
(2009) 03 OHC CK 0053

In the Orissa High Court

Salkhan Murmu

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-03-2009

Acts Referred:

Citation : (2010) 109 CLT 124

Hon'ble Judges : B.S. Chauhan, C.J;B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan, C.J.—This Writ Petition has been filed challenging the order of the Central Administrative Tribunal dated 28.6.2005 passed in O.A. No. 350 of 2004 by which the Petitioner's claim for regularization/absorption has been rejected, but certain relief has been granted in view of the letter dated 18.6.1979 & Circular dated 30.12.1999 for inclusion of his name in the waiting list for one year & to renew thereafter as per the rules laid down for this purpose.

2. The facts & circumstances of the case giving rise to the case are that Petitioner initially was appointed provisionally to the post of Extra Departmental Packer/MC, OSAP Campus, S.O. Bhubaneswar for a period from 12.4.1999 to 30.9.1999 or till regular appointments was made whichever period was shorter. The appointment letter dated 18.9.1999 further clarified that appointment could be terminated when regular appointment was made & he would have no claim for appointment to any post. It was also made clear that Petitioner will be governed by the Extra Departmental Agents (Conduct & Service) Rules, 1964. The Petitioner was again appointed vide letter dated 10.2.2000 for a period from 1.10.1999 to 31.3.2000. Similar appointment letters had subsequently been issued on 26.5.2000, 6.9.2000, 25.10.2000, 7.2.2001, 1.5.2001, 1.11.2001, 1.2.2002 & 22.3.2004. Subsequent thereto, the period was not extended though the Petitioner continued in service for a period of 5 years.

3. Being aggrieved, the Petitioner approached the Learned Tribunal. The Tribunal

decided the case only granting the aforesaid reliefs. Hence this petition.

4. Ms. S. Mohapatra, Learned Counsel for the Petitioner has submitted that as the Petitioner had been permitted to continue to hold the post for a period of five years without any interruption, his services ought to have been regularized & the Learned Tribunal committed the error rejecting his claim for regularization. The right of livelihood is a fundamental right guaranteed under Article 21 of the Constitution. Therefore, the petition deserves to be allowed.

5. Per contra, Mr. J.K. Misra, Learned Asst. Solicitor General has opposed the petition contending that the Petitioner has never been appointed on regular post. He has been holding the tenure post. In such a fact situation, the service comes to an end after efflux of time automatically. Question of regularization of his service could not arise as the Petitioner was holding a tenure post which was extended from time to time with a clear stipulation that he would have no right for regularization on the said post. The relief which the Petitioner was entitled had already been granted to him. Thus, the petition is liable to be dismissed.

6. We have considered the rival submissions made by the Learned Counsel for the parties & perused the record.

7. The facts of the case clearly state that appointment to the tenure post has been extended from time to time. However, the Petitioner cannot claim anything over & above the terms incorporated in the letter of appointment & has no right to continue in service after expiry of the tenure of the post.

8. Appointment of an employee to a tenure post is not governed by any Statutory Rules & he is bound by the terms & conditions incorporated in his appointment letter & there is no reason why the Court should not enforce the same. Vide *State of Punjab and others Vs. Surinder Kumar and others*, . If the Petitioner had been appointed to a tenure post, it comes to an end automatically on efflux of the period & does not require any order of termination by the employer. Here the appointment of the Petitioner was made purely on ad hoc basis & by efflux of time the appointment comes to end, the person holding such post can have no right to continue in the said post. This is so, even if the person is continuing from time to time on ad hoc basis for several years, he cannot claim regularization in service on the basis of such ad hoc appointment offered to him time & again. Vide *Dr. L.P. Agrawal Vs. Union of India and others*, ; *Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava, & State of U.P. and Another Vs. Dr. S.K. Sinha and Others*, .

9. Right to livelihood cannot be stretched so far as to mean that every one must be given a job. Vide *Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd.*, .

10. Similar view has also been taken by the Hon"ble Supreme Court in *Delhi Development Horticulture Employees" Union Vs. Delhi Administration, Delhi and others*, ; & *Rajendra and Others Vs. State of Rajasthan and Others*, . The

Hon"ble Apex Court held that right to livelihood was found not feasible to be incorporated as a fundamental right in the Constitution & therefore employment was not guaranteed under Part III of the Constitution. Therefore, the submission so advanced is preposterous & not worth consideration.

11. In view of the above, we do not find any force in the petition & the same is accordingly dismissed. However, the direction issued by the Tribunal for granting certain relief as per letter & circulars indicated in its order must be implemented, if not already given effect to.

B.N. Mahapatra, J.

I agree.