
(2011) 12 OHC CK 0012
In the Orissa High Court
Case No : Writ Petition (C) No. 1065 of 2009

Jugal Kishore Nayak

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 06-12-2011

Acts Referred:

Citation : (2011) 12 OHC CK 0012

Hon'ble Judges : B.P. Das, J;B.K. Nayak, J

Bench : Division Bench

Advocate : J.K. Rath, D.N. Rath, S.N. Rath, P.K. Rout, for the Appellant; J.P. Pattnaik, Addl. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

B.P. Das, J.—The petitioner, who was working as N.M.R. Store Assistant in the Office of the Liaison Officer, Rengali Irrigation Project, has come up before this Court against the order dated 25.9.2008 passed by the Orissa Administrative Tribunal, Cuttack Bench, in O.A. No. 215(C) of 2002 rejecting his prayer for regularisation of service (Annexure-5). The contention of the petitioner is that the services of his juniors have been regularized but his case has not been considered on the ground that as the relief is confined to such persons, who approached the Orissa Administrative Tribunal, here the petitioner cannot claim equal benefit like that of the applicants of the Original Applications before the Tribunal. The brief facts as narrated in this writ petition tend to reveal that the petitioner was initially engaged as Mazdoor under the N.M.R. Scheme on 31st May, 1979 and placed in different grades and ultimately retrenched in the year 2002. Some of the retrenched employees of the Rengali Irrigation Project, in which the petitioner was working, filed six Original Applications before the Orissa Administrative Tribunal through the Samal Barrage Employees Union, wherein the Tribunal allowed the prayer made in the said Applications directing the O.Ps. to bring the applicants to the work charged establishment with effect from the date of filing of the O.A. in 1993, i.e., 2.9.1993. But the regularisation of service

was not allowed on the ground that as the issue was pending consideration of the Government and at that time it was premature to consider the prayer of the applicants. The State Government challenged the aforesaid judgment before the Hon"ble apex Court in six Special Leave Petitions being S.L.P.(C) Nos.5526 to 5531 of 1996. The orders of the apex Court has been annexed as Annexures-1 series and 2 and the same are quoted below :-

20.3.1998- Within four weeks from today the petitioners shall file an affidavit a statement indicating what has been done pursuant to the resolution dated 15th May, 1997, Annexure-P-1, to the affidavit into rejoinder. The respondents shall have two weeks thereafter to respond. Adjourned for seven weeks.

26.2.1999- We are giving a last opportunity to the State of Orissa to satisfy as that the Scheme that it has formulated has been put into operation for this purpose, it must place an affidavit within four weeks, how many persons in the categories of daily wagers, NMRs and work charge employees are intended to be covered by the Scheme and how many out of them have actually been absorbed pursuant thereto. The affidavit shall indicate when all the persons who were affected shall be absorbed under the Scheme.

Adjourned for four weeks. No further adjournment shall be granted.

2. Thereafter, the Government of Orissa in Finance Department passed a resolution on 15th May, 1997 in Annexure-3, in which it has been resolved inter alia that the Government have been pleased to formulate certain norms and conditions for the NMR/DLR/Job Contract Workers. Few of them are as follows :-

A) Separate gradation/seniority list shall be prepared by the appointing authority for each category of workers determining the length of engagement of a particular person.

B) The workers should have worked under the administrative control of the Department concerned directly for a minimum period of ten years and the engagement of 240 days in a year shall be construed as a complete year of engagement for this purpose.

C) The date of regularisation was decided to be reckoned as the first appointment to the service for pension and other service benefits.

After this resolution was passed, the petitioner approached the authority-Chief Engineer & Basin Manager, Brahmani Left Basin, Samal and the Chief Engineer by his letter dated 26.4.2002 on the representation of the petitioner informed the Additional Secretary to Government in Water Resources Department that 33 nos. of N.M.R. employees, who were juniors to the petitioner, have been appointed under work-charged establishment with effect from 2.9.1993 pursuant to the common judgment passed by the Orissa Administrative Tribunal. The Chief Engineer also requested to consider the representation of the petitioner and take further action on the order of the Government. As nothing could happen, the petitioner filed O.A. No. 215(C) of 2002 before the Orissa Administrative Tribunal

and the same was dismissed by order dated 25.9.2008 on the grounds, such as (i) there was no post of Store Assistant lying vacant against which the petitioner could have been regularized. (ii) The petitioner was engaged prior to 12.4.1993 and was retrenched in the year 2002 and he having been sown in the common seniority list in a category in which no vacant post was available in the regular establishment. (iii) The judgment of the Tribunal cannot be held to be a judgment in rem to be automatically applicable to all other similarly circumstanced persons. In the present writ petition also the petitioner challenges the dismissal order of the Tribunal.

3. Counter affidavit has been filed by O.P.5-Executive Engineer indicating therein that the petitioner was a Store Assistant and no such post was vacant, for which the claim of the petitioner for regularisation could not be accepted.

But the fact remains, the petitioner is one of such N.M.R. employees, who have got the benefit of the order passed in six Original Applications filed by them and challenging the same the State Government filed an SLP before the apex Court but the same was dismissed. It is also a fact that the petitioner was in the category of N.M.R. and he fulfills all the criteria and conditions laid in the resolution in Annexure-3. So the only barrier before him is the order of the Tribunal, which termed as judgment in personem.

4. First of all, we may clarify the misnomer that as the petitioner was discharging the duty of a Store Assistant and due to non-availability of any vacancy in the said post, his case of regularisation could not be considered finally. The case before the Tribunal in earlier Original Applications as well as the Original Application filed by the petitioner was regarding regularisation of service of the N.M.Rs. Admittedly, the petitioner is within the class of N.M.R. and discharging the duty of a Store Assistant. Just because the petitioner was discharging the duty of a Store Assistant, it cannot be said that he ceases to be an N.M.R. The apex Court has dealt with the question of regularisation of the services of the N.M.Rs. and bring them to the status of work charge. The N.M.Rs. are to be regularized. The posts they are holding and the work they are performing are inconsequential. The case of the State before the Tribunal was that it had already prepared a Scheme for absorption for daily wagers, N.M.Rs. and work-charge employees. The preparation of the Scheme and the Resolution in Annexure-3 is not for the purpose of regularizing the services of the persons, who were applicants in the Original Applications before the Tribunal. This is a policy decision taken by the Government to extend the benefit of regularisation of service of those employees, who have worked for a quite long period in the establishment and satisfy the pre-requisite laid down in the Resolution in Annexure-3. The petitioner cannot be deprived of the benefit of the scheme under Annexure-3 just because he did not approach the Tribunal along with the applicants in batch of Original Applications. Hence, there is no force in the argument of the learned State Counsel after the State submitted before the Hon"ble apex Court that a scheme has been prepared for the N.M.R. employees,

basing upon which the Hon"ble apex Court passed the order dated 26.2.1999. In our considered opinion, the scheme covers the N.M.R. employees including the present petitioner.

We, therefore, set aside the order dated 25.9.2008 passed by the Orissa Administrative Tribunal, Cuttack Bench, in O.A. No. 215(C) of 2002 and direct the State Government to regularize the service of the petitioner placing him above his juniors. The entire exercise shall be completed within a period of three months from the date of communication of this order. The writ petition is allowed accordingly.