
(2023) 11 OHC CK 0078
In the Orissa High Court
Case No : Writ Petition (C) No.17485 Of 2019

Jagannath Sahoo

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 14-11-2023

Acts Referred:

Citation : (2023) 11 OHC CK 0078

Hon'ble Judges : Biraja Prasanna Satapathy, J

Bench : Single Bench

Advocate : P.K. Rath, S.K. Samal

Final Decision : Disposed Of

Judgement

Biraja Prasanna Satapathy, J

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard learned counsel appearing for the Parties.
3. Petitioner has filed the present Writ Petition inter alia with the following prayer:-

“ The petitioner, therefore, prays that your Lordships would be graciously pleased to admit this Writ Petition, call for the records and after hearing the parties allow the same, issue writ/writs in the nature of certiorari/ mandamus and/or any other further writ/direction and quash the order dated 05.08.2019 passed by the Joint Secretary to Government, Department of Agriculture & Farmers' Empowerment & order dated 06.09.2019 passed by Director of Agriculture & Food Production, Odisha, Bhubaneswar under Annexure-1 & Annexure-2 respectively”.
4. It is contended that pursuant to the selection process initiated by the Director Agriculture, Opposite Party No.3 with issuance of the advertisement under Annexure-6-Series for appointment of one contractual DTP Operator-cum-

Computer Graphic Designer in the Web Portal of Government of Odisha on 28.11.2013, Petitioner participated in the selection process as against the said post.

4.1. It is contended that on being found suitable, Petitioner was issued with the order of appointment by Opposite Party No.3 vide office order dtd.31.01.2014 under Annexure-8.

4.2. It is contended that the appointment of the Petitioner since was a contractual one, it was renewed from time to time till the impugned communication was issued by Opposite Party No.1 on 21.02.2019 under Annexure-12, wherein it was indicated that no further continuance can be given as the Finance Department has regretted the proposal for further continuance with another observation that the post in question be filled up through outsourcing.

4.3. Learned counsel for the Petitioner contended that challenging the communication issued on 21.02.2019 under Annexure-12, Petitioner initially approached the Tribunal in O.A No.1684(C)/2019. The Tribunal on 15.05.2019 while issuing notice of the matter passed an interim order by staying the operation of the communication dtd.21.02.2019.

4.4. It is contended that just prior to abolition of the Tribunal in the State of Odisha and after filing of the counter in W.P.(C) (OA) No.1684/2019 on 02.08.2019, Opposite Party No.1 vide communication dtd.05.08.2019 under Annexure-1 requested Opposite Party No.2 to take immediate step to outsource the service of the post against which the Petitioner was continuing. Not only that vide another order issued under Annexure-2 on 06.09.2019 by Opposite Party No.3, Petitioner was disengaged from his service w.e.f. 06.09.2019.

4.5. It is contended that the Petitioners challenging the communication dtd.05.08.2019 and order dtd.06.09.2019 under Annexures-1 & 2 approached this Court in the present writ petition in question. This Court while issuing notice of the writ petition on 07.11.2019, passed an interim order by staying operation of the communication as well as the order issued under Annexures-1 and 2.

4.6. It is contended that in spite of the order passed by the Tribunal on 15.05.2019 and by this Court on 07.11.2019 when the Petitioner was not allowed to continue, this Court taking into account the stand of the Opposite Party, passed an order on 25.09.2023 to the following effect:-

"Heard learned counsel for the Parties.

Considering the nature of dispute involved and the order passed by this Court on 07.11.2019 as well as the earlier order passed by the Tribunal on 15.05.2019 in W.P.(C) (OA) No.1684 of 2019, this Court is of the prima facie view that the Petitioner has not been allowed to continue by the Opp.Parties. Without expressing any opinion, this Court adjourn this matter to 29th September, 2023".

Pursuant to the said order, Petitioner was allowed to continue in his post w.e.f. 06.09.2019 vide order dtd.08.10.2023 so issued by the Joint Director of Agriculture (Information of Odisha), Bhubaneswar.

4.7. Learned counsel for the Petitioner contended that Petitioner in terms of the order dtd.08.10.2023 though was allowed to continue w.e.f. 06.09.2019 but the salary that he was receiving at time of his disengagement is not being given to him.

4.8. Learned counsel for the Petitioners contended that since the Petitioner by facing due selection process was engaged as a contractual DTP Operator-cum-Computer Graphic Designer, in terms of the office order dtd.31.1.2014 under Annexure-8 to the writ petition and he was allowed to continue with due extension of his engagement, there was no occasion on the part of the Opposite Party No.2 to regret the proposal for further extension of the services of the Petitioner and with the further observation that the said post be filled up through outsourcing.

4.9. It is accordingly contended that not only the communication issued by Opposite Party No.1 on 21.02.2019 under Annexure-12 is illegal but also further action taken by Opposite Party No.1 vide communication dtd.05.08.2019 under Annexure-1 and by Opposite Party No.3 vide order dtd.06.09.2019 under Annexure-2. The order under Annexures-1 & 2 and the communication issued on 21.02.2019 under Annexure-12 are not sustainable in the eye of law and liable to be set aside by this Court.

5. Mr. S.K. Samal, learned Addl. Government Advocate for the State on the other hand made his submission basing on the stand taken in the counter affidavit filed by Opposite Party Nos.1 and 3. It is contended that since the Petitioner's further continuance was not accepted by the Finance Department, Opposite Party No.1 issued the impugned communication initially on 21.02.2019 under Annexure-12.

5.1. It is further contended that since the Tribunal while staying the operation of the communication under Annexure-12 observed that the interim order will continue till filing of the counter, the Department after filling of the counter on 02.08.2019 issued the communication on 05.08.2019 to fill up the post through outsourcing under Annexure-1. Thereafter, in view of the communication issued under Annexure-12 and the lapse of the interim order so passed by the Tribunal after filing of the counter, Petitioner was disengaged from his services vide office order dtd.06.09.2019 under Annexure-2.

5.2. It is contended that since the Finance Department did not agree to the proposal of the Parent Department to continue with further engagement of the Petitioner on contractual basis and directed the Department to fill up the said post through outsourcing, the communication under Annexure-12 was initially issued. Subsequently after filing of the counter and by taking the interim order to have lapsed the impugned communication under Annexure-1 and consequential order under Annexure-2 were issued.

5.3. It is accordingly contended that no illegality or irregularity has been committed by the Opposite Parties in issuing the impugned communication under Annexure-12 as well as the communication under Annexure-1 and the order under Annexure-2.

6. Having heard learned counsel for the Parties and after going through the materials available on record, this Court finds that the Petitioner was appointed as against the post of DTP Operator-cum-Computer Graphic Designer in terms of the selection process initiated by Opposite Party No.3 under Annexure-6-Series. This Court further finds that the advertisement in question to fill up the post was issued in four separate newspapers of the State.

6.1. It is also found that the Petitioner having been declared successful in the selection process, he was engaged as against the post on contractual basis vide order dtd. 31.01.2014 under Annexure-8.

6.2. It is also found from the record that the engagement of the Petitioners was renewed from time to time. But vide the impugned communication on 21.02.2019 under Annexure-12, further continuance was not extended on the ground that the Finance Department regretted such proposal. This Court taking into account the nature of advertisement issued under Annexure-6-Series and the order of engagement issued in favour of the order under Annexure-8 finds no role of the Finance Department to regret such proposal and also directing to fill up the post through outsourcing.

In view of such position, this Court is inclined to quash the communication dtd.21.02.2019 under Annexure-12 and quash the same accordingly.

6.3. It is also found from the record that the Tribunal while issuing notice of the matter in the connected WPC(OA) No.1684 of 2019, stayed the operation of the communication dtd.21.02.2019 till filing of the counter affidavit. As found from the record counter was filed before the Tribunal on 02.08.2019. But in view of the abolition of the Tribunal in the State w.e.f. 05.08.2019, the matter was kept pending. Taking advantage of the situation and on the ground that the counter has been filed and accordingly the interim order passed by the Tribunal has lapsed, the impugned communication under Annexure-1 and consequential order under Annexure-2 were issued by the Opposite Parties. This Court is of the view that such a course of action could not have been adopted by the Opposite Parties on the face of the interim order passed by the Tribunal on 15.05.2019. The action of the Opposite Parties in issuing Annexures-1 and 2 prior to vacation of the interim order amounts to overreaching the interim order passed on 15.05.2019 and it is also contemptuous in nature.

6.4. In view of such position, this Court is also inclined to quash the communication dtd.05.08.2019 under Annexure-1 and consequential order passed on 06.09.2019 under Annexure-2. While quashing both the communication and order under Annexures-1 & 2, this Court directs the Opposite Parties to allow the Petitioners to continue on contractual basis by paying the

required remuneration as due and admissible.

6.5. With regard to the claim of the Petitioner for his regularization in view of such continuance on contractual basis, this Court further directs Opposite Party No.3 to consider his claim of regularization in terms of the decision of the Hon'ble Apex Court in the case of Secretary, State of Karnataka vs. Uma Devi (3), (2006) 4 SCC-1, State of Karnatak vs. M.L.Keshari, (2010) 9 SCC 247, Nihal Singh & Others vs. State of Punjab & Others, 2013 (14) SCC 65 and Amarkant Rai vs. State of Bihar & Others, 2015 (8) SCC 265 and Dr. Prasanna Kumar Mishra vs. State of Odisha & Others reported in 2016(1) ILR (CUT)-373.

6.5. With the aforesaid observations and directions, both the Writ Petitions stand disposed of.

7. Photocopy of the order be placed in the connected cases.

.....