
(2013) 11 OHC CK 0007
In the Orissa High Court
Case No : W.P. (C) No. 25360 of 2013

Anupama Panda

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 27-11-2013

Acts Referred:

Citation : (2014) 141 FLR 62

Hon'ble Judges : Raghubir Dash, J; M.M. Das, J

Bench : Division Bench

Judgement

M.M. Das and R. Dash, JJ.—Heard. The petitioner claims to be recruited pursuant to the advertisement under Annexure-1 by which applications were invited in the prescribed format from eligible persons belonging to revenue districts of the State for engagement of qualified teachers on contract basis on a consolidated monthly remuneration in different Government High Schools located in the different revenue districts of the State. The appointment as per clause-4 is proposed to be one year and subsequently the same may be renewed. Considering the above claim in accordance with the ratio of the decision in the case of Hrusikes Sethi and Others Vs. State of Orissa and Others, , we are of the view that the petitioner is required to approach learned Orissa Administrative Tribunal as this Court has no jurisdiction to entertain the writ petition.

2. In the aforesaid judgment, a Division Bench of this Court considered as to what is a civil post. Referring to the judgment of the Hon''ble Apex Court in the case of State of Assam and Others Vs. Shri Kanak Chandra Dutta, , and other decisions of this Court, the Division Bench concluded that the recruitment held for filling up of the post existing in different Departments of the Govt. of Orissa in whatever form i.e. either contractual or casual, would amount to recruitment to a "Civil Service", as employer and employee relationship between the State and the employees exists and added to it, payments of remunerations or wages as the case may be made out of the Government exchequer.

Thus holding, this Court in the said case further concluded that this Court lacks

initial jurisdiction, power and authority to decide the dispute with regard to matters concerning contractual/ad hoc/temporary recruitment to civil service in consonance with section 15 of the Administrative Tribunal Act and the Administrative Tribunal alone has jurisdiction to decide such disputes.

3. Mr. K.K. Swain learned Counsel appearing for the petitioner draws attention of this Court to the decision in case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , wherein the Hon"ble Supreme Court, while dealing with the contention of the rights of the employees, in paragraphs-38 and 39, held as follows:

38. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

39. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the concerned department on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on" the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed

on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

4. Relying upon the aforesaid observations made by the Hon''ble Supreme Court Mr. Swain contends that the view expressed by this Court is contrary to the said conclusion arrived at by the Hon''ble Supreme Court.

5. However, on perusing the aforesaid judgment of the Hon''ble Supreme Court, we find that the Hon''ble Supreme Court was dealing with the question of a person who has entered as temporary employee or has got engagement as a contractual or casual worker and the engagement is not based on proper selection as recognized by the relevant rules or procedure, such person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following proper procedure for selection and in concerned case in consultation with the Public Service Commission.

6. The Supreme Court negated such contention coming to the conclusion that the same does not violate Articles 14 and 16 of the Constitution and there is no fundamental right in those employees working on daily wages or temporarily or on contractual basis to claim that they have a right to be absorbed in service as they cannot be said to be the holders of the post since regular appointment could be made only by making appointments consistent with requirement of the Articles 14 and 16 of the Constitution. Such right of temporary or contractual employees cannot rely on or cannot give rise to right to be considered at par with regular employees as that would amount to treating unequals as equals.

7. Mr. Swain learned Counsel emphasizes that the Hon''ble Supreme Court having held that they cannot be said to be the holder of the post, it is not correct to conclude that a contractual post amounts to Civil Service.

8. We, however in disagreement with such contention, finding that the intention of the State is to appoint teachers on contractual basis by a proper recruitment process for which the advertisement under Annexure-1 has been issued, the teacher to be appointed on contractual basis upon selection pursuant to the said advertisement will be holding a civil post as an employee of the State and, therefore, it cannot be said that such contractual teachers, selected by a proper recruitment process does not hold a civil post. The State will be the employer of such contractual teachers who will be employees of the State though on contractual basis. We therefore find that as has been held by this Court in the case of Hrusikesh Sethi and others (supra), the petition is required to approach the Tribunal and the writ application will not be maintainable before this Court in view of section 15 of the Administrative Tribunal Act. The writ petition is,

therefore, disposed of granting liberty to the petitioner to approach the learned Orissa Administrative Tribunal, if so advised.