

(2023) 04 OHC CK 0193

In the Orissa High Court

Case No : Writ Petition Civil (OAC) Nos. 2915 Of 2016, 1069, 1070, 1071, 1072, 1644. 1837 Of 2017

Sameer Kumar Sahu And Another

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 20-04-2023

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Odisha Group C and Group D posts (contractual appointment) Rules, 2013 — Rule 4, 8

Citation : (2023) 04 OHC CK 0193

Hon'ble Judges : Sashikanta Mishra, J

Bench : Single Bench

Advocate : B. Routray, J. Biswal, R.P. Dalai, K. Mohanty, S.K. Samal, S.P. Nath, S.D. Routray, S.N. Pattnaik

Final Decision : Dismissed

Judgement

Sashikanta Mishra, J.

1. Common questions of fact and law are involved in this batch of writ applications for which they were heard together and are being disposed of by this common judgment.

2. The petitioners were engaged as Primary Workers in Block and District levels in the district of Jharsuguda through a service provider pursuant to work order issued by the District Planning and Monitoring Unit, Jharsuguda. They claim to have been selected by the service provider in a duly conducted selection process and engaged as Investigator and Primary Workers in the district of Jharsuguda as per appointment letters issued to them by the service provider on different dates. The petitioners were engaged to collect data for preparation of business register of the district in terms of decision of the Government of India as per letter dated 15.01.2015. By letter dated 11.08.2015, the Government in Department of Planning and Coordination called upon the Director, Economics and Statistics, Orissa (opposite party No.2) to furnish data regarding the persons

who were so engaged on outsourcing basis for being placed before the Development Commissioner –cum- Additional Chief Secretary. The opposite party No.2 furnished the required information. While the matter stood thus, the Odisha Staff Selection Commission (opposite party No.5) issued an advertisement on 19.10.2015 inviting online applications for the post of Primary Investigator under the Directorate of Economics and Statistics. It was indicated in the said advertisement that the appointment shall be contractual in nature. In the meantime, the Government of Odisha framed a Rule, called "Orissa Subordinate Statistical Surveyors (Method of Recruitment and Conditions of Service) Rules, 1994 prescribing direct recruitment to the post of Statistical Field Surveyor by way of competitive examination. Since the petitioners have been continuing since long, they approached the erstwhile Odisha Administrative Tribunal by filing Original Applications with prayer to quash the impugned advertisement dated 19.10.2015 and to direct the authority to allow them to continue against their respective posts on contractual basis as also to take steps for regularization of their services against the respective posts in terms of the 2015 Rules. The said original applications have since been transferred to this Court and registered as the present writ applications.

3. The case of the opposite parties is, due to delay in conduct of direct recruitment process, it was decided to engage manpower temporarily through outsourcing basis to manage the important work of 13th Finance Commission. On such basis, a tender was issued, wherein the opposite party no.4- firm was selected by the tender committee. The petitioners and other persons were engaged by the service provider up to 31.03.2015 against regular posts of Primary Investigator. The claim that they were selected in a due selection process, has been specifically denied. It is further stated that as per G.A. Department Resolution dated 12.11.2012, recruitment to Group-'C' and Group-'D' posts shall be made on contractual basis for a period of six years. There is no employer and employee relationship between the petitioner and the Government. They are paid remuneration by the service provider. Hence, their claim for regular appointment cannot be considered. It is also stated that as per G.A. Department Resolution dated 12.11.2013, a special provision has been made for outsourced persons to come through the competitive examination.

4. Heard Mr. B.P. Routray, learned Senior Counsel along with Mr. J. Biswal, learned counsel for the petitioners and Mr. S.N. Pattnaik, learned Addl. Government Advocate for the State.

5. Mr. Routray would argue that by means of the impugned advertisement the authorities proposed to substitute one set of contractual employees by another set of contractual employees, which is impermissible in view of the law laid down by the Apex Court as well as by this Court in several decisions. Mr. Routray further submits that the petitioners are working as Investigators and Primary Workers which are sanctioned posts. On the other hand, the 2015 Rules provides for appointment of Senior Statistical Field Inspector, Statistical Field Inspector

and Statistical Field Surveyor. Since the advertised posts are not coming within the ambit of 2015 Rules, the said Rule would not be applicable at all to the advertised posts i.e., a Primary Investigator. Alternatively, Mr. Routray contends that even otherwise, the opposite party No.5 has not followed the provisions under Rule 8(b) of the 2013 Rules, whereby weightage for each completed year of service along with relaxation of age is to be given to the outsourced employees.

6. Per contra, Mr. S.N. Pattnaik, has argued that the reference to 2013 Rules in the advertisement cannot be treated as a case of one set of contractual employee being substituted by another, inasmuch as the 2013 Rules only provides that the persons engaged shall be treated as contractual employees for the first six years of their engagement followed by automatic regularization of their services. These employees come through a recruitment process unlike the petitioners, who are engaged on outsourcing basis by service provider and not by the Government. Nevertheless the Rules provide for relaxation to such employees in terms of relaxation of age and weightage in marks awarded for each year of continuous service. However, these employees have to come through the recruitment process and cannot be simply regularized as there is no employer-employee relationship between them and the State. According to Mr. Pattnaik, reference made to 2015 Rules is also misconceived.

7. Admittedly, the petitioners have been engaged through service provider. As such, there is no employer employee relationship between them and the State. The impugned advertisement clearly provides that "Appointment is contractual initially to be guided by the Odisha Group-C and Group- D posts (contractual appointment) Rules, 2013 notified vide G.A. Department Notification No. GAD-SC-Rules-0009-2013-32010/Gen dated 12.11.2013. Be it noted here that the erstwhile Odisha Administrative Tribunal while admitting the Original Applications had passed an interim order to the effect that any appointment made pursuant to advertisement shall be subject to result of the O.A.

8. Rule-4 of the 2013 Rules lists two categories of existing contractual employees, as follows:

"(a) Category I : Contractual appointments/engagements made against contractual posts created with the concurrence of Finance Department without following the recruitment procedure including the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 and the rules made thereunder and Rules regulating recruitment for the regular posts.

(b) Category II : Contractual Engagements made through manpower service provider agencies with concurrence of Finance Department."

9. Rule-8 reads as follows;

"8. Special Provision for different categories of existing Contractual Employees:-

(a) The contractual employees belonging to Category-I and the persons provided

by the manpower service provider agencies under Category-II, who shall be less than 45 years of age and shall have completed at least one year of continuous service, in case they apply for Recruitment under sub-rule (I) of rule 5 for any Group C and Group D posts, shall be allowed relaxation of upper age limit for entry into Government service; provided they satisfy all other eligibility criteria for the post as laid down in the relevant recruitment rules.

(b) They shall be allowed one per cent marks on the total marks of the examination for each completed year of continuous service subject a maximum of fifteen per cent, which shall be added to the marks secured by them for deciding the merit position.”

10. Rule-10(1) reads as follows:

“10. Conditions of Service on Regular appointment-

(1) Regular Appointments: On the date of satisfactory completion of six years of contractual service under sub-rule (1) of rule 8, they shall be deemed to have been regularly appointed. A formal order of regular appointment shall be issued by the appointing authority.”

11. A reading of the above provisions makes it clear that firstly, any appointment made after coming into operation of the 2013 Rules shall be initially on contractual basis for a period of six years, but contingent

upon satisfactory service, the employees shall be deemed to have been regularly appointed on expiry of such period. It would therefore, not be correct to contend that the appointment so made is a contractual appointment as is generally understood. Secondly, the petitioners cannot be said to have been appointed by the State. Therefore, they can be treated as contractual employees only as defined under category-II of Rule-4. Thirdly, even for persons like the petitioners the Rules provides necessary leverage in terms of Rule-8. The argument that the advertisement not having specified application of Rule-8 is bad in law cannot be accepted since there is clear reference to 2013 Rules therein.

12. In such view of the matter, the advertisement cannot be treated as illegal or contrary to law in any manner. To such extent therefore, the main relief claimed by the petitioners in the writ application i.e., of quashing of advertisement, is found to be without merit. Further, the prayer to direct the authorities to regularize their services against the respective posts in terms of 2015 Rules, cannot also be granted in the absence of any employer-employee relationship between them and the State.

13. For the foregoing reasons therefore, the writ petitions are found to be devoid of merit and are hence, dismissed. No order as to costs.

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