
(2007) 08 OHC CK 0058
In the Orissa High Court

Smt. Meera Piri

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 08-08-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2007) 104 CLT 445 : (2007) 2 OLR 533

Hon'ble Judges : S. Panda, J;I.M. Quddusi, J

Bench : Division Bench

Judgement

S. Panda, J.—This Writ Petition has been filed by the Petitioner challenging the Order dated 15.02.1999 passed by the Orissa. Administrative Tribunal, Bhubaneswar (hereinafter referred to as "the Tribunal") in OA No. 2936 of 1996 wherein the Tribunal has rejected the application of the Petitioner for regularization/absorption in the post of Junior Stenographer with effect from 21.08.1996.

2. The facts of the case are as follows;

Petitioner was appointed as an N.M.R. on 01.04.1979 under the Budget Branch of the Office of the Executive Engineer, Bhadrak R & B Division. She was discharging her duties as per the duties assigned to her from time to time as a Clerk, Typist, Stenographer and Tracer in the regular establishment but she was denied the equal pay as that of a regular employee. In this regard; the Executive Engineer issued a certificate on 10.09.1985 that the Petitioner is working as clerk-cum-stenographer in his office. While the matter stood thus, 1787 N.M.R. employees working under the Works Department of Government of Orissa filed a Writ Petition, i.e. OJC No. 3599 of 1988 before this Court for regularization of their services and this Court vide Order dated 13.01.1989 allowed the Writ Petition with a direction to the authorities to pay the equal pay to that of the regular employee and to prepare a scheme on rational basis for absorption of the N.M.R. workers who are serving under the Works Department for more than one year. Since the authorities did not take any steps for regularization of their

services, some of the employees filed Writ Petition (Civil) No. 195 of 1990 before the Apex Court. The Apex Court vide Order dated 7.1.1990 have held that the State Government shall frame a Scheme for regularization of N.M.R. employees within a period of six months. In pursuance to the said direction, Works Department vide G.O. No. 16002 dated 18.07.1991 passed a resolution and formulated a Scheme for regularization of N.M.R. employees/workers. In the said Scheme, it has been stipulated that 1787 N.M.R. employees who have been working under the Works Department for a period of more than 10 years and have the minimum educational/technical qualification required for the posts against which they are working shall be absorbed as regular Government employees. Further it was stipulated that at that time 952 posts were lying vacant out of which 47 posts were promotional posts. Thus, there were 905 posts available for absorption of N.M.R. workers. For absorption against the post of Junior Clerks and junior Stenographers Regular Recruitment Rules would be relaxed and vacancies reserved for S.C. & S.T. would be filled up by reserved candidates. Where suitable N.M.R. workers belonging to Scheduled Castes and Scheduled Tribes are not available, the said vacancies will be filled up after de-reservation by following the provisions of the O.R.V. Act and the Rules. As per the said Scheme, the gradation list of N.M.R. workers were prepared vide order No. 84125 dated 23.12.1991. In the said gradation list, the Petitioner was placed at serial No. 340 on the basis of her engagement as N.M.R. worker and it has been clearly mentioned under Annexure-4 that the Petitioner was engaged with effect from 01.04.1979 having Stenographer and Tracer qualification. Though the posts are lying vacant, the Petitioner services have not been regularized.

3. The Petitioner has made several representations to the Chief Engineer (R & B) Division vide Annexure-5 series for absorption in the post of Stenographer, as the post of Junior Stenographer is lying vacant and she has the requisite qualification and she also fulfills all the criteria for the said post. The authorities have not regularized her service and after a long time the grievance of the Petitioner was considered by the Engineer in Chief (Civil), Orissa vide Memo No. 74224(2) dt. 28.12.1995, vide Annexure-8, which is as follows;

Office of The Chief Engineer Roads and Building: Orissa

No. IVA-34/95 Dt: Bhubaneswar, the Dec, 95 From:

Sri B Patra

Engineer-in-chief (Civil), Orissa

To

The Superintending-Engineer, Electrical (R & B) Circle.

Sub: Absorption of NMR workers under (R&B) wing against the existing vacancies during 1995-96.

Sir,

With reference to the above noted subject it is to request you to please take immediate necessary action for appointment of Smt. Meera Piri, NMR of Bhadrak (R & B) Division in the vacant post of Junior Stenographer under your control subject to observance of the conditions as instructed earlier and report compliance to this office immediately.

The appointment of Smt. Meera Piri NMR shall be conditional subject to the final result of the disposal of the case in OA No. 1238/ 94 as instructed by Hon''ble O.A.T. Copy enclosed and such instruction of OAT should be reflected in the appointment order of Meera Piri.

End : As above. Yours faithfully, Engineer-in-Chief (Civil), Orissa

Memo No. 74224(2) 28.12.95

4. The Engineer-in-Chief (Civil) again on 21.8.1996 issued a letter, vide Annexure-9, for absorption of the Petitioner in the post of Junior Stenographer which is as follows;

Office of the Chief Engineer Roads and Building: Orissa

No. E-IVA-54/95 Dt: Bhubaneswar, the Aug, 96 From:

Sri D.K. Nayak

Engineer-in-chief (Civil), Orissa

To

The Superintending Engineer,

Mechanical (R & B) Circle, Bhubaneswar.

Sub: Absorption of NMR workers under regular establishment.

Sir,

With reference to above, it is to state that Smt. Meera Piri who is now working as NMR under the Executive Engineer, Bhadrak R&B Division, Bhadrak is hereby sponsored to your control for her appointment against the vacant post of Junior Stenographer as per the vacancy -reported by you vide your letter No. 470 dated 7.2.1996. The appointment of Smt. Meera Piri shall be made as per the guidelines communicated to you earlier and also observing due formalities. However, before issue of appointment order a formal test shall be conducted to qualify herself for the post of Junior Stenographer.

The appointment of Smt. Piri, NMR shall be conditional to the final result of the disposal of the case in OA No. 1238 of 1994 (MP No. 1728/94) OA No. 2187/95 and No. 23/96 as instructed by the Hon''ble Orissa Administrative Tribunal and the same shall be reflected in the appointment order of the candidates.

Yours faithfully,

Engineer-in-Chief (Civil), Orissa

5. While the matter stood thus, the Executing Engineer, Bhadrak, R & B Division appointed the Petitioner as Junior Stenographer against a leave vacancy. After being appointed as a Junior Stenographer, the Petitioner discharged her duties as Stenographer sincerely and efficiently to the satisfaction of the authorities concerned since 28.10.1997.

6. In the meantime the authorities have regularized 1786 out of 1787 N.M.R. workers under the Works Department except the Petitioner. The Petitioner's case for regularization was not considered on the ground that she did not withdraw her original application i.e. O.A. No.2936 of 1996 which has been filed by her to regularize her services. In the original application, the Petitioner though prayed for regularization, her main grievance was that one Tribikram Acharya, an outsider, was appointed as Junior Stenographer in the Mechanical R&B Division, Sambalpur against the post to which Petitioner's name was recommended by the Engineer-in-Chief. The Petitioner, however, contended that the N.M.R. workers who are juniors to Petitioner in OJC No. 3519 of 1988 got their usual pay w.e.f. 01.08.1988 and Petitioner having stood on the same footing, her case has not been considered by granting equal pay as applicable to the regular employees and the authorities have also not regularized her service. The Petitioner has further stated that she has possessed Stenography qualification and she was also allowed to discharge her duties as Stenographer since 28.12.1995 uninterruptedly against a vacant and sanctioned post. Thus she is entitled for regularization with consequential benefits.

7. The Tribunal has disposed of the original application on 15.2.1999 with a direction to the concerned authorities to take steps for absorbing the applicant in an establishment corresponding to the post she has been holding in the N.M.R. establishment following the principles and guidelines laid down in the latest scheme issued by the Finance Department dated 15.05.1997 as and when her term comes.

8. The Petitioner challenged the said direction of the Tribunal on the ground that, the order was passed without application of mind and without considering the materials available on record. It is further contended that the Tribunal has also not considered the certificate issued by the concerned authority to the effect that Petitioner is working as Junior Stenographer against the vacant post and have also not considered the gradation list prepared by the Respondent pursuant to the Apex Court's direction wherein the Petitioner is at SI.No.340. Since persons who are juniors to the. Petitioner i.e. at Sl. No. 655 and Sl. No. 720, namely, Sri P.C. Patnaik and Surendra Kumar Behera have been regularized as Junior Stenographers her case should have been considered for regularization. As such, the action of authorities violates Articles 14 and 16 of the Constitution of India.

9. The Tribunal has only observed that as the Petitioner is working as an N.M.R. employee in one of the field formations of the Works Department, though there

is no convincing evidence that she has been working as a Stenographer, the concerned authorities shall take steps for absorbing her in an establishment post corresponding to the post she has been holding in the N.M.R. establishment following the principles and guidelines laid down in the latest scheme issued by the Finance Department when her turn comes.

10. The Opposite Parties have filed their counter affidavit. In their counter affidavit they have admitted that pursuant to the Judgment of the Supreme Court in Writ Petition (civil) No. 195 of 1990 Gundicha Bhoi and Ors. v. State of Orissa and Ors., a scheme was formulated in Works Department vide Resolution No. 16002 dated 18.7.1991 to regularize the services of 1787 identified N.M.R. workers. The posts were filled up keeping in view the inter se position of N.M.R. workers in identification list and their suitability. Para-8 of that Resolution provided that future vacancies occurring in different categories of posts except Junior Clerks and Junior Stenographers in both regular and work Charged establishment are to be filled up by eligible persons out of the balance number of N.M.R. workers. Hence, as a matter of fact, junior clerk and Junior stenographer posts were not open for regularization of N.M.R. employees. The Petitioner got opportunities twice to come over to regular establishment as Choukidar and Work Sarkar respectively. But she has declined to accept the posts. However, the Opposite Parties have admitted that they have regularized Sri P.C. Pattnaik as Junior Stenographer vide Order dated 02.02.1999.

11. From the above facts, it is clear that the Petitioner is continuing in the Department since 1979 and her claim is essentially based on the facts that she is continuing in employment, engagement and working in a significant length of time against vacant sanction (Sic) post. Since she claimed to be absorbed in the post in which she had worked in the Department for a period of more than ten years i.e. as Junior Stenographer, she is entitled to equal pay for equal work from the date of her engagement as an N.M.R. She is also entitled to be considered for regularization in the post of Junior Stenographer as the post was vacant at the time of her appointment/engagement and there was no Ban order at that point of time.

12. Law is well settled that main concern of the Court in the above situation is to see that the Executive acts fairly and gives a fair deal to its employees consistent with the requirements of Article 14 and 16 of the Constitution of India. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. Since the State is a model employer it is for this reason equal pay must be given for equal work which is indeed one of the directive principles of the Constitution. The person should not be kept in temporary or ad hoc status for long time. Where a temporary or ad hoc appointment is continued for long the Court presumes that there is need and warrent for a regular post and accordingly directs regularization. If an ad hoc or temporary employee is continued for a fairly long spell, the authorities must

consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to reservation policy of the State. The normal rule of course is regular recruitment through the prescribed agency but exigencies of administration may some times call for an ad hoc and temporary appointment to be made.

13. The question of regularization in any service including any Government service arises in two contingencies. Firstly, if on any available clear vacancies which are of a long duration, appointments are made on ad hoc basis or daily wage basis by a competent authority and are continued from time to time and if it is found that the incumbent concerned have continued to be employed for a long period of time with or without any artificial break and their services are otherwise required by the institution which employs them, a time may come in service career of such employees who are continued on ad hoc basis for a given substantial length of time to regularize them so that the employee concerned can give their best by being assured security of tenure. But this would require one pre-condition that the initial entry of such employee must be made against an available sanctioned vacancy by following the rules and regulations governing such entry. The second type of situation in which the question of regularization may arise would be when the initial entry of the employee against an available vacancy is found to have suffered from some flaws in the procedural exercise though the person appointing is competent to effect such initial recruitment and has otherwise followed due procedure for such recruitment. The Petitioner's case comes under first category.

14. In the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , the Constitution Bench of the Supreme Court have held that;

One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajun and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the Courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this Judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the Courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be

reopened based on this Judgment, but there should be no further bypassing of the constitution requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.

It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents.

15. Considering the aforementioned ratio of the decision and the facts of the present case, it is held that the Petitioner's case is squarely coming within the purview of the said decision.

16. In the backdrop of events, it is found that neither the Petitioner was appointed during the subsistence of any ban order of Government nor was there any restriction imposed for any temporary or ad hoc engagement. The authorities have given her appointment without following the recruitments procedure. She is duly qualified for the post she holds and such post is a sanctioned vacant post. Furthermore she is continuing in the said post for more than 10 years without interruption and intervention/orders of Court or Tribunal. Since the persons junior to the Petitioner in service have been regularized, Petitioner accrues, right to be considered for regularization. Thus all effective steps shall be taken by the Opposite Parties in this regard as expeditiously as possible, preferably within a period of six months.

17. With the above direction, we dispose of this Writ Petition by setting aside the Order dated 15.02.1999 passed by the Orissa. Administrative Tribunal, Bhubaneswar in O.A. No. 2936 of 1996.

There is no Order as to costs.

I.M. Quddusi, J.

18. I agree.