

(2023) 09 OHC CK 0018

In the Orissa High Court

Case No : Writ Petition (C) No. 10534 Of 2016

Paresh Kumar Khamari And Others

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 05-09-2023

Acts Referred:

Orissa Agriculture Produce Market Act, 1956 — Section 18A
Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 — Section 3(d), 6, 7

Citation : (2023) 09 OHC CK 0018

Hon'ble Judges : S.K. Mishra, J

Bench : Single Bench

Advocate : P.K. Rath, G.N. Rout, P.K. Panda

Final Decision : Allowed

Judgement

S.K. Mishra, J

1. The Petitioners, who are working as Odia Typist, Weigh Bridge Operator, Electrician-Cum-Pump Driver and Paddy Cleaner Operator on contract basis in the Regulated Market Committee (RMC), Bargarh, have preferred the present Writ Petition for quashing of the Order dated 09.09.2015 passed by the Collector-Cum-Chairman, RMC, Bargarh (Opposite Party No.5), as at Annexure-13, whereby, their representation for regularization of services against the vacant posts of Odia Typist, Weigh Bridge Operator, Electrician-Cum-Pump Driver and Paddy Cleaner Operator was rejected. Also a prayer has been made seeking for a direction to the Opposite Party Nos. 2 to 5 to regularize their services and extend all such benefits, as is due and admissible to the said posts.

2. The factual matrix of the case, in a nutshell, is that the State Government under the Orissa Agriculture Produce Market Act, 1956, shortly, Act, 1956, established Market Committee in every area in respect of agriculture produce. For superintendence over such Market Committee, by Notification in Official Gazette, a Board called the Orissa State Agricultural Market Board, shortly, OSAM

Board, was established under Section 18-A of the Act, 1956. The OSAM Board vide Office Order No.4106 dated 03.08.2007, as at Annexure-1, intimated the Chairman/Secretary, RMC, Bargarh that the Board has been pleased to accord approval for creation of posts in different categories in favour of the RMC, Bargarh. Pursuant to the said Order, the RMC, Bargarh vide its Office Order No.754 dated 26.08.2007, as at Annexure-2, requested to accord necessary approval of OSAM Board, to fill up 45 numbers of vacant posts on contractual basis from amongst the existing NMRs. On 31.08.2007 proceeding of the Appointment and Promotion Sub-Committee of RMC, Bargarh was held in the Office of the Sub-Collector-Cum-Chairman, RMC, Bargarh, wherein it was decided to engage the present NMRs in the vacant posts on contractual basis after obtaining due approval from the OSAM Board. Thereafter, the OSAM Board, vide Order dated 20.09.2007, as at Annexure-5, intimated the RMC, Bargarh about the approval of the proceeding of the Sub-Committee of RMC, Bargarh by the Hon'ble Minister, Co-operation-Cum-Chairperson, OSAM Board and advised to observe due formalities.

3. Pursuant to the Resolution of the Appointment and Promotion Sub-Committee of RMC, Bargarh and approval of OSAM Board, Bhubaneswar, the Sub-Collector-Cum-Chairman, RMC, Bargarh vide Order No.950 dated 09.10.2007, as at Annexure-6, appointed the Petitioners against the vacant posts on contractual basis with consolidated salary. Since then, the Petitioners are discharging their services on contractual basis. When no step was taken for regularization of the services of the Petitioners, they made representation dated 05.08.2008 to the Chairman, RMC, Bargarh through the Secretary, RMC, Bargarh, as at Annexure-7. The Secretary, vide his letter dated 10.08.2008, submitted the said representation to the General Manager, OSAM Board. On receipt of the said representation, the General Manager, OSAM Board, vide his letter dated 13.08.2008, sought for certain clarification and justification from the Secretary, RMC, Bargarh, for regularization of services of the contractual workers. In response to the said letter, the Secretary, RMC, Bargarh, furnished necessary clarification assigning reasons for regularization of services of the Petitioners vide letter dated 22.09.2008, as at Annexure-10. It is the further case of the Petitioners that after proper verification/clarification given by the Secretary, RMC, Bargarh, the General Manager, OSAM Board, vide letter dated 27.09.2008, approved the proposal of regularization of 45 numbers of contractual workers including the Petitioners and communicated the Secretary, RMC, Bargarh regarding the approval of the said proposal for regularization of 45 nos. of contractual workers by the Chairperson, OSAM, Board indicating therein that after regularization of the said staff, the expenditure should be within the prescribed limit fixed by OSAM Board. The RMC, Bargarh was advised to observe due formalities in the said respect. Accordingly, the Petitioners' services were regularized. In spite of such regularization, the Petitioners were not treated as regular employees and denied their regular scale of pay.

4. The Petitioners, finding no other alternative remedy, preferred W.P.(C)

No.7904 of 2010. This Court, by its Order dated 06.07.2010, disposed of the said Writ Petition by directing the Petitioners to file fresh representation before Opposite Party No.5. Accordingly, the Petitioners made representation before the Collector-Cum-Chairman, RMC, Bargarh. The Opposite Party No.5 did not consider the said representation of the Petitioners.

5. Again, the Petitioners were constrained to prefer W.P.(C) No.15281 of 2011 before this Court, which was disposed of vide Order dated 27.07.2015 with a direction to file a fresh representation before the Authority within ten days from the date of passing of the said Order and the Authority concerned was directed to consider and pass order within six weeks. Pursuant to said direction, the Petitioners made representation to the Opposite Party No.5 within the stipulated time. However, the Opposite Party No.5, vide Order dated 09.09.2015, as at Annexure-13, rejected the representation of the Petitioners solely on the ground that irregularly recruited engagees cannot be regularized in blatant violation of settled recruitment norms and transgression of provisions of ORV Act.

6. Being aggrieved by the said Order dated 09.09.2015 passed by the Opposite Party No.5, as at Annexure-13, the Petitioners have approached this Court with the prayers as detailed above.

7. Being noticed, the Opposite Parties, including the State, though appeared but chose not to file any Counter Affidavit till the date of final hearing. On being asked, Mr. Panda, learned Counsel for the Opposite Party Nos. 3 and 4, submitted that a copy of the Counter Affidavit filed by the Board earlier in W.P.(C) No.15281 of 2011 preferred by the present Petitioners has been annexed to the Writ Petition as Annexure-14 detailing therein the stand of the Board (Opposite Party Nos. 3 and 4).

8. Heard Mr. Sahoo, learned Counsel for the Petitioners, Mr. G.N. Rout, learned Additional Standing Counsel for Opposite Party Nos. 1, 2 and 5 and Mr. Panda, learned counsel for Opposite Party Nos. 3 and 4.

9. Learned Counsel for the Petitioners submitted that the case of the Petitioners is identical to the case of the Petitioners in W.P.(C) No.5668 of 2016, which was disposed of vide a detailed judgment dated 21.07.2023 by this Court and, as such, the present case may be disposed of in terms of the said judgment.

10. Admittedly, when the matter got listed on 09.01.2023, being admitted by the learned Counsel for the Parties, including the learned Counsel for the contesting Opposite Party Nos. 3 and 4 that the present Writ Petition is identical to W.P.(C) No.5668 of 2016, liberty was granted to the learned Counsel for the Petitioners to move for listing of the present Writ Petition immediately after pronouncement of the judgment passed in W.P.(C) No.5668 of 2016. Liberty being so given, on being mentioned, the matter was taken up on 25.07.2023 and after hearing the learned Counsel for the Parties, pronouncement of order/judgment was reserved.

11. Paragraphs Nos. 1 and 11 of the Counter Affidavit filed by the present

Opposite Party Nos. 4 and 5 in W.P.(C) No.15281 of 2011 are extracted below:

"1. That I am the Secretary of the Regulated Market Committee and I have been arrayed as opposite party No.4 in the present writ petition. I have been duly authorized to swear this affidavit on behalf of opposite party No.5, Chairman of the Regulated Market Committee, Bargarh (here in after referred as "R.M.C." in short).

11. That the deponent humbly submits that the appointments of the petitioners were done as per the prevailing norms and prior approval of the Board was duly obtained & in course of their engagement necessary compliance was made to observe proper implementation of O.R.V. Rules. Besides other employment Rules and procedures were properly followed. The deponent humbly submits as it transpires from the records available in the office of the deponent that the recruitment procedure followed for engagement of the petitioner was regular one and was made as per law and in view of relaxation made under Annexure-B/4, these petitioners claim requires to be considered in proper perspective by this Hon'ble Court and the deponent humbly submits in case their appointment is regularized, adequate funds can be made available by proper budgetary allocations for disbursement of salary components in favour of the petitioners, which will be well within the prescribed limit fixed by the Board."

(Emphasis supplied)

12. In view of the facts detailed above, this Court finds that the present case is squarely covered by the judgment dated 21.07.2023 passed in W.P.(C) No.5668 of 2016 (Rabiratan Sahu and others vs. State of Odisha and others).

13. Accordingly, the impugned Order dated 09.09.2015, as at Annexure-13, passed by the Opposite Party No.5 is set aside.

14. The Opposite Parties, more particularly, Opposite Party Nos. 2 to 5 are directed to regularize the services of the Petitioners with effect from 27.09.2008 i.e. the date on which the General Manager, Orissa State Agricultural Marketing Board, Bhubaneswar communicated the Secretary, R.M.C., Bargarh (Annexure-11) to regularize the services of the Petitioners, and to grant them all consequential service and financial benefits, as due and admissible, by making due calculation thereof within a period of four months from the date of communication of the certified copy of this judgment.

15. The Writ Petition stands allowed and disposed of. No order as to cost.

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