

(2024) 02 OHC CK 0245

In the Orissa High Court

Case No : Writ Petition (C) No. 4876 Of 2023

Jyotirmayee Devi

APPELLANT

Vs

College OF Basic Science & Humanities, Ouat, Bbsr & Others

RESPONDENT

Date of Decision : 27-02-2024

Acts Referred:

Citation : (2024) 02 OHC CK 0245

Hon'ble Judges : Biraja Prasanna Satapathy, J

Bench : Single Bench

Advocate : P. Rath, S.K. Samal, R.N. Mishra

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:-
" (a) To quash the letter dated 8.2.2023 vide Annexure-14 and Letter dated 6.12.2022 vide Annexure-12,
(b) Allow the Petitioner to continue and be regularize in terms of 2013 Rules read with 2022 Rules and be granted all service benefits".
4. It is contended that the Petitioner was engaged as a Part Time Laboratory Assistant vide order of engagement issued on 26.10.2015 under Annexure-2, basing on the notice issued on 16.10.2015 under Annexure-1. Petitioner in terms of the clarification issued by the Government on 22.12.2017 under Annexure-7 was appointed as a Laboratory Assistant in the Department of Zoology on full time contractual basis against the post of Laboratory Assistant vide order dtd.18.08.2018 under Annexure-8.

4.1. Learned Senior counsel for the Petitioner contended that since while issuing the clarification on 22.12.2017 under Annexure-7, the University was permitted by Opposite Party No.2 to appoint the Petitioner on full time contractual basis taking recourse to the provisions contained in the GA Department Notification dtd.12.11.2013, in view of the subsequent Notification issued by the self-same G.A. Department on 16.10.2022 under Annexure-11, Petitioner became eligible and entitled to get the benefit of regular appointment as against the post in question.

4.2. But in order to deprive the Petitioner, the benefit of regular appointment in terms of the Notification dtd.16.10.2022, Government-Opposite Party No.2 initially issued the impugned communication on 06.12.2022 under Annexure-12 inter alia clarifying that the post of Laboratory Assistant in the Department of Zoology in OUAT in Group-B category can only be filled up through open advertisement instead of absorbing the existing part time Laboratory Assistant i.e. the present petitioner. On receipt of the clarification issued by the Government-Opposite Party No.2 on 06.12.2022 under Annexure-12, when the University sought for clarification vide letter dtd.15.12.2022 under Annexure-13 further clarification was issued under Annexure-14 on 08.02.2023. In the said clarification, it was indicated that the post of Laboratory Assistant can only be filled up through open advertisement and the Petitioner is not eligible and entitled to get the benefit of the notification dtd.16.10.2022 under Annexure-11.

4.3. Petitioner being aggrieved by the communication issued by the Government-Opposite Party No.2 on 06.12.2022 under Annexure-12 and subsequent clarification issued on 08.02.2023 under Annexure-14 is before this Court and with a further prayer to direct the Opposite Parties to extend the benefit of regularization in terms of the notification issued by the Opposite Party No.1 on 16.10.2022 under Annexure-11.

4.4. It is contended that Petitioner was appointed as a full time contractual Laboratory Assistant vide order dtd.18.08.2018 under Annexure-8, basing on the clarification issued by the Government-Opposite Party No.2 on 22.12.2017 under Annexure-7, while continuing as a part time Laboratory Assistant w.e.f. 26.10.2015. Such clarification was issued taking recourse to the provisions contained in the GA Department notification dtd.12.11.2013 so issued under Annexure-10. In view of the same, Petitioner automatically became entitled to get benefit of the notification issued by the G.A. Department on 16.10.2022 under Annexure-11 as by the time the notification was so issued, Petitioner was continuing as a full time contractual Laboratory Assistant in terms of the provisions contained in the Notification dtd.12.11.2013 under Annexure-10, so clarified in Annexure-7. But Opposite Party No.2 in order to deprive the Petitioner to avail the benefit of regular appointment, issued the impugned communications under Annexures-12 and 14.

4.5. It is accordingly contended that the impugned communications issued under Annexures-12 & 14 are not sustainable in the eye of law and Petitioner is eligible

to get the benefit of regular appointment in terms of the notification issued on 16.10.2022 under Annexure-11.

5. Learned Addl. Government Advocate on the other hand made his submission basing on the stand taken in the counter affidavit so filed by Opposite Party No.2. It is contended that since the Petitioner was appointed as a part time Laboratory Assistant in OUAT on consolidated remuneration basis without facing due recruitment process and other mandatory condition as laid down in the GA Department Notification dtd.12.11.2013, Petitioner is not entitled to get the benefit of subsequent notification issued by the G.A. Department on 16.10.2022 under Annexure-11.

5.1. It is also contended that the clarification issued by the Department on 22.12.2017 under Annexure-7 is not issued only on the claim made by the Petitioner and it is a general one. Petitioner accordingly is not entitled to get the benefit of the stipulation contained in the clarification issued on 22.12.2017 under Annexure-

7. Taking into account such fact, Opposite Party No.2 issued the clarification under Annexure-12 & 14 and it requires no interference.

6. Mr. R.N. Mishra, learned counsel for the University on the other hand made his submission basing on the stand taken in the counter affidavit. It is the case of the University that basing on the clarification issued by the Government-Opposite Party No.2 on 22.12.2017 under Annexure-7, Petitioner who was continuing as a Part Time Laboratory Assistant by then was appointed as against the said post on full time contractual basis vide order dtd.18.08.2018 under Annexure-8. Petitioner was also allowed the financial benefit as due and admissible vide Office order dtd.28.03.2019 under Annexure-9. But after issuance of the Notification dtd. 16.10.2022 under Annexure-11, by which Petitioner became eligible to get the benefit of regular appointment, Government-Opposite Party No.2 since issued the impugned clarification on 06.12.2022 under Annexure-12 and subsequent clarification on 08.02.2023 under Annexure-14, the University is not in a position to regularize the services of the Petitioner as against the post of Laboratory Assistant.

7. Having heard learned counsel appearing for the Parties and after going through the materials available on record, this Court finds that Petitioner was initially engaged as a part time Laboratory Assistant vide order dtd.26.10.2015 under Annexure-2. Petitioner was so appointed basing on the selection process initiated by the University with issuance of the notice on 16.10.2015 under Annexure-1. Petitioner while so continuing as a Part time Laboratory Assistant, basing on the clarification issued by the Government-Opposite Party No.2 on 22.12.2017 under Annexure-7, Petitioner was appointed as against the post of Laboratory Assistant on full time contractual basis vide order dtd.18.08.2018 under Annexure-8.

7.1. This Court after going the clarification issued on 22.12.2017 under

Annexure-7 finds that such a clarification was issued by Opposite Party No.2 taking recourse to the provisions contained in GA Department Notification issued on 12.11.2013 under Annexure-10. As further found from the record Petitioner on being so appointed on full time contractual basis she was extended with the benefit of the salary as due and admissible vide Office order dtd.28.03.2019 under Annexure-9.

7.3. As found from the record, Odisha Group-C, & Group-D posts (Contractual Appointment) Rules, 2013 so issued on 12.11.2013 under Annexure-10 was repealed vide Notification dtd.16.10.2022 issued under Annexure-11. As provided under Rule-4 of the Odisha Group-B, C and Group-D posts (Repeal and Special Provisions) Rules, 2022, the initial appointees appointed under the Contractual Rules now in position shall be deemed to have been appointed against the post on regular basis as on the date of commencement of these rules.

7.4. Since it is found that clarification dtd.22.12.2017 under Annexure-7 was issued by the Government-Opposite Party No.2 in terms of the provisions contained under the 2013 Rules so issued vide Notification dtd.12.11.2013, in view of the provisions contained under Rule-4 of the 2022 rules, Petitioner since as on date of issuance of the Notification was continuing as a Laboratory Assistant under the 2013 Rules, it is to be held that Petitioner is deemed to have been appointed against the post on regular basis. Since in view of the impugned clarifications issued on 06.12.2022 under Annexure-12 and on dtd.08.02.2023 under Annexure-14, the benefit of 2022 Rules has been taken away, this Court is inclined to quash the clarifications issued by the Government-Opposite Party No.2 on 06.12.2022 under Annexure-12 and further clarification issued on 08.02.2023 under Annexure-14. While quashing both the clarifications so issued under Annexures-12 and 14, this Court held the Petitioner eligible and entitled to get the benefit of the provisions contained under Rule-4 of the 2022 Rules so issued vide Notification dtd.16.10.2022 under Annexure-11. While holding so this Court directs Opposite Parties to extend the benefit of regularization in favour of the Petitioner in terms of the provisions contained under Rule-4 of the 2022 Rules so notified on 16.10.2022 under Annexure-11 within a period of six (6) weeks from the date of receipt of this order.

8. Accordingly, the Writ Petition stands disposed of.

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