2013 in Misc. Case No.1761 of 2013. Referring to the rejoinder affidavit, it is further submitted by Mr. Behera, learned counsel that pursuant to the petitioner's appointment upon receiving his joining report, a Service Book was opened as per Annexure-26 reflecting therein that he was initially appointed as Steno-cum-Typist re-designated as Junior Stenographer. Referring to the legal opinion obtained by opposite party No.4 as per Annexure-27, it is submitted that such appointment of the petitioner was not held to be illegal. The submission is that the petitioner joined in 1992 and as against a post created, he was adjusted with the overage being condoned but thereafter, alleging the appointment as illegal upon receiving a complaint, the order of removal was followed in 2013. The contention is that the ban and the cut-off date i.e. 12th April, 1993 is not to be into account for that the appointment of the petitioner is of the year 1992. That apart, according to Mr. Behera, learned counsel, in a similarly

situated case, this Court directed regularization of service in **Smt. Santilata Mahakud Vrs. State of Odisha & others** in W.P.(C) No.21723 of 2016. Referring to a decision of the Co-ordinate Bench in W.A. No.1445 of 2024 (**State of Odisha & another Vrs. Barendra Krishna Nayak & another**) and therefore, the petitioner, since retired in 2018, his service should be regularized as against the post of Junior Stenographer with the quashment of the orders at Annexures-11 and 12.

4. Mr. Panda, learned ASC for the State, on the other hand, referring to the counter affidavit filed through opposite party Nos.1 and 2 would submit that the petitioner's appointment is illegal, inasmuch as, he was engaged as a Steno-cum-Typist on 9th June, 1992 illegally sufficiently before the post created on 25th June, 1993 and that too in respect of a post with different nomenclature as Junior Stenographer, which was never meant to accommodate him. Further submission is that in view of the cut-off date, the petitioner's case could not have been considered for regularization and that apart, when the very engagement was found to be illegal and though on a complaint received, the impugned decision of the Government by a direction for disengagement followed by Annexure-11 and consequential order vide Annexure-12 is perfectly justified.

5. Recorded the submission of Mr. Rout, learned counsel for the opposite party No.4.

6. From the Annexure-1, the Court finds that the petitioner was given appointment with a decision by the Selection Committee of the NAC and it was against a post of Steno-cum-

Typist on a temporary basis but thereafter, the post was created in the year 1993 as made to reveal from Annexure-2. Such creation of post by the Government was in exercise of the power conferred under the Municipal Rules. For creation of the post by order dated 25th June, 1993, it was followed by the decision of the NAC to accommodate as against it by the resolutions dated 25th January, 1994 and 23rd September, 1994. Not only that the Government condoned the overage appointment of the petitioner and five others in terms of 2nd proviso of Rule 408(2) of the Rules by office order dated 4th November, 1994. It was, thereafter, the petitioner was allowed to continue as Junior Stenographer with the post re-designated as revealed from the Service Book as at Annexure-26. All along, opposite party No.4 justified the selection even though the complaint was received and necessary correspondence addressed to the NAC with a detailed reply dated 3rd July, 2012 was made. Nevertheless, the petitioner was directed to be removed from service and it was ultimately followed by Annexure-12.

7. The appointment of the petitioner was subsequently approved against the post of Junior Stenographer created by the Government by order dated 25th June, 1993 i.e. Annexure-2. The objection of the State is that the initial appointment is illegal but it has been justified vide Annexure-8 with the intimation that such appointment is pursuant to the decision of Selection Committee held in the year 1992. Admittedly, the appointment of the petitioner to the post of Steno-cum-Typist is prior to the cut-off date i.e. 12th April, 1993. Even otherwise,

this Court while considering any such appointment against the cut-off date concluded in **Smt. Santilata Mahakud** (supra) that the recruitment thereafter cannot be held as illegal. In fact, in the above decision, the ratio decided by a Division Bench of this Court in **Barendra Krishna Nayak and another** was reiterated. The Court is inclined to reproduce the relevant extract of the above decision which is herein below:

> "4.2. The second contention of Mr. Panda that there was a complete embargo against engagement otherwise than on regular recruitment w.e.f. 12.04.1993 and therefore, any entry post-ban is illegal, is difficult to countenance. Reasons for this are not far to seek; firstly, a ban of the kind cannot be treated as an impregnable China Wall; secondly, even after the ban, thousands of employees were engaged, may be in violation thereof, and the State cannot feign ignorance of the same. Secondly, in thousands of cases, this Court and the Apex Court have granted regularization in worthy matters notwithstanding ban of the kind; thirdly, no action is taken against the officials who trampled the ban and made such engagements. Ban of the kind was only a measure of economic austerity and not anything beyond. If the ban were to be mandatory, the State would not have ignored its violation with impunity; lastly, whatever arguable 'illegality', would diminish year by year and should vanish at a long point of time, as has happened in this case."

8. The Court finds that regularization of service of the petitioner was recommended with others as made to reveal from Annexure-21. In fact, vide Annexure-21, the Government directed the Municipal Commissioner, BMC, Berhampur and others to furnish information for consideration of the

regularization of 27 left out cases which included the name of the petitioner under Barpali NAC for being absorbed against the post of Work Sarkar and in any case pending regularization of the service of the petitioner even after being appointed vide Annexure-1, he was allowed to continue by virtue of regulations of the NAC upon a creation of post by the Government vide Annexure-2 and overage having been condoned as per Annexure-5 and considering the fact that he was allowed to continue and retire from service on 31st January, 2018, such action vide Annexure-12 cannot be justified.

9. Of course, in **Smt. Santilata Makakud** (supra), the petitioner was seeking for regularization of service of her husband which was declared as void while demanding family pension and considering the same and the embargo with respect to regular recruitment having been banned with effect from 12th April, 1993, this Court held that the same is liable to be interfered with and set aside. In the case at hand, the petitioner however was allowed to continue even after the order of removal and superannuated from service in the year 2018. Considering the above facts and submissions of learned counsel for the respective parties and that the petitioner was allowed to join in the post created by the Government with the selection process held since revealed from Annexure-1, his engagement cannot be held as illegal. Even otherwise, in view of the decision in **Barendra Krishna Nayak** (supra), the Court is inclined to hold that the decision of the Government and order of removal vide Annexure-12 deserves to be set aside treating the engagement ever since 9th June, 1992 as legal with a

direction to opposite party Nos.1 and 2 to consider regularization of service on and from the said date and to ensure that other service retiral benefits are granted to him within a stipulated period.

10. Accordingly, it is ordered.

11. In the result, the writ petition stands allowed. As a necessary corollary, the impugned order at Annexure-11 with a direction to opposite party No.4 to disengage and consequential order of removal dated 19th January, 2013 directed vide Annexure-12 are hereby set aside with a direction to opposite party Nos.1 and 2 to treat the service of the petitioner as regular from date of appointment i.e. 9th June, 1992 and thereafter to consider release of service and retiral benefits as admissible to him upon such regularization concluding the exercise at the earliest preferably within a period of three months from the date of receipt of a copy of this order.

12. Issue urgent certified copy of this order as per rules.

**(R.K. Pattanaik)**
**Judge**

TUDU

Signature Not Verified
Digitally Signed
Signed by: THAKURDAS TUDU
Designation: Sr. Stenographer
Reason: Authentication
Location: OHC,CTC
Date: 15-Apr-2026 11:09:03