
(2017) 05 OHC CK 0033

In the Orissa High Court

Case No : 11122 of 2013

Prasanna Kumar Biswal

APPELLANT

Vs

Chief Postmaster General, Orissa and others

RESPONDENT

Date of Decision : 02-05-2017

Acts Referred:

Constitution of India, Article 226, Article 227 - Power of High Courts to Issue certain writs - Power of superintendence over all courts by the High Court

Citation : (2017) 05 OHC CK 0033

Hon'ble Judges : Sanju Panda, S.N.Prasad

Bench : DIVISION BENCH

Advocate : Sukanta Kumar Dalai, S.Mohapatra, K.Pradhan, S.K.Patra, M.K.Badu

Judgement

1. This writ petition is under Articles 226 and 227 of the Constitution of India wherein the order dated 21.2.2013 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A.No.24 of 2011 is under challenge, whereby and where under the Tribunal while dismissing the original application has denied the claim of the petitioner to allow him to work as packer under Postal Gramin Dak Sevak Scheme till the original incumbent taken over charge of the post.

2. Brief facts of the case is that the applicant/petitioner has joined as a packer under Gramin Dak Sevak Scheme on 27.11.2009 at Banpur Sub-Post Office under Puri Postal Division and worked as such from 27.11.2009 till 30.1.2010, thereafter he was restrained by the Postmaster on the ground that the post under which he was working, the substantive incumbent has joined and as such his service is no more required. The petitioner has approached the Tribunal by filing O.A.No.687 of 2010, the Tribunal while disposing of the original application vide order dated 10.11.2010 has directed the authorities to consider representation of the petitioner and pass reasoned order within 45 days. In the meanwhile, the petitioner has got his arrears for the period he had worked but

the representation filed by the petitioner has been dismissed, hence he again approached the Tribunal in filing O.A.No.24 of 2011 and the same has been rejected vide order dated 21.2.2013, which is the subject matter of the present writ petition.

3. Learned counsel representing the opposite parties has submitted that the petitioner has no right to continue in the post since he has been appointed subject to availability of vacancy on account of leave of the substantive holder of that post and the date when the substantive holder of the post has joined his duty, his service is not required and as such he has been asked not to discharge his duty hence there is no illegality having been committed by the authorities. The Tribunal, while dealing with the issue and after examination of the materials available on record, has rightly passed order, hence the same needs no interference.

4. Learned counsel for the petitioner has submitted that the opposite parties have come out with the guideline applicable for Orissa circle issued on 27.3.2017 and on the basis of that guideline the petitioner can be engaged. Learned counsel representing the opposite parties has submitted that there is provision that in case of the real incumbent, if on leave and due to any other reason, vacancies arises, substituted Gramin Dak Sevak can be appointed but he has forcibly submitted that he may not be considered for regular appointment. He has also submitted that in the meanwhile a fresh advertisement has been issued inviting applications for regular appointment as Gramin Dak Sevak in which the petitioner has made an application.

5. We have heard learned counsel for the parties and perused the documents available on record.

6. We, on appreciating the factual aspects which is not in dispute that the petitioner since been engaged as Gramin Dak Sevak in place of regular employee and as such the very nature of appointment was conditional, hence when the regular employee has resumed his duty, the authorities has rightly restrained the petitioner from discharging his duty. According to us, since the petitioner was engaged as stop-gap arrangement for the urgent work due to absence of regular employee of the said post, he cannot claim, as a matter of right, to continue in service, the Tribunal, taking into consideration this aspect of the matter, has rightly passed the order, hence we are not inclined to interfere with the same.

7. So far as the contention raised by the authorities that new advertisement has been issued in which the petitioner has made application, we are not making any comment since the same is the subject matter of selection process and the authorities will fill up the post in pursuance to the rule in force.

8. So far as the contention raised by the petitioner that he will be allowed to continue in service in absence of the substantive holder are there, we cannot pass any direction in this regard rather it is open to the petitioner to bring into the notice of the authorities in case of such exigency if arise and the stand taken

by the learned counsel representing the opposite parties that the rule to that effect is in force.

9. We, after taking into consideration this aspect of the matter, are not passing any specific direction in this regard. However, liberty is given to the petitioner to raise his grievance before the authorities in this regard. Accordingly, the writ petition is disposed of with the above observation and direction.