

(2023) 09 OHC CK 0017

In the Orissa High Court

Case No : Writ Petition (C) No. 7224 Of 2016

Dheerendra Kumar Dash And Others

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 05-09-2023

Acts Referred:

Orissa Agriculture Produce Market Act, 1956 — Section 18A
Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 — Section 3(d), 6, 7

Citation : (2023) 09 OHC CK 0017

Hon'ble Judges : S.K. Mishra, J

Bench : Single Bench

Advocate : P.K. Rath, G.N. Rout, P.K. Panda

Final Decision : Allowed

Judgement

S.K. Mishra, J

1. The Petitioners, who are working as Yardmen on contract basis in the Regulated Market Committee, Bargarh, shortly, RMC Bargarh since 2007, have preferred the present Writ Petition for quashing of the Order dated 09.09.2015 passed by the Collector-Cum-Chairman, RMC, Bargarh (Opposite Party No.5), as at Annexure-1, whereby, their representation for regularization of services against the vacant posts of Yardman was rejected. Also a prayer has been made seeking for a direction to the Opposite Party Nos. 4 and 5 to regularize their services and extend all such benefits, as is due and admissible to the said posts.

2. The factual matrix of the case, in a nutshell, is that the State Government under the Orissa Agriculture Produce Market Act, 1956, shortly, Act, 1956, established Market Committee in every area in respect of agriculture produce. For superintendence over such Market Committee, by Notification in Official Gazette, a Board called the Orissa State Agricultural Market Board, shortly, OSAM Board, was established under Section 18-A of the Act, 1956. The OSAM Board vide Office Order No.4106 dated 03.08.2007 intimated the Chairman/Secretary,

RMC, Bargarh that the Board has been pleased to accord approval for creation of posts in different categories in favour of the RMC, Bargarh. Pursuant to the said Order, the Secretary, RMC, Bargarh, vide its Office Order No.754 dated 26.08.2007, as at Annexure-3, requested to accord necessary approval for engagement of 45 numbers of contractual workers against vacant posts from amongst the existing NMRs. On 31. 08.2007 proceeding of the Appointment and Promotion Sub-Committee of RMC, Bargarh was held in the Office of the Sub-Collector-Cum-Chairman, RMC, Bargarh, wherein it was decided to engage the present NMRs in the vacant posts on contractual basis after obtaining due approval from the OSAM Board. Thereafter, the OSAM Board, vide Order dated 20.09.2007, as at Annexure-6, intimated the RMC, Bargarh about the approval of the proceeding of the Sub-Committee of RMC, Bargarh by the Hon'ble Minister, Co-operation-Cum-Chairperson, OSAM Board and advised to observe due formalities.

3. Pursuant to the Resolution of the Appointment and Promotion Sub-Committee of RMC, Bargarh and approval of OSAM Board, Bhubaneswar, the Sub-Collector-Cum-Chairman, RMC, Bargarh vide Order No.953 dated 09.10.2007, as at Annexure-7, appointed the Petitioners against the vacant posts on contractual basis with consolidated salary. Since then, the Petitioners are discharging their services on contractual basis. When no step was taken for regularization of the services of the Petitioners, they made representation dated 05.08.2008 to the Chairman, RMC, Bargarh through the Secretary, RMC, Bargarh, as at Annexure-8. The Secretary, vide his letter dated 10.08.2008, submitted the said representation to the General Manager, OSAM Board, Bhubaneswar. On receipt of the said representation, the General Manager, OSAM Board, vide his letter dated 13. 08.2008, sought for certain clarification and justification from the Secretary, RMC, Bargarh, for regularization of services of the contractual workers. In response to the said letter, the Secretary, RMC, Bargarh, furnished necessary clarification assigning reasons for regularization of services of the Petitioners vide letter dated 22.09.2008, as at Annexure-11. It is the further case of the Petitioners that after proper verification/clarification given by the Secretary, RMC, Bargarh, the General Manager, OSAM Board, vide Order dated 27.09.2008, as at Annexure-12, communicated to the Secretary, RMC, Bargarh regarding approval for regularization of 45 nos. of contractual workers by the Chairperson, OSAM, Board indicating therein that after regularization of the said staff, the expenditure should be within the prescribed limit fixed by OSAM Board and the RMC, Bargarh was advised to observe due formalities in the said respect. Accordingly, the Petitioners' services were regularized. In spite of such regularization, the Petitioners were not treated as regular employees and denied regular scale of pay.

4. The Petitioners, finding no other alternative remedy, preferred W.P.(C) No.7907 of 2010. This Court, by its Order dated 06.07.2010, disposed of the said Writ Petition by directing the Petitioners to file fresh representation before Opposite Party No.5. Accordingly, the Petitioners made representation to the

A.D.M.-Cum-Chairman, RMC, Bargarh. The Opposite Party No.5 rejected the said representation in a mechanical manner on 21.09.2010. The Secretary of the Regulated Market Committee vide Memo No.2049 dated 21.09.2010, communicated the same to the Petitioners.

5. Again, the Petitioners preferred W.P.(C) No.15278 of 2011 before this Court, which was disposed of vide Order dated 27.07.2015 with a direction to file a fresh representation before the Authority within ten days from the date of passing of the said Order and the Authority concerned was directed to consider and pass order within six weeks. Pursuant to said direction, the Petitioners made representation to the Opposite Party No.5 within the stipulated time. However, the Opposite Party No.5, vide Order dated 09.09.2015, rejected the representation of the Petitioners solely on the ground that irregularly recruited engagees cannot be regularized in blatant violation of settled recruitment norms and transgression of provisions of ORV Act.

6. Being aggrieved by the said Order dated 09.09.2015 passed by the Opposite Party No.5, the Petitioners have approached this Court with the prayers as detailed above.

7. Being noticed, the Opposite Parties, including the State, though appeared but did not file any Counter Affidavit. Learned Counsel for the Petitioners submitted that Opposite Party Nos. 3 and 4 filed a detailed Counter Affidavit in the previous Writ Petition preferred by the present Petitioners i.e. W.P.(C) No. 15278 of 2011, which has been annexed to the Writ Petition as Annexure-2. The said submission was not disputed by Mr. Panda, learned Counsel for the Opposite Party Nos. 3 and 4.

8. Heard Mr. Rath, learned Senior Counsel for the Petitioners, Mr. G.N. Rout, learned Additional Standing Counsel for Opposite Party Nos. 1, 2 and 5 and Mr. Panda, learned counsel for Opposite Party Nos. 3 and 4.

9. Learned Counsel for the Petitioners submitted that the case of the Petitioners is identical to the case of the Petitioners in W.P.(C) No.5668 of 2016, which was disposed of vide a detailed judgment dated 21.07.2023 by this Court. He further submitted that the Petitioners are four, out of forty-five contractual employees, whose cases were duly approved by the Chairperson for regularization of their services. Accordingly, Mr. Rath, Senior Counsel for the Petitioners prayed for disposal of the present case in terms of the said judgment dated 21.07.2023 passed in W.P.(C) No.5668 of 2016.

10. Mr. Panda submitted that though no Counter Affidavit has been filed by his clients, as per Sections 6 and 7 of the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975, the reserved post under the said Act cannot be de-reserved for general candidates and as such, the services of the Petitioners cannot be regularized in the concerned posts.

11. In response to such submission made by Mr. Panda, Mr. Rath, learned Senior Counsel for the Petitioners submitted that in view of the specific provisions enshrined under Section 3(d) of the ORV Act, the said Act is not applicable to the Petitioners, who were appointed as contractual employees against regular vacancies and are continuing as such for years together, for which a prayer has been made for regularization of their services. Mr. Rath further submitted that the Counter Affidavit filed by the present Opposite Party Nos.3 and 4, who were Opposite Party Nos. 4 and 5 in the earlier Writ Petition i.e. W.P.(C) No.15278 of 2011, also substantiates the said stand of the present Petitioners that while appointing them on contractual basis due compliance was made for proper implementation of the ORV Act and at this juncture such a submission made by Mr. Panda, contrary to the stand taken in the earlier Writ Petition, is not entertainable. He drew attention of this Court to Paragraph-11 of the said Counter Affidavit filed by the present Opposite Party Nos. 3 and 4 in W.P.(C) No.15278 of 2011, as at Annexure-2, and submitted that it has been admitted by the present Opposite Parties in the said Counter Affidavit that while appointing the Petitioners, it was so done as per the prevailing norms and prior approval of the Authority concerned. Compliance was made to observe proper implementation of ORV Rules.

Paragraphs Nos. 1 and 11 of the said Counter Affidavit, being germane to the oral argument advanced by Mr. Panda, learned Counsel for Opposite Party Nos. 3 and 4, are extracted below:

"1. That I am the Secretary of the Regulated Market Committee and I have been arrayed as opposite party No.4 in the present writ petition. I have been duly authorized to swear this affidavit on behalf of opposite party No.5, Chairman of the Regulated Market Committee, Bargarh (here in after referred as "R.M.C." in short).

11. That the deponent humbly submits that the appointments of the petitioners were done as per the prevailing norms and prior approval of the Board was duly obtained & in course of their engagement necessary compliance was made to observe proper implementation of O.R.V. Rules. Besides other employment Rules and procedures were properly followed. The deponent humbly submits as it transpires from the records available in the office of the deponent that the recruitment procedure followed for engagement of the petitioner was regular one and was made as per law and in view of relaxation made under Annexure-B/4, these petitioners claim requires to be considered in proper perspective by this Hon'ble Court and the deponent humbly submits in case their appointment is regularized, adequate funds can be made available by proper budgetary allocations for disbursement of salary components in favour of the petitioners, which will be well within the prescribed limit fixed by the Board."

(Emphasis supplied)

12. From the pleadings made by the learned Counsel for the Parties and on

perusal of the judgment cited above, this Court finds that the present case is squarely covered by judgment dated 21.07.2023 passed in W.P.(C) No.5668 of 2016 (Rabiratan Sahu and others vs. State of Odisha and others).

13. Accordingly, the impugned Order dated 09.09.2015, as at Annexure-1, passed by the Opposite Party No.5 is hereby set aside and quashed.

14. The Opposite Parties, more particularly, Opposite Party Nos. 4 and 5 are directed to regularize the services of the Petitioners with effect from 27.09.2008 i.e. the date on which the General Manager, Orissa State Agricultural Marketing Board, Bhubaneswar communicated the Secretary, R.M.C., Bargarh (Annexure-12) to regularize the services of the Petitioners, and to grant them all consequential service and financial benefits, as due and admissible, by making due calculation thereof within a period of four months from the date of communication of the certified copy of this judgment.

15. The Writ Petition stands allowed and disposed of. No order as to cost.

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