
(2008) 12 OHC CK 0100
In the Orissa High Court

Dwarikanath Nayak

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 17-12-2008

Acts Referred:

Citation : (2009) 107 CLT 453

Hon'ble Judges : R.N. Biswal, J;B.P. Das, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.P. Das, J.—The Petitioner has filed this writ application with a grievance that though he has been working as Junior Assistant/Clerk on N.M.R. basis in the Cuttack Municipal Corporation (in short, "Corporation") since 1.11.1990, his services have not been regularized.

2. Perusal of Annexure-6, i.e., Order Dated 19.7.2001 passed by the Director, Municipal Administration and Ex-Officio Additional Secretary to Government, shows that the case of the Petitioner was considered for regularization but the same was rejected because he could not be able to produce any document regarding entrustment of work of Jr. Assistant in the Corporation. Simultaneously, the Chief Executive of the Corporation has reported that there is no documentary evidence in his favour regarding entrustment of work, for which the Selection Board did not consider his case for regularization in the rank of Jr. Assistant.

3. Counter affidavits have been filed by O.Ps. 1 & 2 and O.Ps. 3 & 4. In paragraph-6 of the counter affidavit of Cuttack Municipal Corporation, it is stated that by Order Dated 29.3.1996 the Municipal Authorities forwarded the name of the Petitioner to the appropriate authority for consideration of his regularization but the Municipal Authorities being the recommending authorities have no power to absorb the Petitioner as Jr. Assistant. On the other hand, in paragraph 4 of the counter affidavit filed on behalf of O.Ps. 1 & 2 State Authorities sworn to by Sri

Bishnu Prasad Sarangi, Under Secretary to Government in Housing and Urban Development Department, it is indicated that admittedly, in the instant case, the Petitioner was engaged to work as Jr. Assistant on N.M.R. basis by the Cuttack Municipal Corporation with effect from 30.3.1996 and as the appointment of the Petitioner is de hors the statutory rules, his claim for regularization is misconceived.

The counter affidavit filed by the State Authorities goes contrary to the Order Dated 19.7.2001 in Annexure-6, which shows that the case of the Petitioner was considered and was rejected only for the reason of non-production of documents in support of his claim that he was entrusted with the work of Jr. Assistant.

4. In course of hearing of this case, by Order Dated 15.12.2008 we directed the Corporation to produce the personal file of the Petitioner indicating his date of appointment. Today Learned Counsel for the O.P. Corporation files a Memo along with the communication dated 16.12.2008 addressed to its Advocate (Sri S.K. Nayak) enclosing therewith the xerox copy of the extract from the original list of N.M.R. employees of the Corporation. The aforesaid document shows that the Petitioner joined the Corporation on 1.11.1990 and his nature of work is Accounts (Clerical).

5. This being so, we have no hesitation to set aside the Order Dated 19.7.2001 passed by the Director, Municipal Administration in Annexure-6 and accordingly, we do so. The Director, Municipal Administration, is directed to consider the case of the Petitioner for regularization of his services and take appropriate decision on the same in accordance with law. Let the entire exercise be completed within three months from the date of communication of this order. The writ application is allowed accordingly.

R. N. Biswal, J.

I agree.