
(2021) 06 OHC CK 0067

In the Orissa High Court

Case No : W.A. Nos. 101, 100, 165, 80, 79, 29 Of 2021

Collector And District Magistrate, Dhenkanal And Others

APPELLANT

Vs

Arabinda Panda & Others

RESPONDENT

Date of Decision : 21-06-2021

Acts Referred:

Citation : (2021) 06 OHC CK 0067

Hon'ble Judges : S. K. Mishra, J;Savitri Ratho, J

Bench : Division Bench

Advocate : R.N.Mishra, B.S.Tripathy-1, A.Tripathy, A. Sahoo, Shakti Prasad Panda

Judgement

S.K.Mishra,J

1. In these six intra court appeals, the State of Odisha through the Collectors and District Magistrates, Dhenkanal and Jajpur, the Commissioner of CT

and GST, Odisha, has assailed the orders passed by learned Single Judge dated 28.8.2020 passed in W.P. (C) No.21243/2020, order dated 28.8.2020

passed in W.P. (C) No.21241/2020, order dated 25.8.2020 passed in W.P. (C) No.20631/2020, order dated 03.9.2020 passed in W.P. (C)

No.22094/2020, order dated 10.9.2020 passed in W.P. (C) No.22689/2020 and order dated 20.8.2020 passed in W.P. (C) No.20006/2020. Identical

orders have been passed in these six disposed of Writ Petitions on the date of first listing.

2. The Petitioners-Respondents have filed the writ petitions seeking directions to the Opposite Parties-Appellants, to regularize their services taking

into account their continuous service of more than eight years as has been done in favour of other similarly situated persons as per Government

Circular and in terms of the principles decided in the case of State of Karnataka v. Umadevi (3), reported in (2006) 4 SCC 1, State of Karnataka

and others v. M.L.Kesari and others, (SLP (C)No.15774/2006. After hearing the Petitioners-Respondents and initial submissions of the learned

Addl. Government Advocate without giving any reasonable opportunity of filing counter affidavits or to take instructions in the matter, the learned

Single Judge has passed the following orders:-

“Considering the contentions raised by the learned counsel for the Petitioners and after going through the records, it appears that the Petitioners have rendered service for more than eight years on; monthly remuneration basis. Therefore, the case of the Petitioners is squarely covered by the ratio decided in the cases cited

supra. In that view of the matter, this Court disposes of this Writ Petition directing the Opposite Parties to consider the case of the Petitioners and regularize their services keeping in view the judgment in the case of Secretary State of Karnataka and others v. Umadevi (3) and others; (2006) 4 SCC 1 and State of Karnataka

and others Vs. M.L. Kesari and others involving SLP (C) No.15774/2006 and also the resolution of the G.A. Department dated 17.9.2013, within a period of four

months from the date of communication of a copy of this order by the Petitioners and grant consequential service benefits as due admissible to them. (underlined and

provided inverted commas for emphasis)

It is further directed that in the event the Petitioners are still continuing in their service, status quo as on today in respect of the services of the Petitioners shall be

maintained till a decision is taken in the matter by the Opposite Parties in terms of the above direction.

3. In assailing these orders Mr. R.N.Mishra, the learned Addl. Government Advocate, submitted that the orders passed by the learned Single Judge

directing consideration and regularization of the services of the Petitioners-Respondents in all these cases are erroneous as there is no positive finding

that they should be regularized as per the ratio decided in the cases referred to above. Learned Addl. Government Advocate also submitted that the

learned Single Judge, issuing a mandamus for regularizing their services without any reasonable opportunity to the Opposite Parties-Appellants to file

counter affidavit is also not in accordance with the standard procedure adopted

in such cases.

4. Mr. B.S.Tripathy-1, learned counsel for the Respondents, on the other hand, argued at length justifying the order passed by the learned Single Judge.

5. However, we are of the opinion that since these cases were disposed of on the first date of listing, a detailed order on merit of the contentions raised by the parties in the appellate stage for the first time will not be proper and expedient in the interest of justice.

6. Generally, an order directing the authorities to consider the representation of a Petitioner is not a proper disposal of a Writ Petition. However, Courts in India have developed this method of directing disposal of representation because of the heavy pendency of the cases and limited number of Courts.

7. In all these Writ Petitions writs of mandamus have been issued by directing the appellants to regularise the services of the Petitioners without affording reasonable opportunity to the Opposite Parties-Appellants to file Counter Affidavits and without giving a positive finding that they are entitled to be regularized in the given facts and law applicable.

8. In that view of the matter, we hereby allow these Writ Appeals in Part and set aside the following portion of the order and direction of the learned

Single Judge;

â?? xxx and regularize their services

xxx xxx xxx

and grant consequential service benefits as due admissible to them.â??

In other words, we direct the appellants to consider the representation of the respondents in all these cases keeping in view the settled principles of

law as stated by Honâ??ble Supreme Court in the judgments referred to above. For this purpose, the Respondents in each cases are given liberty to

file detailed representation along with duly attested copy of this Judgment within a period of twenty-one days, which shall be considered by the

authorities keeping in view the aforesaid consideration within a period of one month thereafter by a reasoned order after affording reasonable

opportunity of hearing to the Respondents.

As the restrictions due to resurgence of COVID-19 are continuing, learned

counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by Mr. B.S.Tripathy-1, Advocate with a seal, or Mr. R.N.Mishra and Mr. Shakti Prasad Panda, the learned Addl. Government Advocates with seals, in the manner prescribed vide Court's Notice No.4587 dated 25th March, 2020 as modified by Court's Notice No.4798 dated 15th April, 2021.

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