

(2021) 08 OHC CK 0107
In the Orissa High Court
Case No : WPC (OA) No. 479 Of 2014

Manoranjan Patnaik

APPELLANT

Vs

State Of Odisha & Ors

RESPONDENT

Date of Decision : 19-08-2021

Acts Referred:

Citation : (2021) 08 OHC CK 0107

Hon'ble Judges : Dr. B.R. Sarangi, J

Bench : Single Bench

Advocate : Ajit Rath, N.K. Praharaj

Final Decision : Dismissed

Judgement

Â Dr. B.R. Sarangi, J

1. This matter is taken up through hybrid mode.
2. Heard Mr. Rajib Rath, learned counsel appearing for the petitioner and Mr. N.K. Praharaj, learned Standing Counsel for the State.
3. The petitioner, by means of this writ petition, seeks direction to the opposite parties to regularize him in the post of Forester from the date of his initial appointment, i.e., 22.08.1984
4. Mr. Rajib Rath, learned counsel appearing for the petitioner contended that the petitioner was initially appointed on ad hoc basis as Forester in the year 1981 against training vacancy of one K.K. Dandasena and, thereafter, his service was terminated. Subsequently, he was appointed as Forester on 22.08.1984 temporarily against the transfer vacancy of one Jaladhar Swain, Forester, but till date his service has not been regularized. Seeking similar relief, he had approached the Orissa Administrative Tribunal, Bhubaneswar in O.A. No. 1306 of 1993, which was disposed of vide order dated

09.02.1999. By the said order, the tribunal observed that the appointment of the petitioner was not regularized and there is no dispute that he is still continuing as an ad hoc employee. But, merely on account of length of service rendered, his service cannot be regularized. However, as per the dictum of the apex Court, he should be directed to continue in the post until regular recruitment is made by holding a recruitment test in accordance with the rules. By observing so, the tribunal directed that the petitioner shall be given an opportunity to compete with other candidates in the recruitment test, if held at any time, and the age limit of the petitioner shall be relaxed, if at the time of entry into service he was within the prescribed age limit. In compliance of the said order of the tribunal, the petitioner appeared in the selection process, but as his name did not find place in the select list, he filed O.A. No.479 of 2014, which has been transferred to this Court, on abolition of the tribunal, and registered as WPC (OA) No. 479 of 2014.

5. Mr. N.K. Praharaj, learned Standing Counsel appearing for the State contented that the contention raised by learned counsel for the petitioner has no substance, in view of the fact that order of the tribunal passed on 09.02.1999 in O.A. No. 1306 of 1993 has been complied with and, as such, the petitioner was called upon to appear in the selection test, but he could not come out successful, therefore, he cannot claim for regularization. More so, it is contended that representation of the petitioner for regularization has been rejected vide order dated 11.07.2012 and till date the said order has not been challenged by the petitioner by filing a properly constituted application.

6. Considering the rival contentions raised by learned counsel for both parties and after going through the records, this Court finds that the petitioner was initially appointed as Forester on ad hoc basis against training vacancy of K.K. Dandasena, Forester, vide office order dated 31.03.1981, and his service was terminated vide office order dated 17.03.1982. Again, he was appointed on ad hoc basis against leave vacancy of R.N. Swain, Lac Demonstrator, vide office order dated 12.09.1983, and he continued in the said post till joining of R.N. Swain, Lac Demonstrator, i.e., on 22.12.1983. He was once again appointed temporarily as Forester, vide office order dated 22.12.1984, against transfer vacancy of Jaladhar Swain Forester, with the condition that the appointment is purely temporary and terminable at any

time without notice and assigning any reason thereof. Thereafter, the petitioner is continuing as such. As per the terms and conditions of the appointment, the petitioner's appointment is purely temporary and not in accordance with Odisha Sub-Ordinate Forest Service (Method of Recruitment and Condition of Service of Foresters) Rules, 1998. Thereby, the question of regularization, which is de hors the rules, does not arise.

7. In any case, the petitioner had earlier approached the tribunal by filing O.A. No. 1306 of 1993, which was disposed of vide order dated 09.02.1999, directing the opposite parties to give the petitioner an opportunity to compete with other candidates in the recruitment test for the post of Forester held during the year 2010 giving relaxation of age limit. In pursuance of the said order of the tribunal, though the petitioner was allowed to participate in the recruitment test conducted for the post of Forester, but he did not qualify due to lack of requisite physical standard. Therefore, since the case of the petitioner has been considered in compliance of the direction given by the tribunal and he could not qualify the selection test, the question of his regularization does not arise at this stage.

8. Even though the petitioner has rendered service for a quite long period, but the judgments of the apex Court in *Secretary, State of Karnataka v. Umadevi*, (2006) 4 SCC 1, *State of Karnataka v. M.L. Keshari*, 2010 (II) OLR SC 482 and *Amrants Ray v. State of Bihar* in Civil Appeal No. 2835

of 2015 do not apply to the petitioner. The said cases could have been applied to the petitioner, had the petitioner been continuing against sanctioned post and rendered service continuously for more than ten years. As such, in view of the subsequent judgment of the apex Court, ten years period has to be computed till the judgment in *Umadevi* (supra) was rendered. As it appears, the petitioner has not made out a case in his favour in the light of the judgments mentioned above.

9. For all the above reasons, this Court does not find any merit in this case, which is accordingly dismissed.

Issue urgent certified copy as per rules..

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