

(2000) 02 OHC CK 0022

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1590 of 1999

Bimal Prasad Pattnaik

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-02-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2000) 1 OLR 407

Hon'ble Judges : P.K. Mohanty, J;P.K. Misra, J

Bench : Division Bench

Advocate : Ajit Kumar Hota and A.N. Upadhyaya, for the Appellant; S.S. Das-I, K.C. Swain and R.K. Singh, for the Respondent

Judgement

P.K. Mohanty, J.—The petitioner has approached this Court for the following reliefs :

(i) To issue notice to the opposite parties asking for show cause as to why the services of the petitioner shall not be regularised and he shall not be absorbed in the vacant post of Lower Division Clerk with all service and financial benefits, and in the event of improper, unsuitable and unsatisfactory reply from the opp. parties to direct the opp. parties to regularise the services of the petitioner with effect from 1.1.1996 absorbing him in the post of L.D.C. and to grant all service and financial benefits to him as due and admissible;

(ii) To direct the opp. parties not to be vindictive upon the petitioner by terminating his services in view of the unspecified statutory service conditions inadequately provided or being not provided in the statute, National Council for Teachers Education Act, 1993;

(iii) To grant any other fit, proper and equitable relief, the petitioner is entitled to in the facts and circumstances of the case;

(iv) To allow the application with costs.

2. The undisputed facts, without unnecessary details, are that the petitioner was appointed temporarily on ad hoc basis for a period of 89 days as a Typist in the office of the Eastern Regional Committee, National Council of Teachers Education, Bhubaneswar by the order of appointment under Annexure- 2 and continued from time to time in different spells with break in service and ultimately by office order dated 11.1.1999, a copy of which is Annexure- 21, the petitioner was engaged as Lower Division Clerk on a consolidated wage of Rs. 2,000/- with effect from 11.1.1999 to 10.2.1999 or till further orders, whichever is earlier, with the condition that the engagement will not confer on him any right or claim for regular appointment against the post in the office and the engagement can be terminated at any time without any notice and without assigning any reason thereof and will stand terminated on the afternoon of 10.2.1999 automatically. Being apprehensive of termination, the petitioner has challenged the aforesaid order dated 11.1.1999. It is submitted by the petitioner that he having been selected by a process of selection through a duly constituted selection committee in December, 1995 and continuously worked in the post during these period, he was entitled to be regularised in the service and the order under Annexure-21, which contemplates automatic termination is illegal and arbitrary. The petitioner has averred that in the month of June, 1997, a selection was made for filling up of the post of L.D.C., wherein the petitioner has appeared at the interview, but with ulterior motive, no appointment order was issued to the petitioner, even if he was selected and recommended for the post. The selection was kept in abeyance or stood cancelled, without any notice to the petitioner for the reasons best known to the authorities. However, the petitioner asserts that he continued to discharge his duties continuously in spite of the artificial breaks in his appointment order and therefore the selection made by the authorities to fill up the post of L.D.C. through the sponsored candidates from Employment Exchange depriving the petitioner of his right of regularisation is illegal and arbitrary. The petitioner has made several allegations against the authorities alleging mala fides, but we need not go into those facts since such allegations are on the basis of surmises.

3. The opposite parties, however, have taken the stand in their counter affidavit that the petitioner's appointment being on term basis for different spells of time with break and the petitioner having not been selected through the process of selection in accordance with the rules of recruitment, he cannot lay any claim for regularisation. It is further stand of the opp. parties that this petitioner was allowed to attend the interview for the selection held in the year 1997, but he was never selected, inasmuch as none of the candidates who faced the interview being sponsored by the Employment Exchange having been found suitable by the Selection Committee there was no question of giving any appointment either to the petitioner or any other candidate and in such circumstances, the petitioner was allowed to continue to manage the work. However, it has been stated in the counter affidavit that the authorities had taken some attempts in the year 1998 and ultimately in 1999, when the Employment Exchange was requested to

sponsor some names, five names were sponsored by the Employment Exchange, but the name of the petitioner being not there, a further request was made to sponsor some more candidates with the hope that the name of the petitioner may be sponsored and thereby the petitioner could avail the opportunity of facing the interview and get a chance of being appointed. It is stated that since the name of the petitioner was not sponsored by the Employment Exchange, he was not allowed to participate in the selection, inasmuch as by the time the petitioner was appointed initially in the year 1996, he was of over age.

4. Law is well settled that a temporary, ad hoc or daily wage appointment made to man the post pending regular recruitment through the process of selection in terms of the recruitment rules, does not confer any right on the incumbent to be regularised, since the authorities are bound to make the selection in terms of the recruitment rules. Any appointment de hors the rules does not confer any right for regularisation.

5. Undisputedly, the petitioner was appointed in different spells of time on 89 days basis, since January, 1996 and the last appointment by the order dated 11.1.1999 was at a consolidated wage till 10.2.1999. On the submission of the petitioner that he was selected in 1997 selection for the post of L.D.C. but the authorities vindictively did not appoint him in the post even though the opp. parties in their counter affidavit stated that none of the candidates was found suitable including the petitioner by the selection committee, we called for the records of the Selection Committee and on perusal, it was observed that the selection committee found no one suitable including the petitioner and therefore, the contention of the petitioner that even though he was selected for the post in the year 1997, but no appointment order was issued and he was vindictively allowed to continue as an ad hoc employee, is false and unfounded.

6. In that view of the matter, when the petitioner admittedly was appointed on 89 days basis for different spells of time and ultimately on a consolidated scale for one month under Annexure-21 and nothing has been brought on record by the petitioner to show that the initial appointment under Annexure-2 was made pursuant to a regular selection in terms of the recruitment rules, inasmuch as in view of the specific averment of the opp. parties that no selection was made, but a temporary ad hoc appointment order was issued to meet the exigencies of service, pending selection by regular process, the petitioner has no right to claim regularisation de hors the recruitment rule. The petitioner continued on ad hoc basis in terms of the letters of appointment and therefore, such continuance would not create any right in favour of the petitioner for regularisation and therefore, so far as the prayer for regularisation in service is concerned, it is misconceived and has to be rejected.

7. Now the next question that arises for consideration is whether the petitioner was rightly kept away from the selection made in the year 1999. Admittedly, requisition was sent to the Employment Exchange to sponsor names and a further requisition was made by the, opp. parties as would be revealed from

paragraph-18 of the counter affidavit. It is further stated therein that with the hope that the petitioner's name will be sponsored by the Employment Exchange, it was requested to sponsor some more names, but the petitioner's name having not been sponsored, he could not be allowed to participate in the selection held on 19.2.1999. We afraid, such a stand by the opp. parties would not stand the scrutiny of law. The petitioner admittedly was continuing on ad hoc basis as against the vacant post pending selection through regular process and he was also allowed to participate and take the interview in the year 1997 where he could not get selected and as such, if the petitioner was continuing as on the date when the selection was made, there was absolutely no justifiable reason for the opposite parties not to allow him to participate and take a chance in the selection on the ground that the Employment Exchange did not sponsor his name. The petitioner was continuing in the employment of the opp. parties may be on ad hoc basis and therefore, it is incumbent upon the authorities to afford him an opportunity to prove his merit and if suitable, get recruited, which has not been done and the petitioner is deprived of his right of consideration for selection even though he has no right to be selected or appointed to the post.

8. In that view of the matter, the petitioner having been denied the opportunity of being considered for selection to the post, when he was already continuing in the post on ad hoc basis/89 days basis/consolidated wage basis, illegally, the selection said to have been made on 19.2.1999, cannot be allowed to stand. Accordingly, we quash the selection and direct the opposite parties to conduct a fresh selection in accordance with the recruitment rules allowing the petitioner to participate and face the selection and interview on his own merit on which we express no opinion.

The writ application is disposed of accordingly.

P.K. Misra, J.

I agree.