
(2008) 10 OHC CK 0032
In the Orissa High Court
Case No : Writ Petition (C) No. 17459 of 2006

Rama Chandra Behera

APPELLANT

Vs

Secretary to Govt., Rural Development Department, Orissa
and Others

RESPONDENT

Date of Decision : 30-10-2008

Acts Referred:

Citation : (2009) 1 OLR 444

Hon'ble Judges : R.N. Biswal, J;B.P. Das, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard Mr. Manoj Kumar Mishra, learned Counsel for the Petitioner and learned Counsel for the State.

2. The case of the Petitioner in this writ application is that on 1.1.1994 he was initially engaged as a High Skilled Labourer under the Executive Engineer, Rural Water Supply & Sanitation, (R.W.S. & S). Division, Balasore, (opp. party No. 4) on hand receipt-(HR) basis and he worked as such in different capacities. In the statement showing the NMR/HR Staff position vide Annexure-2, the name of the Petitioner finds place at Sl. No. 2 and he has been shown as working under the Balasore R.W. S & S Section, Bahanga.

3. Opp. party No. 2, Chief Engineer, R.W.S. & S. Department, Bhubaneswar, Orissa by the letter dated 30.1.2003. vide Annexure-3 required all the Ex Engineers of R.W.S. & S Division including opp. party No. 4 to submit Division-wise information on actual number of employees on BOR/ Wages/NMR/DLR/HR, etc. The aforesaid letter in Annexure-3 is extracted herein below:

With reference to the subject cited above, I am to request you to furnish the name of the Schemes/Blocks against the names of BOR/Wages/NMR/HR/DLR and Ors. categories of personals for which they have been engaged and receiving wages under Chargeable Head of R/M to W/S name and R/M to T Ws respectively

for the period both before 12.4.1993 and after 12.4.93.

Further you are also requested to assess the strength of staff as per yard stick and if necessary you are advised to show redeployment of surplus staff.

4. Pursuant to the decision of the State Government as per Annexure-4, opp. party No. 2 Chief Engineer by letter dated 26.6.2003 (Annexure-5) instructed all the Superintending Engineers of the RWS&S Circles and the Executive Engineers of RWS & S divisions to maintain prepare photographic records of all NMR/DLR/HR and any other categories of casual workers under RWS & S organization engaged before 12.4.1993 and after 12.4.1993 at Division level for proper identification for payment of their wages and to send two copies of album of passport size photographs of such employees to his office for onward transmission of the same to the Government. It is further averred that the Junior Engineer, RWS & S, Subdivision, Soro along with his letter dated 14.8.2003 (Annexure-6) submitted the signed P.P. photograph of the Petitioner-Ramachandra Behera as well as of Narayan Chandra Nanda, who were working under him for the aforesaid purpose. When no step was taken by the opp. parties despite the representation made by the Petitioner vide Annexure-7 to include his name in the identified list/photographic album of H.R./ Casual employees, he approached this Court in W.P.(C) No. 9108 of 2005, and this Court disposed of the said writ petition on 8.8.2005 with the following orders:

Heard learned Counsel for the Petitioner and the learned Counsel for the State;

The Petitioner who claims to be working as an H.R/casual employee under opposite party No. 4 has filed this writ application praying for a direction to include his name in the identified list/ photographic album and for payment of arrear wages.

It appears that the Petitioner has made a representation to opposite party No. 4 in Annexure-7 on 7.12.2004 and it is stated that the said representation is pending disposal.

In view of the above, I dispose of this writ application directing the opposite party No. 4 to consider the grievance of the Petitioner as set out in Annexure-7 and pass appropriate orders thereon within a period of three months from the date of communication of this order.

Xx xx xx xx

5. When the aforesaid order of his Court was not complied with by the opposite parties, the Petitioner filed CONTC No. 828 of 2006 in which this Court on 3.11.2006 issued notice to the opp. parties. Learned Counsel for the Petitioner submits that the Executive Engineer RWS & S after receiving notice in the contempt petition, rejected the representation of the Petitioner vide Annexure-9 by passing the following order:

Sri Rama Chandra Behera, S/O Gopinath Behera At/PO-Sunakhandi Dist-Cuttack

is hereby informed that as per order of the Hon"ble Court he was requested vide this office Lr. No. 3400 dated 8.12.2006 to attend the office of the undersigned regarding disposal of his representation.

After carefully studying the documents, it is concluded that in view of the Finance Deptt. Order No. 17815/12.4.93, it has not been possible to include his name in the identified list of NMR/DLR/HR. Further he has not made himself available during the verification made by Superintending Engineer RWS & S Circle, Cuttack to identify the NMR/DLR/HR staff actually working under this Division. Thus he could not justify his claim for inclusion of this name in the identified list before the Superintending Engineer RWS&S Circle, Cuttack. So at this belated stages, it is not possible on the part of the undersigned to consider his name for inclusion in the identified list. Hence his representation is rejected.

6. Aggrieved by the aforesaid order dated 11.12.2006 (Annexure-9), the Petitioner has filed this writ petition praying to quash the said order and to direct the opp. parties to include his name in the identified list/photographic album of HR/Casual employees and to release the arrear as well as the current dues with consequential financial benefits. The Petitioner submits that opp. party No. 2 by letter in Annexure-3 clearly instructed to prepare and furnish list of employees who have been engaged as BOR/wages/NMR/HR/DLR/other categories before or after 12.4.1993 and therefore the Petitioner was entitled to be included in the identified list of NMR/DLR/HR and any other casual labourers as per Annexure-3 and 5. Learned Counsel for the Petitioner strongly submits that the Petitioner was very much present at the time of verification and the opp. parties did not take any step to include his name in the identified list of NMR/DLR/HR. So according to the Petitioner, the rejection of the claim of the Petitioner by the order in Annexure-9 is not sustainable in the eye of law so also the observation made therein that the Petitioner was not made himself available during the verification made by the Superintending Engineer, RWS&S Circle, Cuttack.

7. A counter affidavit has been filed by opp. party No. 4 taking a stand that the Petitioner was not engaged as a Highly Skilled labourer but he was temporarily engaged as a labour on Hand Receipt basis and no formal appointment order was issued in favour of the Petitioner. As the Petitioner was engaged after 12.4.1993 as a Non Continuous (NC) labourer and his service was utilized as and when required for the exigency of work under the Junior Engineer RWS & S Section, Bahanaga, his name could not be included.

8. We have already indicated that the Chief Engineer (RWS&S) vide Annexure-3 requested all the Executive Engineers of R.W.S. & S Divisions to furnish the list of names engaged in BOR/Wages/NMR/ HR/DLR before 12.4.1993 and after 12.4.1993.

9. Opp. party No. 4 in his counter affidavit has stated that since the Petitioner was a Hand Receipt employee, he was not eligible to be given any opportunity. But Annexure-11 to the rejoinder which is an information on HR employees

engaged after 12.4.1993 and position given in the year 2002-2003, shows that they were all engaged as Hand Receipt Employees after 12.4.1993. To the specific allegation of the Petitioner that Jayanta Ku. Bag, Tapan Kumar Ray and Padmanav Panda were engaged after 12.4.1993, the answer in counter affidavit is that the engagement of the above named employees was on the basis of order of the higher authorities as well as per the direction of the Minister of Rural Development Department, vide Annexure-B/4. The aforesaid action of the opp. parties clearly shows that the case of the Petitioner was not considered in its proper prospective and his representation was rejected in an arbitrary manner. That too it is a clear case of discrimination meted out to the Petitioner.

10. Considering the facts and circumstances of the case, we allow the writ application and direct the opposite parties to include the name of the Petitioner in the identified list. The Executive Engineer, opp. party No. 4 shall comply with this order within a period of three months from today. For the purpose of identification, the Petitioner shall produce all necessary documents before the Executive Engineer within a period of four weeks from today and furnish his present address whereafter the Executive Engineer shall fix a date for his appearance for the purpose of preparation of photographic record.