
(2014) 05 OHC CK 0021
In the Orissa High Court
Case No : W.P.(C) No. 9107 of 2013

Paresh Kumar Sahoo

APPELLANT

Vs

District and Sessions Judge, Dhenkanal and Another

RESPONDENT

Date of Decision : 14-05-2014

Acts Referred:

Citation : (2014) 118 CLT 774 : (2014) 143 FLR 109 : (2014) 2 ILR 511 :
(2014) 2 OLR 663 Suppl. : (2014) 2 OLR 663

Hon'ble Judges : I. Mahanty, J;B.N. Mahapatra, J

Bench : Division Bench

Judgement

B.N. Mahapatra, J.—This Writ Petition has been filed with a prayer to quash the impugned order dated 26.03.2013 passed by the District & Sessions Judge, Dhenkanal under Annexure-9 by which services of the petitioner has been terminated with effect from 31st March, 2013.

2. The instant case reveals a very sorry state of affairs as there remains a complete darkness in the light house. The head of district judiciary acted in utter disregard to the judgment of this Court for which a low salary paid employee has been harassed and suffering miserably.

3. The facts giving rise to the present writ petition in a nut shell is that pursuant to the open advertisement, the petitioner was selected to the post of Junior Stenographer having gone through due process of selection. While the petitioner was continuing as Junior Stenographer in the Court of S.D.J.M., Talcher, he was terminated from service, with effect from 31.03.2011. Against such order of termination, the petitioner approached this Court in W.P.(C) No. 11274 of 2011. This Court quashed the order of termination of the petitioner vide its order dated 14.09.2011 with a direction to reinstate him. Pursuant to the said direction of this Court, the petitioner was reinstated in service vide order dated 15.10.2011 as Junior Stenographer purely on ad hoc and contractual basis and attached to Fast Track Court till 31.03.2012, i.e., till the life time of the Fast Track Courts. The tenure of appointment of the petitioner was thereafter extended till

31.03.2013. Petitioner's services were once again terminated on the ground of abolition of Fast Track Courts vide order of termination dated 26.3.2013. Hence, the present Writ Petition.

4. Mr. K.P. Mishra, learned counsel appearing for the petitioner submitted that the advertisement dated 1st May, 2009 was published by opposite party No. 1-District and Sessions Judge, Dhenkanal to fill up two base level vacancies of Junior Stenographers on ad hoc annual increment basis. The petitioner submitted his candidature for one of the posts in question. Interview, shorthand, typing test and computer test were held on 05.06.2009 and 06.06.2009 by opposite party No. 1. As per final merit list, two candidates were selected for the posts in question and name of the petitioner found place at Sl. No. 2. On 24.07.2009, opposite party No. 1 issued appointment letter in favour of the petitioner with a consolidated salary of Rs. 3,000/- per month up to 31.03.2010. Consequently, petitioner joined the aforesaid post on 03.08.2009. Though the advertisement under Annexure-1 stipulates for annual contract but services of the petitioner were extended from time to time by the authority. From the date of his appointment, petitioner was asked to work under the S.D.J.M., Talcher and S.D.J.M., Hindol. The petitioner has never been appointed against Fast Track Courts as it appears from his initial order of appointment. The petitioner has been appointed against base level vacancies. Mr. Mishra, submitted that the State Government has not abolished any post of regular nature. The selection process of regular Stenographer and contractual post of Stenographer is same and the petitioner is now age-barred for the post in question.

It was further submitted that instead of regularizing services of the petitioner, the authorities have issued fresh advertisement for filling up of the same, which is grossly illegal. There is no provision under the Rules for contractual post. Thus, termination of service of the petitioner is illegal and exploitation of labour. The opposite parties have not given any reasonable opportunity of hearing to the petitioner before terminating his service. In contractual appointment, principles of natural justice should be followed. All the base-level posts are being filled up through contractual appointment in the State of Odisha and thereafter the same are regularized considering the period of service.

Mr. Mishra further submitted that one Manas Ranjan Mohanty, whose services were terminated along with service of the petitioner with effect from 31.03.2013 vide order dated 26.03.2013 of opposite party No. 1, approached this Court in W.P.(C) No. 9934 of 2013 and this Court vide order dated 03.05.2013 quashed the order of termination dated 26.03.2013 and directed the District and Sessions Judge, Dhenkanal to consider the case of Sri Mohanty for appointment in the post of Junior Stenographer afresh, if any vacancy in the said post exists and if there is need of the said post. Pursuant to the said order of this Court, Opposite party No. 1-District and Sessions Judge vide his order dated 18.03.2013 posted Sri Mohanty as a Stenographer (Grade-III) in the Court of the Civil Judge (Junior Division), Bhuban. Therefore, Mr. Mishra submitted to quash the order of

termination of petitioner's service dated 26.03.2013 and to direct the opposite party No. 1 to reinstate the petitioner in the post of Junior Stenographer.

5. Mr. M.S. Sahoo, learned Additional Standing Counsel appearing for the State submitted that since the petitioner was appointed against Fast Track Court, the District Judge has rightly terminated his service on abolition of Fast Track Courts with effect from 31.03.2013. Therefore, it is submitted that there is no illegality or infirmity in the impugned order passed by opposite party No. 1.

6. On the rival contentions of the parties, the questions that fall for consideration by this Court are as follows:-

(i) Whether opposite party No. 1-District & Sessions Judge, Dhenkanal is justified in giving appointment to the petitioner vide order dated 15.10.2011 as Junior Stenographer purely on ad hoc and contractual basis in the Fast Track Courts till 31.03.2012, i.e., till the life time of the Fast Track Court and the said order is in consonance with the judgment dated 14.09.2011 passed by this Court in W.P.(C) No. 11274 of 2011?

(ii) Whether the order of opposite party No. 1-District & Sessions Judge, Dhenkanal in terminating the service of the petitioner vide order dated 26.03.2013 under Annexure-9 is sustainable in law?

(iii) Whether case of the petitioner is similar to the case of Sri Manas Ranjan Mohanty and he is entitled to the relief granted to Sri Mohanty?

(iv) What order?

7. The question Nos.(i) and (ii) being interlinked, they are dealt with together.

8. Admittedly, applications were invited pursuant to advertisement dated 1st May, 2009 from the intending candidates in order to fill up two posts of Junior Stenographers with a consolidated salary of Rs. 3,000/- per month on annual contract basis. Opposite party No. 1-District and Sessions Judge, Dhenkanal vide his order dated 07.07.2009 published the final merit list of the candidates, who came out successful in the test/interview for the post of Junior Stenographers held on 05.07.2009 and 06.07.2009. The said order reads as follows:-

ORDER

The following candidates have come out successful in order of Merit List in the Interview/Test for the post of Junior Stenographers held on 05.07.2009 in respect of the Judgeship of Dhenkanal-Angul.

The selected candidates be given appointment as per the Merit list in the existing base level vacancies purely on Adhoc, Temporary & Contract basis in a consolidated pay of Rs. 3000/- p.m. as per the govt. of Orissa Home Deptt. L.T. No. 3769/HS Dt. 16.03.2002.

Sd/- District & Sessions Judge, Dhenkanal-Angul, Dhenkanal.

(Underlined for emphasis)

Thus, the petitioner along with one Manas Ranjan Mohanty was appointed against the existing base-level vacancies.

9. While quashing termination order of the petitioner dated 30.03.2011, this Court in its judgment dated 14.09.2011 passed in W.P.(C) No. 11274 of 2011 observed as follows:-

7.On the other hand, he was given appointment in the post of Junior Stenographer after facing due process of selection. It is also not the case of the opposite parties that there is no need of services of a Stenographer in the Office of the SDJM, Talcher and no such vacancy in the said post exists.

10. With the above observation, this Court quashed the termination order of the petitioner dated 30.03.2011 and directed opposite party No. 1 to consider his case for appointment in the post of Junior Stenographer afresh, if any vacancy exists in the said post and if there is need of service of a Junior Stenographer. Pursuant to the said direction of this Court dated 14.09.2011 passed in W.P.(C) No. 11274 of 2011, the District & Sessions Judge, Dhenkanal gave appointment to the petitioner against the Fast Track Court, Kamakshyanagar vide order dated 15.10.2011 till 31.03.2012. It is not understood as to why the petitioner, who was selected against the base-level post, was appointed under the Fast Track Court, Kamakshyanagar. It is not the case of the opposite parties that after termination of the petitioner from service on 30.03.2011 that post was filled up by any regular recruitment process. Therefore, the petitioner was supposed to be given appointment against the base-level vacancy.

11. At this juncture, it is necessary to extract here the order dated 15.10.2011 passed by the learned District & Sessions Judge, Dhenkanal pursuant to the judgment of this Court dated 14.09.2011 passed in W.P.(C) No. 11274 of 2011.

Office of The District & Sessions Judge Dhenkanal-Angul

Order No. 51 Date of Order: 15.10.2011

Reason:-In view of the judgment dated 14.09.2011 passed by the Hon''ble High Court of Orissa in W.P.(C) No. 11274 of 2011.

-ORDER-

Shri Paresh Kumar Sahoo, S/o. Sri Ramesh Chandra Sahoo of village/P.O. Talabarkot, P.S. Sadar, Dist-Dhenkanal (Ex-Junior Stenographer of this Judgeship) is appointed as Junior Stenographer purely on ad hoc and contract basis in a consolidated pay of Rs. 5200/- p.m. against the base level posts consequent upon the ad hoc promotion of Senior Stenographers to the Fast Track Courts on the following terms and conditions, and attached in the Court of S.D.J.M., Hindol.

1. He shall join in his new assignment in the forenoon of 28.10.2011 positively,

failing which his appointment shall stand cancelled.

2. His tenure of appointment is valid till 31.3.2012, i.e. till the life time of the Fast Track Court.

3. He shall furnish an undertaking at the time of his joining to the effect that he shall have no claim for regular appointment under the State Government merely on the ground that he was appointed on contract basis for a specific period.

4. He shall not claim any T.A. for joining in the post.

5. The appointment is purely temporary and ad hoc basis and can be terminated at any time without assigning any reason thereof.

Intimate all concerned.

Sd/- District & Sessions Judge, Dhenkanal-Angul

12. Perusal of the order dated 15.10.2011 passed pursuant to the direction of this Court dated 14.09.2011 in W.P.(C) No. 11274 of 2011 reveals that the learned District & Sessions Judge, Dhenkanal appointed the petitioner against the Fast Track Court, Kamakshyanagar stipulating stringent conditions with a view to frustrating the judgment of this Court. The conditions stipulated in the order dated 15.10.2011 are not in consonance with the judgment of this Court. He even has gone to the extent of directing the petitioner to furnish undertaking at the time of joining to the effect that he shall have no claim for regular appointment under the State Government merely on the ground that he was appointed on contract basis for a specific period. It further reveals that with some ulterior motive, which is tell-tale and to overreach the judgment of this Court, the learned District & Sessions Judge, Dhenkanal had purposefully put further condition that the tenure of appointment of the petitioner was valid till 31.03.2012, i.e., till the life time of the Fast Track Court. This shows scant regard of the learned District Judge towards the judgment of this Court. We are shocked to notice that a Judicial Officer in the cadre of District Judge instead of carrying out the judgment of this Court in its true intent and spirit, has taken steps to frustrate it which would create chaos in the administration of justice. We are afraid that Judicial Officers having this type of temperament would certainly be a danger to the functioning of judiciary which is most important organ of the democracy.

Thus, the action of the opposite party-authority (District Judge) in passing the order dated 15.10.2011 is clearly without any legal sanction and the inevitable conclusion is that the order has to be nullified. The judgment passed by this Court was clear and was not open to any interpretation other than what has been clearly stated in the judgment. There is no ambiguity in the judgment. Therefore, the impugned order is not only illegal but also has been unfortunately passed in an arbitrary manner. The condition stipulated not to claim for regularization and other benefits clearly smacks of mala fide. In the order of this Court dated 14.09.2011 passed in W.P.(C) No. 11274 of 2011, there was even no indication

as to stipulation of any conditions while giving appointment to the petitioner.

13. Since the petitioner was not recruited against the Fast Track Court initially, which is schematic in nature, services of the petitioner cannot be terminated on abolition of Fast Track Courts. It may be noted that the selection process for appointment in the contractual post and regular post is similar and identical in nature.

14. In view of the above, we are of the considered view that opposite party No. 1-District Judge is not justified in giving appointment to the petitioner as Junior Stenographer vide order dated 15.10.2011 purely on ad hoc and contractual basis against the Fast Track Court till 31.03.2012, i.e., till the life time of Fast Track Court and the said order is not in consonance with the judgment dated 14.09.2011 passed by this Court in W.P.(C) No. 11274 of 2011. Consequentially, the subsequent order of the District Judge dated 26.03.2013 passed under Annexure-9 terminating the service of the petitioner, with effect from 31.03.2013 on abolition of the Fast Track Court is not sustainable in law.

15. Question No. (iii) as to whether the case of the petitioner is similar to the case of Manas Ranjan Mohanty and he is entitled to relief granted to Manas Ranjan Mohanty.

It may be noted that termination order of said Manas Ranjan Mohanty, whose services was terminated along with termination of petitioner's service vide impugned order was quashed by this Court vide order dated 03.05.2013 passed in W.P.(C) No. 9934 of 2013 and pursuant to the said order of this Court he was given appointment as Junior Stenographer (Grade-III) in the scale of pay of Rs. 5,200/- to 20,000/-, G.P. Rs. 2,400/- P.M. and other allowances admissible to the government servants from time to time in the Court of Civil Judge (Senior Division), Bhuban.

16. For the reasons stated above, we are of the considered opinion that the case of the petitioner is similar to the case of Manas Ranjan Mohanty and he is entitled to the relief granted to Sri. Mohanty.

17. It is not disputed that the petitioner is age-barred and opposite party No. 1 authority has issued advertisement for recruitment of Stenographer under Annexure-10 and in the interim, the said recruitment process has been stayed by this Court vide order dated 25.06.2013 in Misc. Case No. 8531 of 2013.

18. In the result, the impugned order passed on 26.03.2013 under Annexure-9 and the advertisement under Annexure-10 are hereby quashed. The District & Sessions Judge, Dhenkanal is directed to consider the case of the petitioner for appointment in the post of Junior Stenographer against permanent base level vacancy. We make it clear that the petitioner shall not be entitled to any financial benefit from the date of termination till his re-engagement.

19. The writ petition is allowed to the extent indicated above. No costs.

I. Mahanty, J.

20. I agree.