

(2010) 11 OHC CK 0033
In the Orissa High Court
Case No : O.J.C. No. 615 of 2000

Nirupama Tripathy and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-11-2010

Acts Referred:

Citation : (2011) 1 ILR (Ori) 191

Hon'ble Judges : L. Mohapatra, J;Arna Suresh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

L. Mohapatra, J.—The Petitioners were the applicants in O.A. Nos. 748 of 1994, 749 of 1994, 750 of 1994 and 751 of 1994 before the Central Administrative Tribunal, Cuttack Bench, Cuttack seeking for regularization in service. Their Original Applications having been dismissed by the Tribunal in a common judgment, they approached this Court in the present writ application. This writ application was allowed by judgment dated 30.6.2005 directing the opposite parties to consider their cases for regularization and also for giving them continuity of service as ad hoc employees. The order of termination passed on the basis of the judgment of the Tribunal was also quashed. The opposite parties challenging the said judgment approached the Hon'ble Supreme Court in Civil appeal No. 240 of 2007. The Hon'ble Supreme Court by order dated 16.1.2007 set aside the order of this Court and remitted the matter back for hearing afresh in the light of the decision of the Hon'ble Supreme Court in the case of corresponding to AIR Supreme Court 1806.

2. The facts leading to filing of the Original Applications by the Petitioners before the Tribunal are that the Regional Director, E.S.I. Corporation called for names of suitable candidates for filling up the posts of Lower Division Clerks on ad hoc basis. The Employment Exchange was requested to sponsor the names of at least 40 candidates. The age limit was mentioned as 18 to 25 years, the upper age limit being relaxable by 5 years in case of S.C. and S.T. candidates. In

response to the said request made by the Regional Director, names were sponsored by the Employment Exchange including that of the Petitioners and as it appears a type writing test followed by interview had been conducted and candidates were selected for such appointment by the Selection Committee including the Petitioners. They were appointed on ad hoc basis initially for a period of three months but such appointments were extended from time to time. Ultimately in the year 1992, an order was passed extending their appointment for a further period of three months or till availability of regularly selected candidates whichever is earlier. Having continued for a long period on ad hoc basis, they approached the Tribunal for regularization of their services. Apprehending termination during pendency of the Original applications, the Petitioners also sought for protection and the Tribunal by order dated 30.12.1994 directed that their services should not be terminated without the leave of the Tribunal.

3. All the Original Applications were heard together and were dismissed by a common judgment on 7.1.2000 on the ground that in absence of any averment on record with regard to holding of a type writing test it was not possible on the part of the Tribunal to come to a conclusion that the Petitioners had in fact appeared in type writing test and came out successful and that later they were selected in the interview by the Selection Committee constituted as per Head Office letter dated 13.3.1991 and 15.5.1991. The Tribunal further held that the Petitioners having not come through a regular process of selection are not entitled to be regularized. Challenging the said order, the Petitioners filed this writ application. While deciding the writ application in favour of the Petitioners by judgment dated 30.6.2005 this Court came to a conclusion that names of at least 40 candidates were sponsored from Employment Exchange for recruitment on ad hoc basis by the Departmental Selection Committee. Naturally a competitive type writing test was held for those persons, who had been sponsored from the Employment Exchange. Only successful candidates in type writing test were called for interview and after being selected, they were given appointment. The Petitioners are amongst those candidates who were not only sponsored by the Employment Exchange but also came out successful in the type writing test as well as interview. Therefore, this Court held that the findings of the Tribunal that the Petitioners were not subjected to any type writing test was not correct and therefore, they having been given ad hoc appointment through a regular recruitment process are entitled to be considered for regularization and accordingly allowed the writ application. The Hon''ble Supreme Court while setting aside the judgment of this Court was of the view that the case of the Petitioners had not been considered in the light of the judgment of the Hon''ble Supreme Court in the case of (supra) and accordingly remitted the matter back to this Court for rehearing with reference to the aforesaid judgment.

4. The Court is now therefore called upon to examine as to whether the Petitioners were appointed as Lower Division Clerks on ad hoc basis having been selected through a selection process and as to whether the decision rendered by

the Hon"ble Supreme Court in the aforesaid judgment stand on their way so far as claim of regularization is concerned or not. The Hon"ble Supreme Court while remitting the matter back to this Court did not set aside the findings available in the judgment but only because of non-consideration of the aforesaid judgment remitted the matter back for rehearing with reference to the said judgment.

The appointment letters so far as the Petitioners are concerned have been annexed as Annexures-A/1, A/2, A/3 and A/4 to the counter affidavit filed by opposite party Nos. 1 to 4. The appointment letters clearly show that the Petitioners were selected and were offered appointment to the post of L.D.C. in the scale of pay of Rs. 950-1500/-. Such appointments were subject to certain terms and conditions and one of the conditions was that the appointment will be on ad hoc basis as a stop gap arrangement and is not expected to last for more than three months and that there is no chance of such appointment being made on regular basis. All the Petitioners accepted such terms and conditions indicated in the appointment letter and joined the posts. Annexures-A/9 to A/12 to the counter affidavit of the aforesaid opposite parties also show that Regional Director approved the appointment of the Petitioners as L.D.C. on ad hoc basis as a stop-gap arrangement which was not expected to last for more than three months with effect from 16.8.1991. It was also stipulated therein that such ad hoc appointment shall not confer any right for regular appointment to the post and the services of the Petitioners can be terminated without any notice or without assigning any reason therefore. In paragraph-5 of the counter affidavit, the opposite parties admitted that names were called for from the Employment Exchanges and to short list the candidates sponsored by the Employment Exchanges, a type writing test followed by interview was conducted and candidates were selected. However, such selection was not in conformity with the Recruitment Regulations for the post of L.D.C. but the said method of recruitment had been devised to ensure fairness in selection. It also appears from paragraph-7 of the counter affidavit that selection of candidates for appointment to the post of L.D.C. is required to be done by the Staff Selection Commission but the Staff Selection Commission having failed to provide sufficient number of candidates, informed the E.S.I. Corporation by letter dated 22.3.1996 to make its own arrangement for recruitment to the post of L.D.C. Therefore, such a method was devised to meet the immediate requirement and the candidates including the Petitioners were selected for appointment on ad hoc basis.

5. In the counter affidavit, the opposite parties in paragraph-5 having admitted to have conducted a type writing test followed by interview for the purpose of selecting the candidates, it cannot be said that the Petitioners had not been subjected to any kind of selection process before appointment. Though there is no denial of the fact that such selection is required to be made by the Staff Selection Committee, due to inability of the Staff Selection Commission, the E.S.I. Corporation was requested to make its own arrangement for filling up the said post of L.D.C. The next question for consideration is as to whether in view of

the judgment of the Hon''ble Supreme Court in case of Secretary, (supra), the claim of the Petitioners for regularization can be entertained. Shri G.A.R. Dora, the learned Senior Counsel appearing for the Petitioners placed reliance on paragraph-38 of the judgment which is quoted below:

When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

On perusal of the observation made by the Hon''ble Supreme Court in the above paragraph, it appears that when a person enters a temporary employment and such engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of such appointment being temporary and therefore, cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases in consultation with the Public Service Commission. Here is a case where admittedly the selection of candidates for appointment to the post of L.D.C. is required to be done by the Staff Selection Commission but because of the inability of the Staff Selection Commission to do so, the E.S.I. Corporation devised the method of recruitment to meet the immediate requirement. Therefore, the relevant rule or procedure for selection of candidates to the post of L.D.C. had not been followed and consequently the ad hoc appointments were made tenure appointments which were extended from time to time. The only exception made in the aforesaid judgment of the Hon''ble Supreme Court is stated in paragraph-44 of the judgment which is quoted below:

One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa (supra), R.N. Nanjundappa (supra), and B.N. Nagarajan (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the

cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.

6. Hence we hold that the appointment of the Petitioners was irregular, they having not been selected by the Staff Selection Commission. However, they continued in the post by virtue of the interim order dated 30.12.1994 passed by the Tribunal and are still continuing because of the interim protection granted by the Hon''ble Supreme Court. They did not have 10 years of service without intervention of Court and accordingly they also do not satisfy the requirement for the purpose of regularization as enumerated in the said paragraph of the judgment of the Hon''ble Supreme Court.

7. In view of the discussions made above, the claim of the Petitioners for regularization cannot be allowed and accordingly the writ application is dismissed.

Writ petition dismissed.