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**(2015) 03 OHC CK 0043**

**In the Orissa High Court**

**Case No :** Writ Petition (Civil) No. 16088 of 2012

Arun Kumar Mishra and Others

APPELLANT

Vs

Bhubaneswar Development Authority and Others

RESPONDENT

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**Date of Decision :** 12-03-2015

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16  
Industrial Disputes Act, 1947 — Section 10, 12

**Citation :** (2015) 120 CLT 950 : (2015) 1 ILR Ori 1162 : (2015) 1 OLR 686

**Hon'ble Judges :** B.R. Sarangi, J

**Bench :** Single Bench

**Advocate :** K.K. Das, for the Appellant; S.C. Parida and B.R. Rath, Advocates for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Dr. B.R. Sarangi, J.—The petitioners, who are the DLR Workmen, working under the Bhubaneswar Development Authority (BDA), have filed this application seeking for a direction to regularize their services as per the award passed by the Presiding Officer, Labour Court in ID Case No. 74 of 2003, which was confirmed by this Court in W.P. (C) No. 5319 of 2005, disposed of on 11.01.2010 and upheld by the Supreme Court in Civil Appeal No. 20736 of 2010 dated 06.08.2010 and further seeking to quash the office order dated 30.04.2011 vide Annexure-11 denying regularization due to lack of educational qualification/technical qualification.

2. The fact of the case in nutshell is that the Bhubaneswar Development Authority, in short, "BDA" v/as established in the year 1981 under the provisions of Orissa Development Authorities Act, 1982 and to carry out its functions, it engaged the petitioners as DLR-workmen in Class-III and Class-IV posts. After rendering uninterrupted service for five years since the petitioners' services were not regularized, they raised Industrial dispute. Consequently, the Government of Orissa referred the dispute under Sections 10 and 12 of the Industrial Dispute

Act to the Industrial Tribunal for adjudication with regard to regularization of service in ID Case No. 2 of 1988 on 23.01.1988. The Industrial Tribunal vide order dated 21.11.1990 in Annexure-4 passed an award in ID Case No. 2 of 1988 directing the BDA to regularize the services of the DLR employees, who have been working for more than one year and grant all consequential benefits admissible to the posts.

3. The Government of Odisha notified the award dated 21.11.1990 passed in ID Case No. 2 of 1988 on 03.12.1990 in official gazette. In consonance with the said award the opposite party-Management requested the employees' union for amicable settlement and it was agreed upon on 29.04.1991, vide Annexure-1 that the employees, who have rendered five years of service, their services would be regularized. Till the year 1993-1994 the opposite party-Management regularized the service of 290 NMR/DLR employees and thereafter the process of regularization was stopped. In 50th Board meeting of BDA, it was decided that the cases of DLR/NMRs who have completed five years of service, would be considered for regularization, vide Annexure-2. Consequently, settlement was arrived at between the employee's union and the opposite party-Management with regard to regularization of the services on 21.12.1993 vide Annexure-3. Pursuant to Annexure-3, as the services of the 113 DLR employees including the present petitioners were not considered as per the award in ID Case No. 2 of 1988 and the decision of 50th and 83rd Board meeting, the employees' Union raised the demand for regularization and considering the same, the State Government in exercise of power conferred under Sub-section (5) of Section 12 read with Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 referred the matter in dispute to this Court in Labour and Employment Department Memo No. 12075 (5)/L. dt. 17.12.2003 for adjudication and award. The term of reference read as under:

"Where the action of the management of Bhubaneswar Development Authority, Bhubaneswar in not regularizing the services of 113 numbers of N.M.R./D.L.R./Adhoc workmen is legal and or justified. If not what relief they are entitled."

The reference was registered by the Labour Court as I.D. Case No. 74 of 2003.

4. The Industrial Tribunal after due adjudication passed the award to the following effect:

"That the action of the management of Bhubaneswar Development Authority, Bhubaneswar in not regularizing the services of 113 numbers of N.M.R./D.L.R./Adhoc workmen is illegal and unjustified. The above 113 workmen are entitled for regularization of their respective services from the date they have completed five years of service in respect of general category of workmen and three years of service in respect of the Scheduled Caste and Scheduled Tribe workmen. The management is directed to consider the case of the concerned 113 workmen for regularization at an early date.

The reference is thus answered accordingly."

5. Thereafter a seniority list of DLR employees working in BDA was prepared and published by the BDA on 09.11.2004 vide Annexure-5, showing the nature of work/job performed by them. The petitioner's name find place against SI. Nos. 10, 47, 51, 58, 59, 62, 87, 100, 41, 74, 71 and 36 their corresponding names were also available in the award of the Industrial Tribunal in ID Case No. 74 of 2003 at SI. Nos. 14, 61, 64, 45, 107, 34, 86, 99, 52, 66, 77 and 42. In the written statement filed in ID Case No. 74 of 2003 nowhere opposite party-management had raised a plea about the disqualification of the present petitioners to hold the posts due to lack of proper education qualification or they are unfit to hold the posts or they were ineligible to be considered for regularization. The pleadings available in the written statement have also be annexed in the present application. Challenging the said award dated 30.12.2004 in I.D. Case No. 74 of 2003, opposite party-management filed W.P. (C) Case No. 5319 of 2005 taking a plea that there was no sufficient work available for regularization and there is financial crunch. But this Court after hearing the parties dismissed the writ petition filed by the opposite party-management vide judgment dated 11.01.2010 (Annexure-7). Assailing the said award passed in I.D. Case No. 74 of 2003 and the judgment dated 11.01.2010, the opposite party-management approached the apex Court in SLP (Civil) No. 20736 of 2010, which was also dismissed vide order dated 06.08.2010, Annexure-8. Consequently, the award dated 30.12.2004 passed by the Industrial Tribunal with regard to regularization of services of 113 workmen including the present petitioners were upheld by this Court as well as the apex Court. Instead of regularizing the services, the opposite party-management in its 116th Board meeting held that the management will regularize all the DLR./NMR/Ad hoc employees from the date of the order of apex Court without any arrear benefits, i.e., back wages, notional promotion, fixation of pay etc. In the said Board meeting it was also decided that if the workmen do not agree for the same, the BDA will file Review Petition before the apex Court and for that purpose a committee was constituted. Pursuant to such decision dated 10.11.2010, the opposite party-management called upon 104 DLR workmen excluding the present petitioners on 31.01.2011 to produce an undertaking in the shape of affidavit for regularization of their services in the format prescribed by the opposite party-management on or before 04.02.2011. The opposite party-management informed the petitioners that as per the decision of the 118th Board meeting dated 31.04.2011, the DLR/NMR workmen, who have not possessed the requisite qualification/technical qualification would not be considered for regularization, vide Annexure-11. The petitioners submitted an application before the Vice-Chairman on 05.08.2011 requesting to consider their case for regularization as per the award passed by the Industrial Tribunal in I.D. Case No. 74 of 2003, which has been subsequently upheld by this Court as well as the apex Court. Out of 14 left out DLR workmen, 9 DLRs submitted their testimonials showing that they have appeared at the HSC examination, but as per Agenda No. 9/123, decision was taken to regularize the services of 2 DLR workmen and the case of 7 DLRs was placed before the authority for decision and the petitioners

were directed to attend the Certificate Committee in the Conference Hall on 6.11.2012 for necessary verification. But in spite of all these, the petitioners' services have not been regularized.

6. In the counter affidavit filed by the opposite party-Management, reliance was placed on Annexure-B/1 where the educational qualification/technical qualification was prescribed for the purpose of regularization, but the said notification relates to method of recruitment and conditions of services to different posts in Works Department. Rule 5 of the said notification, deals with method of recruitment, which means direct recruitment and by way of promotion. The proviso to Rule 7 inter alia states about relaxation of age limit to such extent as provided in Orissa Ex-Serviceman (Recruitment to State Civil Services and Posts Rules) in respect of ex-servicemen and in case of NMR/DLR workers as prescribed in F.D. Resolution No. 22264 dated 15.05.1997 who would be recruited having requisite qualification mentioned therein. Applying the said notification, the petitioners have been denied regularization in their services as they lack in educational qualification/technical qualification. Hence, this application.

7. Mr. A.K. Choudhury, learned counsel for the petitioners strenuously urged that so far as regularization of the services of the petitioners is concerned, the same having been set at naught by the learned Industrial Tribunal, confirmed by this Court as well as apex Court, nothing remains to be considered by the authority except implementing the same in letter and spirit. At a belated stage, the authorities cannot raise a plea that since the petitioners lack educational qualification/technical qualification, their services cannot be regularized. Their cases have been duly adjudicated by the competent forum, the authorities have to give due relaxation in the matter of regularization in terms of the decision of the said forum and more so, at no point of time the opposite party-management has raised any objection with regard to their educational qualification/technical qualification before any of the forums. Once the question of regularization has been adjudicated and reached its finality by the learned Industrial Tribunal and this Court as well as the apex Court, the opposite party-management is precluded to raise such question and denial of regularization of services amounts to over-reaching the order passed by the appropriate forums. In support of his submission, he has placed reliance on Maharaj Krishan Bhatt and Another Vs. State of Jammu & Kashmir and Others, (2008) 106 CLT 778 : (2008) 118 FLR 883 : (2008) 13 JT 593 : (2008) 11 SCALE 29 : (2008) 9 SCC 24 : (2008) 2 SCC(L&S) 783 , State of Karnataka and Others Vs. C. Lalitha, (2006) 108 FLR 1051 : (2006) 2 JT 322 : (2006) 2 LLJ 93 : (2006) 2 SCALE 73 : (2006) 2 SCC 747 : (2006) SCC(L&S) 447 : (2006) 1 SCR 971 : (2006) 2 SLJ 151 , Pee Vee Textiles Ltd. Vs. State of Maharashtra, (2015) 144 FLR 736 : (2014) 4 LLN 545 : (2015) 1 SCJ 130 , Sultan Singh Vs. State of Haryana, (2014) 4 CCR 315 : (2015) 1 Crimes 59 : (2014) 3 DMC 626 : (2015) 1 JCC 506 : (2014) 4 RCR(Criminal) 757 , Sandhya Vs. State of Maharashtra, (2014) 8 SCALE 210 . Inder Pal Yadav and Others Vs. Union of India (UOI) and Others, (1985) 51 FLR

138 : (1985) 2 LLJ 406 : (1985) 1 SCALE 703 : (2005) 11 SCC 301 : (1985) 3 SCR 837 : (1985) 2 SLJ 58 : (1985) 17 UJ 1040 , K.C. Sharma and others Vs. Union of India and others, AIR 1997 SC 3588 : (1997) 7 JT 58 : (1997) 5 SCALE 223 : (1997) 6 SCC 721 : (1997) 3 SCR 87 Supp : (1997) 2 UJ 719 : (1997) AIRSCW 3699 : (1997) 7 Supreme 40 .

8. Mr. S. Swain, learned counsel appearing for the opposite party-management laid emphasis on Annexure-B/1, the notification issued by the Works Department dated 9.12.2005, where in exercise of the powers conferred under Section 309 of the Constitution of India, the Governor of Orissa has framed a rule for regulating the method of recruitment and conditions of service of persons appointed to different posts of the Orissa Subordinate Electrical Worker's Service under the administrative control of the Works Department, called "Orissa Subordinate Electrical Workers Service (Method of Recruitment and conditions of Service of Electrical Works working under the administrative control of Works (Department) Rules, 2005". It is urged that the minimum qualification has been prescribed under Rule 7, the same should be adhered to while regularizing the services of the DLRs of the opposite party. The petitioners having no requisite qualification, their services cannot be regularized and decision so taken by the authority is wholly and fully justified and this Court should not interfere with the same.

9. On the basis of the facts pleaded above, it is the admitted case of the parties that the petitioners are working as DLR employees under the opposite party-management and they have rendered more than 10 years of continuous service and they are continuing till date and for regularization of their services, they had approached the State Government and consequently the State Government referred the matter under Sections 10 and 12 of the Industrial Disputes Act to the Presiding Officer, Industrial Tribunal for adjudication in ID Case No. 74 of 2003. After giving due opportunity, the learned Industrial Tribunal passed the award in Annexure-4, which has also been challenged by the opposite party-management before this Court in a writ petition. But this Court dismissed the said writ petition against which order, the opposite party-management went to the apex Court in S.L.P. which was also dismissed. Therefore, by dismissal of the writ petition as well as S.L.P, the award passed by the learned Industrial Tribunal has reached its finality and as such, the opposite party-management has to implement the award in letter and spirit. Though the petitioners were also parties to the industrial proceeding and by virtue of the award passed by the learned Industrial Tribunal like other employees, the services of the petitioners are also required to be regularized, but the opposite party-management though regularized the services of similarly situated persons, but discriminated the petitioners by not regularizing their services on the plea of non-possession of educational qualification/technical qualification. As it appears from the written statement filed before the learned Tribunal, the disqualification of the petitioners due to non-possession of educational qualification/technical qualification has never been raised. Therefore, irrespective of the fact that the petitioners may or may not have educational qualification/technical qualification with them, that

cannot be raised subsequently when the matter has reached its finality with the dismissal of the SLP by the apex Court. In that case, the opposite party-management has to implement the award passed by the learned Tribunal, which has reached its finality with the dismissal of the writ petition as well as SLP preferred by the opposite party-management. So far as applicability of the Rule 692 mentioned in Annexure-B/1 referred to by the opposite party-management is concerned, that has come into force in 2005 and more so, the said Rule is not applicable to the present petitioners because their cases have been duly adjudicated by the Industrial forum and affirmed by this Court and the apex Court and more so, the Rule is only applicable to the persons appointed to different posts of the Orissa Subordinate Electrical Workers under the administrative control of the Works Department. Nothing has been placed before this Court to indicate that the opposite party-management has adopted the said Rule for its employees. Even if the same is adopted, it will apply prospectively and not retrospectively as at no point of time any decision has been taken by the management nor any averment made in the counter indicating that the Rule has got retrospective application. In view of the decision already made by the learned Industrial Tribunal and upheld by this Court as well as the apex Court, the opposite party-management is precluded to raise any such objection which they are now raising in the present proceeding that the petitioners do not possess the educational qualification/technical qualification when services of similarly situated persons who were also parties before the learned Industrial Tribunal, have been regularized without any objection. By making objection, it creates an artificial discrimination, which attracts Article 14 of the Constitution of India.

10. In *Inder Pal Yadav and Others Vs. Union of India (UOI) and Others*, (1985) 51 FLR 138 : (1985) 2 LLJ 406 : (1985) 1 SCALE 703 : (2005) 11 SCC 301 : (1985) 3 SCR 837 : (1985) 2 SLJ 58 : (1985) 17 UJ 1040 , the apex Court while dealing with the question of applicability of doctrine of equality has held as follows:

"If the workmen are otherwise similarly situated, they are entitled to similar treatment, if not by any one else at the hands of this Court."

11. In *K.C. Sharma and others Vs. Union of India and others*, AIR 1997 SC 3588 : (1997) 7 JT 58 : (1997) 5 SCALE 223 : (1997) 6 SCC 721 : (1997) 3 SCR 87 Supp : (1997) 2 UJ 719 : (1997) AIRSCW 3699 : (1997) 7 Supreme 40 , the apex Court has held as follows:

"The appellants should have been given relief in the same terms as was granted by the Full Bench of the Tribunal to others."

12. In *C. Lalitha (supra)*, the apex Court in paragraph 29 has held as follows:

"Service Jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the Court that would not mean that persons similarly situated

should be treated differently."

13. In *Maharaj Krishna Bhatt and others (supra)*, the apex Court in paragraph 23 has held as follows:

"In fairness and in view of the fact that the decision in *Abdul Rashid Rather* had attained finality, the State authorities ought to have gracefully accepted the decision by granting similar benefits to the present petitioner."

14. In *E.P. Royappa Vs. State of Tamil Nadu and Another*, AIR 1974 SC 555 : (1974) LabIC 427 : (1974) 1 LLJ 172 : (1974) 4 SCC 3 : (1974) 2 SCR 348 , the apex Court has held as follows:

"From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it effects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.

15. In *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, AIR 1978 SC 597 : (1978) 1 SCC 248 : (1978) 2 SCR 621 , the apex Court has held as follows:

"Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits... Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence...."

16. In *D.S. Nakara and Others Vs. Union of India (UOI)*, AIR 1983 SC 130 : (1983) 1 LLJ 104 : (1982) 2 SCALE 1213 : (1983) 1 SCC 305 : (1983) 2 SCR 165 : (1983) 1 SLJ 131 , the apex Court has observed thus:

"...The thrust of Article 14 is that the citizen is entitled to equality before law and equal protection of laws. In the very nature of things the society being composed of unequals a welfare State will have to strive by both executive and legislative action to help the less fortunate in the society to ameliorate their condition so that the social and economic inequality in the society may be bridged. This would necessitate a legislation applicable to a group of citizens otherwise unequal and amelioration of whose lot is the object of State affirmative action. In the absence of doctrine of classification such legislation is likely to flounder on the bed rock of equality enshrined in Article 14. The Court realistically appraising the social stratification and economic inequality and keeping in view the guidelines on which the State action must move as constitutionally laid down in Part IV of the Constitution, evolved the doctrine of classification. The doctrine was evolved to sustain a legislation or State action designed to help weaker sections of the

society or some such segments of the society in need of succour. Legislative and executive action may accordingly be sustained if it satisfies the twin tests of reasonable classification and the rational principle correlated to the object sought to be achieved...."

17. In *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, AIR 1981 SC 487 : (1981) 1 LLJ 103 : (1981) 1 SCC 722 : (1981) 2 SCR 79 : (1981) 2 SLJ 651 , the Supreme Court observed as under:

"...It must, therefore, now be taken to be well settled that what Article 14 strikes at is arbitrariness because any action that is arbitrary, must necessarily involve negation of equality"....

18. In *Dakshin Haryana Bijli Vitran Nigam and Others Vs. Bachan Singh*, AIR 2009 SC 2745 : (2009) 123 FLR 435 : (2009) 10 JT 352 : (2009) 14 SCC 793 : (2010) 1 SCC(L&S) 463 : (2009) 11 SCR 710 : (2010) 1 SLJ 262 : (2009) 5 SLR 476 : (2009) AIRSCW 5467 : (2009) 5 Supreme 665 , the apex Court has held as follows:

"This Court time and again had observed that the principle underlying the guarantee of Article 14 of the Constitution is that all persons similarly placed shall be treated alike, both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation without any discrimination."

19. In view of the law laid down by the apex Court as mentioned above, this Court is of the considered view that the impugned order in Annexure-11 dated 30.4.2011 passed by the opposite party-management denying regularization of the services of the petitioners on the ground of lack of educational/technical qualification is arbitrary, unreasonable and violates Article 14 of the Constitution of India. Accordingly, the same is quashed. The opposite party-management is directed to regularize the services of the petitioners in compliance to the award passed by the learned Industrial Tribunal in I.D. Case No. 74 of 2003, which has been confirmed by this Court as well as the apex Court. The entire exercise has to be completed within a period of two months from the date of receipt of a copy of this judgment.

20. With the aforesaid direction, the writ petition is allowed. No cost.