
(2015) 05 OHC CK 0007
In the Orissa High Court
Case No : Writ Appeal No. 413 of 2014

State of Odisha and Others	Vs	APPELLANT
Manoj Kumar Parida and Others		RESPONDENT

Date of Decision : 15-05-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 05 OHC CK 0007

Hon'ble Judges : P. Mohanty, Actg. C.J. and Krushna Ram Mohapatra, J.

Bench : Division Bench

Advocate : H.M. Dhal and M.R. Dhal, for the Respondent

Final Decision : Dismissed

Judgement

Krushna Ram Mohapatra, J.—The appellants, namely, State of Odisha in Panchayati Raj Department, Bhubaneswar and Collector & Chief Executive Officer, District Rural Development Agency, Kendrapada, have filed this writ appeal assailing the order dated 24.3.2014 passed by the learned Single Judge in W.P. (C) No. 8340 of 2012.

2. Facts in brevity for proper adjudication of the case are stated hereunder.

Pursuant to an advertisement, the respondent No. 1, namely, Manoj Kumar Parida, was appointed as a Junior Stenographer under District Rural Development Agency (for short "DRDA"), Kendrapada vide Order No. 4536 dated 3.6.1994 issued by the appellant No. 2 and he joined as such on 3.6.1994. However, his services were terminated on 18.7.1994 as per Order No. 6050 dated 18.7.1994 of the District Office, Kendrapada. He was again re-engaged as a Junior Clerk on 24.7.1994 vide Order No. 810 dated 24.7.1994 and continued as such till 5.9.1994 on ad hoc basis for 44 days. Thereafter, the respondent No. 1 was again engaged as a Junior Clerk-cum-Typist vide Order No. 985 dated 6.9.1994 and continued as such till 01.11.1994 on contractual basis with consolidated pay. Subsequently, vide Order No. 1271 dated 01.11.1994, the respondent No. 1 was

engaged as a Junior Stenographer on contractual basis with consolidated pay till 6.3.1996. Vide Order No. 969 dated 12.3.1996, the respondent No. 1 was again engaged as a Junior Stenographer on ad hoc basis and has been continuing as such till date. Needless to mention here that the Government in P.R. Department vide its Order No. 9526 dated 16.7.1994 approved and sanctioned the post of Junior Stenographer in which the respondent No. 1 is continuing. The Governing Body of the DRDA, Kendrapada in its 100th meeting dated 6.2.2009 resolved to submit a proposal to regularize the services of respondent No. 1 along with five other employees against permanent vacancies. The respondent No. 1 also made representations dated 8.12.2009 and 29.12.2009 respectively to appellant No. 1 for regularization of his service. Since no tangible step was taken by appellant No. 1 for regularization of the services of respondent No. 1, he moved this Court in W.P.(C) No. 20369 of 2010 and the same was disposed of by order dated 09.02.2011 with following directions:

"The petitioner, who is working as Junior Stenographer in D.R.D.A., Kendrapara since 1994 on daily wage basis, has filed this application praying for regularization in service. It appears that he has made representations in Annexures-7 and 8 to the Commissioner-cum-Secretary to Government, Panchayati Raj Department, Orissa, Bhubaneswar for regularization in service.

Since no decision has been taken on the said representations, we dispose of this writ application directing opposite party No. 1 to consider the representations in Annexures-7 and 8 with reference to Annexure-6 attached to the writ application and take a decision thereon within a period of two months from the date of communication of this order."

3. In obedience to the directions issued by this Court in the said writ petition, the appellant No. 1 considered the representation of respondent No. 1 and rejected his claim with the observation that as "an irregularly recruited employee cannot claim the right of regularization without passing through the regular recruitment procedure", the case of the respondent No. 1 could not be considered". The said decision was communicated to the Collector and C.E.O, DRDA, Kendrapada-appellant No. 2 vide letter No. 7208 dated 18.04.12. Assailing the said decision, the respondent No. 1 preferred W.P.(C) No. 8340 of 2012 before this Court with a prayer to quash the said letter dated 18.04.2012 and issue a writ of mandamus to regularize his services in the post of Junior Stenographer under DRDA, Kendrapada. The respondent No. 1 elaborating the facts as narrated above also pleaded that one Smt. Suniti Mohapatra, who is similarly placed with that of respondent No. 1 and is continuing as a Junior Clerk in the office of the DRDA, Khurda, has been regularized vide order under Annexure-11 to the writ petition.

4. The appellants and proforma respondent No. 2, who were opposite parties 1 to 3 respectively in the said writ petition, contested the case by filing a detailed counter affidavit. It was strenuously urged that as per G.O. No. 11269 dated 07.12.1989, no direct recruitment to the posts of Junior Clerk-cum-Typist, Junior Stenographer and Driver in the DRDA shall be made from the date of adoption of

the Orissa District Rural Development Agency Employees (Recruitment and Conditions of Service) Regulations, 1989 (for short "Regulations, 1989) by the DRDA, Kendrapada. The vacancies in the said categories should be filled up by way of deputation from the respective district cadres as per order under Annexure-P/3 to the counter affidavit. As such, the appellants contended that when appointment of respondent No. 1 was made without following due procedure of law, the writ petition could not be entertained and prayed for dismissal of the same.

5. The learned Single Judge taking into consideration the undisputed facts involved in the case and the ratio decided in the cases of Secretary, State of Karnataka and Others Vs. Umadevi and Others, and State of Karnataka and others v. M.L. Kishori and others, reported in 2010 (II) OLR (SC) 982, came to the conclusion that since the respondent No. 1 is continuing against a sanctioned post as Junior Stenographer and has completed ten years of service, he should be regularized against the said post even though his appointment is irregular and accordingly quashed the letter dated 18.04.2012 under Annexure-10 to the writ petition and directed for regularization of his service within a period of three months from the date of the order.

6. During course of argument, Mr. Pattnaik, learned Additional Government Advocate for the appellants strenuously urged that the learned Single Judge had not considered the ratio decided by the Hon"ble Supreme Court in the cases of Secretary, State of Karnataka and Others Vs. Umadevi and Others, and State of Karnataka and others v. M.L. Kishori and others, 2010 (II) OLR SC 982 in its proper perspective. He also argued that respondent No. 1 was appointed without following due procedure of law, inasmuch as there was neither any advertisement nor the recruitment was made following the procedure laid down in Regulations, 1989. He also contended that no appointment can be made to the post of Junior Stenographer directly by the DRDA as per G.O. No. 11269 dated 7.12.1989, but it should have been made by way of deputation from the respective district cadres. Admittedly, the procedure of recruitment is not conspicuously followed in the case. Therefore, such appointment is not only irregular but also illegal and an employee appointed illegally cannot be regularized notwithstanding his length of service in the post. He further asserted that the DRDA being a Society constituted under the Societies Registration Act, 1860, the writ petition is not maintainable against DRDA, Kendrapada.

7. On the other hand, Mr. H.M. Dhal, learned counsel for respondent No. 1 refuted the contention raised by the appellants asserting that though initially there were some breaks in services of respondent No. 1 but he is continuing in service with effect from 7.3.1996 till date without any break. Thus, respondent No. 1 has completed about twenty years of continuous service. He also drew attention of this Court to Annexure-10 of the writ petition, wherein, the Government in P.R. Department while rejecting his representation held that his appointment was irregular. As such, he submitted that the learned Single Judge

has rightly quashed the order under Annexure-10 to the writ petition and directed the appellants to regularize him in service and prayed for dismissal of the writ appeal. Our attention was drawn to the letter dated 18.7.2011 as at Annexure-11 to the writ petition wherein a similarly placed employee, namely, Smt. Suniti Mohapatra, who is continuing as a Junior Clerk-cum-Typist like that of respondent No. 1 in similar manner, has been regularized as Junior Clerk-cum-Typist in the office of DRDA, Khurda. Moreover, respondent No. 1 has been working in the post of Junior Stenographer for more than ten years continuously without the benefit or protection of the interim order of any Court or Tribunal and his employer employed and continued him in service voluntarily and continuously for more than ten years against a sanctioned post. As such, the writ appeal merits no consideration and is liable to be dismissed.

8. The Hon''ble Apex Court in the case of State of Karnataka and others v. M.L. Kesari and others, reported in 2010 (II) OLR (SC) 982, at paragraph-7 held as follows:

"7. It is evident from the above that there is an exception to the general principles against "regularization" enunciated in Umadevi, if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular."

In the aforesaid decision at paragraph-7 (ii), the Hon''ble Supreme Court has made a distinction between the illegal and irregular appointment. It is clearly held that where the appointments are not made or continued against sanctioned post or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possesses the prescribed qualification and was working against sanctioned post, but had been selected without undergoing process of open competitive selection, such appointments are considered to be irregular. Similar view is taken by Hon''ble Apex Court in the case of Uma Devi (supra).

9. In the case at hand, it is not disputed that respondent No. 1 having possessed the prescribed qualification for being appointed as a Junior Stenographer under DRDA, Kendrapada, was appointed and allowed to continue against a sanctioned

post of Junior Stenographer, but the fact remains that he was recruited without following the procedure laid down in Regulations 1989. In such view of the matter, the appointment of respondent No. 1 to the post of Junior Stenographer can by no stretch of imagination be said to be illegal and the same can only be said to be irregular as held in the decision in the case of M.L. Kesari (supra). Moreover, appellant No. 1 while rejecting the representation of respondent No. 1 for regularization of his service observed "irregularly recruited employees cannot claim the right of regularization without passing through regular recruitment procedure". Hence, the first contention of the appellants that since respondent No. 1 was appointed de hors the Recruitment Rules and G.O. No. 11269 dated 7.12.1989, the same is illegal, cannot sustain.

Secondly, the appellants further submitted that the respondent No. 1 has not completed ten years of continuous service and he was allowed to continue with intermittent breaks/interruption. It was strenuously urged that respondent No. 1 was initially appointed on 03.06.1994 as a Junior Stenographer and his services was terminated on 18.07.1994. Subsequently, he was re-engaged on 24.07.1994 as a Junior Clerk and continued as such till 05.09.1994 on ad hoc basis for forty-four days with one day break in between. Thereafter, the respondent No. 1 was engaged as a Junior Clerk-cum-Typist on 06.09.1994 and continued as such till 01.11.1994 on contractual basis as a contractual employee on consolidated pay. On 01.11.1994, he was engaged as a Junior Stenographer on contractual basis with consolidated pay and continued as such till 06.03.1996. Again he was engaged on 07.03.1996 and is continuing as such till date.

Taking into consideration the submission of the appellants, it can safely be said that the respondent No. 1 is continuing as a Junior Stenographer from 07.03.1996 till date continuously and without protection from any court or tribunal. Thus, the case of respondent No. 1 is squarely covered under the observation made in Paragraph-7 (II) of the case of M.L. Keshari (supra).

Thirdly, the appellants raised an issue that the DRDA, Kendrapada is a Society registered under the Societies Registration Act. Thus, the writ petition under Article 226 of the Constitution of India is not maintainable against a Society. Needless to mention here that the State Government in Panchayati Raj Department has deep and pervasive control over the DRDA. The DRDA implements the projects and schemes of both Central and State Government for the rural development in Odisha. It is an agency which functions on the financial aid of the State Government. The Chairperson of Zilla Parishad of the District is the Ex-officio Chairperson of the DRDA and the Collector of the District is the Chief Executive Officer of the concerned DRDA. Therefore, there is no iota of doubt that the DRDA, Kendrapada is an instrumentality of the State and thus, the writ petition is maintainable.

10. Besides that one Smt. Suniti Mohapatra, who was appointed and continued as a Junior Clerk in the DRDA, Khurda in the similar manner as that of the respondent No. 1, had moved this Court in W.P.(C) No. 14929 of 2009. Pursuant

to the directions made by this Court in the said writ petition, the Government in Panchayati Raj Department had regularized her services as a Junior Clerk in the DRDA, Khurda vide letter dated 18.07.2011 (Annexure-11). The appellants neither in the writ petition nor in the writ appeal dispute this factual position. In such view of the matter, the respondent No. 1 cannot be treated unequally refusing regularization of his services.

11. In view of the above, the writ appeal being devoid of merit is accordingly dismissed with cost. The directions issued by this Court on 24.03.2014 in W.P.(C) No. 8340 of 2012 shall be complied forthwith.

P. Mohanty, Actg. C.J.

I agree.