

(2025) 04 OHC CK 1376

In the Orissa High Court

Case No : Writ Petition (C) No. 9617 Of 2024

Santosh Kumar Beja And Others

APPELLANT

Vs

State Of Odisha And Others Vs

RESPONDENT

Date of Decision : 16-04-2025

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2025) 04 OHC CK 1376

Hon'ble Judges : Aditya Kumar Mohapatra, J

Bench : Single Bench

Advocate : Saswati Mohapatra, Unmesh Chandra Jena

Final Decision : Allowed

Judgement

Aditya Kumar Mohapatra, J

1. By filing the present writ petition, the Petitioners calls in question the validity and legality of orders dated 16.08.2024 passed by the Opposite Party No.2-Director General and Inspector General of Police, Odisha under Annexure-6 Series. Further, the Petitioners have prayed for a direction to the State-Opposite Parties to reinstate them in service in their respective posts by quashing the respective termination orders.

2. Learned counsel for the Petitioners, at the outset, contended that the Petitioners were appointed to the posts of contractual Class-IV employees, which were created in lieu of regular posts under the administrative control of Opposite Party No.4. While continuing in service on contractual basis, notices were issued to the Petitioners and similarly situated many other persons on 18.07.2012 under Annexure-3 to the writ petition calling upon the Petitioners to show cause with regard to the allegation made against the Petitioners that by defying the authority of the superiors they have participated in a protest organized by the contractual employees association. Such show cause reply was directed to be filed by 30.07.2012. It appears that the Petitioners submitted their reply to the

show cause notice. However, with effect from 13.09.2012, the Petitioners were not allowed to enter into the SOG. Learned counsel for the Petitioners, at this juncture, contended that w.e.f. 13.09.2012, the Petitioners were discharged from contractual service by order of the Opposite Party No.4. In respect of the Petitioner No.1, the discharge order has been appended as Annexure-4 to the writ petition. So far as the other Petitioners are concerned, learned counsel for the Petitioners contended that in their cases, the discharge orders were not even communicated to them.

3. Learned counsel for the Petitioners, further referring to the order under Annexure-4, contended that the same reveals that the Petitioner No.1 was appointed as a 'Barber' in the SOG on contractual basis on 15.11.2008. At the time of his joining, he had submitted an undertaking wherein he had agreed to serve at any location in the State without any compensatory allowances except for the contractual remuneration and not to claim any regular scale of pay and other allowances. Further, an undertaking was given by the said Petitioner No.1 to the effect that he shall not join or participate in any private or service association and that his further continuance would depend upon the satisfactory performance of his duties.

4. She further contended that on 16.08.2012, it is alleged that the Petitioners had gone to attend a peaceful Dharana, which was conducted at lower PMG, Bhubaneswar, along with other Class-IV employees, who had organized a demonstration due to the non-fulfillment of their demands by the State Government. Furthermore, there is no evidence on record that the present Petitioners had participated in such demonstration. However, the Opposite Party No.4, without considering the show cause reply of the Petitioners, passed an order of disengagement against the Petitioners on 13.09.2012. Being aggrieved by such conduct of the Opposite Parties in disengaging the Petitioners from contractual service, the Petitioners have approached this Court by filing the present writ petition.

5. In course of her argument, learned counsel for the Petitioners further contended that earlier the Petitioners had approached this Court by filing W.P.(C) Nos.41630 of 2023, 953 of 2024, 424 of 2024 and 157 of 2024, which were disposed of by this Court vide order dated 02.01.2024, 24.01.2024, and 17.01.2024 respectively by directing the Opposite Party No.2 to dispose of the representation of the Petitioners within a period of eight weeks by passing a speaking and reasoned order.

6. After disposal of the above noted writ petitions, the Petitioners approached the Opposite Party No.2 along with a copy of the order dated 02.01.2024, 24.01.2024 and 17.01.2024. The Opposite Party No.2, vide his order dated 16.08.2024 under Annexure-6 Series, rejected the representation of the Petitioners. Further, referring to the impugned rejection order dated 16.08.2024 under Annexure-6 Series, learned counsel for the Petitioners further contended that the representations have been rejected basically on two grounds, firstly, the

Petitioners had given an undertaking pursuant to Home Department Letter dated 18.01.2007 wherein they agreed not to join or participate in any private or service association and that their continuance in the said post was subject to their satisfactory performance which is to be evaluated by the appropriate authority. Secondly, despite re-call notice to resume their duties by 27.08.2012, the Petitioners did not resume their duty and remained absent for more than 15 (fifteen) days without any intimation or prior permission from the competent authority and, accordingly, the Petitioners were discharged from contractual service w.e.f. 10.09.2012 in accordance with the Government of Odisha, Finance Department O.M. No.23689/F dated 23.06.2012.

7. Learned counsel for the Petitioners further submitted that the Petitioners were discharged from service by referring to the aforesaid O.M. dated 23.06.2012 of the Finance Department of Government of Odisha. She further contended that the aforesaid O.M. was the subject matter of dispute before this Court in an identical case of Ramesh Sahoo v. State of Odisha and others (W.P.(C) No.7612 of 2019, which was decided vide judgment dated 28.10.2022 by a Division Bench of this Court).

8. The factual scenario of the present case, as stated by the learned counsel for the Petitioners, is almost identical to the factual matrix involved in Ramesh Sahoo's case (supra). She further contended that in the aforesaid judgment, while testing the validity of the O.M. of the Finance Department dated 23.06.2012, the Hon'ble Division Bench has categorically arrived at a conclusion that the words "automatic termination/discharge from service" is unknown to the service jurisprudence. Moreover, such a practice is not in conformity with the principles of natural justice. Accordingly, in para-15 of the judgment, the Hon'ble Division Bench has declared the Memorandum dated 23.06.2012, under Annexure-8 to that writ petition, to be ultra vires to Articles 14 and 16 of the Constitution of India. Therefore, the order passed by the Tribunal which was under scrutiny by the Division Bench was confirmed and the order of termination/discharge passed by the authority was quashed.

(Underlined portion emphasized)

9. Learned counsel for the State, on the other hand, referring to the counter affidavit filed by the Opposite Parties No.1 to 4, contended that the Opposite Party No.2 has not committed any illegality in discharging the Petitioners from contractual service by virtue of order dated 13.09.2012. The case of the Opposite Parties is that the Petitioners were appointed on temporary and contractual basis only and, as per their appointment letters, their services are liable to be terminated at any time. It was also contended that at the time of joining the Petitioners have given an undertaking to the effect that they will not join or participate in any private or service association and their further continuance in the service shall be subject to satisfactory performance of their duties and that they will not claim any regular scale of pay.

10. Learned counsel for the State further contended that the Petitioners had absconded from duty on 16.08.2012 for sitting on "Dharana" at lower PMG, in order to stage a demonstration against the Government and formed an illegal association of contractual employees with other supporting staffs of SOG, Chandaka, Bhubaneswar without any prior permission from the competent authority. Thus, the learned counsel for the State contended that such conduct of the Petitioners violates the terms and conditions of contractual service as enumerated in the guideline of the Government of Odisha vide letter dated 18.01.2007.

11. Learned counsel for the State further contended that since the Petitioners, despite repeated oral intimations and recall notices dated 27.08.2012, failed to resume their duty, the Opposite Parties have very rightly and lawfully issued the notice under Annexure-3 requiring them to file their reply to the show cause. Furthermore, since the conduct of the Petitioners are contrary to the service conditions agreed upon by the Petitioners and the Petitioners having remained absent for more than 15 days continuously, they were liable to be removed from service pursuant to the Finance Department O.M. No.23689/F dated 23.06.2012.

12. In para-6 of the counter affidavit, the State-Opposite Parties have referred to the Finance Department O.M. dated 23.06.2012 and heavily relied upon the said O.M. to justify their conduct in discharging the Petitioners from duty. On the aforesaid grounds, learned counsel for the State contended that the Opposite Parties have not committed any illegality by first disengaging the Petitioners by virtue of the order under Annexure-4 to the writ petition, and thereafter by rejecting the representation of the Petitioners vide order dated 16.08.2024 under Annexure-6 Series to the writ petition. Accordingly, it was prayed that the present writ petition is devoid of merit and, as such, the same is liable to be dismissed.

13. Heard Ms. Saswati Mohapatra, learned counsel for the Petitioners as well as the learned Additional Standing Counsel appearing for the State-Opposite Parties. Perused the pleadings of the respective parties as well as the materials placed on record for examination by this Court.

14. Having heard the learned counsels appearing for the respective parties and on a careful examination of the factual background of the case as well as the materials on record, this Court observes that the issue that is required to be decided in the present writ petition is as to whether the conduct of the Opposite Party No.4 in disengaging the Petitioners from contractual service, vide order dated 13.09.2012 under Annexure-4 to the writ petition, and subsequent dismissal of the representation of the Petitioners vide order dated 16.08.2024, under Annexure-6 Series to the writ petition, is legally sustainable or not?

15. On a perusal of the impugned discharge order under Annexure-4, it is observed that the Opposite Parties have categorically mentioned that the Petitioners absconded on 16.08.2012 from the headquarters to sit on a 'Dharana'

along with other Class-IV employees at lower PMG to stage a demonstration against the Government. Accordingly, the Opposite Parties have come to a conclusion that the Petitioners had formed an illegal association contrary to the contractual conditions agreed upon by the Petitioners at the time of their entrance into service. Moreover, such participation was without permission from the higher authorities. The impugned order further reveals that despite notice by the concerned authorities, the Petitioners did not resume their duties by 27.08.2012. Thus, the Opposite Party No.4 has come to a conclusion that such conduct of the Petitioners amount to serious misconduct and insubordination.

16. Moreover, the impugned order of disengagement of the Petitioners does not reveal that the Petitioners were given an opportunity of hearing or filing any show cause by the Opposite Parties. Such order does not also reveal that the aforesaid action was taken pursuant to the O.M. of Finance Department dated 23.06.2012, even though such ground has been taken by the Opposite Party No.2 while rejecting the representation of the Petitioners under Annexure-6 to the writ petition. With regard to the validity of the O.M. dated 23.06.2012, before the same is examined, the above-mentioned O.M is quoted hereinbelow for better appreciation:-

"GOVERNMENT OF ODISHA

FINANCE DEPARTMENT

No.23689/F

Date - 23.06.2012

OFFICE MEMORANDUM

Sub: Entitlement of Contractual appointees to Casual Leave.

Persons engaged on contractual basis and guided by Finance Department Office Memorandum No.40545/F dt. 29.08.2009 are extended with the following benefits.

(i) Contractual employees shall be eligible (subject to exigencies of public service) for special leave of 10 days at the maximum during the period of engagement for one year. The leave will not be carried over to the next year and will lapse on completion of each year of service.

(ii) Unauthorised absence for a continuous period of 15 days or more will automatically terminate his/her engagement.

(iii) Female contractual employees, who are married and have less than two surviving children would be eligible to get the benefit of absence from duty on maternity ground in terms of Finance Department Circular No.12383/F dt. 31.3.12.

It is, however, clarified that persons engaged through outsourcing shall be

guided by the terms and conditions contained in this agreement between the employer and the service provider.

Sd/-

Principal Secretary to Government”

17. In the context of aforesaid O.M., this Court would like to record that the said O.M. has been declared to be ultra vires to Articles 14 and 16 to the Constitution of India by a Division of this Court in Ramesh Sahoo’s case (supra). Since such judgment of the Division Bench has attained finality, the O.M. dated 23.06.2012 no more exists in the eye of law. Therefore, the same cannot be relied upon by the Opposite Parties to defend their conduct in discharging the Petitioners from duty, as has been done under Annexure-4 to the writ petition.

18. Additionally, similarly situated employees, who had participated along with the Petitioners and sat in Dharana along with the Petitioners, have been taken back in service subsequently and only a handful of persons like the Petitioners have been left out. Moreover, on perusal of the counter affidavit, it is observed that the Assistant Commandant, SOG, Bhubaneswar, on 17.08.2012, submitted a list to the Commandant, SOG, Bhubaneswar indicating therein the name of the persons who are involved in such in-disciplinary activities. It is further revealed that out of a total strength of 271 menials (Cook, Vistry, FO. Dhobi, Barbar, Daftari), 37 persons were found to be unauthorizedly absent. The name of the Petitioners along with the above named Ramesh Sahoo appeared in the said list. However, similarly situated persons including the above named person, who were disengaged from service, have been reinstated in service and subsequently their services have also been regularized.

19. On perusal of the order dated 16.08.2024, this Court further observes that the same has been passed pursuant to the orders dated 02.01.2024 and 24.01.2024 passed by this Court in W.P.(C) No.41630 of 2023 and W.P.(C) No.953 of 2024 respectively. The Opposite Party No.2, while rejecting the representation of the Petitioners, has relied upon the O.M. dated 23.06.2012 of the Finance Department of the Government of Odisha, as has been mentioned hereinabove. As has been already established, the aforesaid O.M. has been declared to be ultra vires to Articles 14 and 16 of the Constitution of India. Therefore, it was not open to the Opposite Party No.2 to refer the aforesaid O.M., which has already been declared ultra vires by this Court and eventually quashed. Therefore, the main plank of order dated 16.08.2024 gets demolished.

20. Furthermore, similarly situated persons like the Petitioners who were in the same list having identical allegations against their name have already been reinstated in service in the meantime. The factual backdrop of the cases of the persons who have been reinstated in service are almost identical to the case of present Petitioners. Therefore, treating the Petitioners differently would be discriminatory and, as such, would fall foul of Article 14 of the Constitution of India.

21. In view of the aforesaid analysis of the factual position, further keeping in view the fact that O.M. dated 23.06.2012 has already been declared ultra vires and has been quashed, and similarly situated persons including one Ramesh Sahoo, whose case has already been referred to hereinabove, have been reinstated in service even though they were disengaged along with the present Petitioners, this Court is of the view that the impugned orders disengaging the present Petitioners vide order dated 13.09.2012, under Annexure-4, as well as the subsequent rejection of their representation vide order dated 16.08.2024, under Annexure-6 Series to the writ petition, are legally unsustainable. Moreso, if those orders are allowed to stand, then same would cause discrimination against the Petitioners and would amount to arbitrary conduct resulting in violation of Articles 14 and 16 of the Constitution of India. Therefore, this Court has no hesitation in quashing the impugned orders under Annexures-4 and 6 Series. Accordingly, the same are hereby quashed. The writ petition stands allowed.

22. The Opposite Parties are directed to reinstate the Petitioners in service. Since the Petitioners were in contractual service, the Opposite Parties shall do well to engage them on contractual service. Further, with regard to the remuneration for the period for which the Petitioners remained out of service, this Court is of the view that since the Petitioners were on contractual service and they have not performed any duty, they are not entitled to regular wages/remuneration. However, taking into consideration the conduct of the Opposite Parties in not reinstating the Petitioners along with other similarly situated persons, this Court directs the Opposite Parties to pay a lump sum compensation amount of Rs.50,000/- to each of the Petitioners for the aforesaid period. It is further directed that the period of disengagement of the Petitioners shall be taken into consideration towards continuity of their service and for the purpose of calculation of all other service benefits.

23. With the aforesaid observation and direction, the writ petition stands allowed. However, there shall be no order as to costs..

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