
(2018) 03 OHC CK 0095
In the Orissa High Court
Case No : O.J.C. NO. 1454 OF 2002

UMESH PRASAD DHAL

APPELLANT

Vs

STATE OF ODISHA AND OTHERS

RESPONDENT

Date of Decision : 30-03-2018

Acts Referred:

Citation : (2018) 03 OHC CK 0095

Hon'ble Judges : S. PANDA, K.R. MOHAPATRA

Bench : Division Bench

Advocate : J. K. Rath, S. N. Rath, P.K. Rout, S. Mishra, C.K. Rajguru, D.N. Rath, M.S.Sahu

Final Decision : Disposed of

Judgement

K.R. MOHAPATRA, J.

1. The petitioner in this writ petition, seeks to assail the order dated 05.11.2001 (Annexure-10) passed by Cuttack Bench of Orissa Administrative

Tribunal (for short, 'learned Tribunal) in O.A. No.1438(C) of 1991.

2. Briefly stated the petitioner was appointed as a Junior Stenographer in the office of the Director of Technical Education and Training, Cuttack (for

the short, 'DTET')-opposite party No.2 on ad hoc basis for different spells from 29.12.1989 to 23.08.1991. Apprehending termination of his

services, the petitioner filed O.A.No. 1438 (C) of 1991 with the following prayer:-
'7.Relief (s) sought: In view of the facts mentioned in para 6

above the applicant prays for the following relief(s).The Hon'ble Tribunal be graciously pleaded to pass an order that until the post in which the

applicant is continuing is filled up by a regular process as prescribed by the State Government, the applicant be permitted to continue. And further the

applicant be given an opportunity to appear before the Selection Committee constituted for the purpose so as to prove his ability for regularization of

his service and alternatively to consider the case of the applicant for the post of Instructor lying vacant in which the applicant has gained sufficient

experience and qualification.â??

3. The matter was taken up for hearing on 05.11.2001, on which date the learned counsel for the applicant/petitioner was absent due to â??cease

workâ?? of the Advocates. However, learned Tribunal taking into consideration the averments made disposed of the Original Application with the

following direction:-

6. However, since he has been continuing in service on whatever tenure it may be, we direct that the respondent No.2 shall take steps to fill up the

said vacancy in a regular manner according to the prescribed procedure now in vogue, prescribed in executive instructions or in statutory rules. The

applicant shall be allowed to compete with others for regular appointment to the post, even if his name is not sponsored by the Employment Exchange,

on his application for regular appointment to the post within the prescribed time. If he is successful and selected he shall be given regular appointment,

if necessary by condoning his upper age limit under the provisions of Orissa Service Code. It may be made clear that if he is not selected for the post,

he shall vacate the same in favour of the regularly selected/appointed candidate. The whole process shall be completed within three months from the

date of receipt of a copy of this order. Till then the applicant shall be allowed to continue in his job.

7. In the result, the O.A. is disposed of with the above direction.â??

4. The petitioner has filed this writ petition contending that he was not given an opportunity of hearing in the matter, as a result of which his case could

not be considered in its proper perspective.

5. Mr.Rath, learned Senior Advocate, argued that the petitioner is still continuing in service and no regular recruitment has yet been made to the said

post following due procedure of law. The petitioner has, in meantime become age-barred to appear in any selection test. Taking into consideration his

long tenure in service, he is entitled to be regularized in the post in which he is continuing. Hence, he prayed for a direction to remit the matter to

learned Tribunal for consideration of his prayer for regularization.

6. Mr.Sahu, learned Additional Government, on the contrary, submitted that since the prayer made by the petitioner has been granted by the learned

Tribunal, this writ petition is not maintainable. Hence, he prayed for dismissal of this writ petition.

7. We have heard learned counsel for the parties and perused the record. Perusal of paragraph-7 of the Original Application makes it clear that the

petitioner has not made any prayer for regularization of his services before the learned Tribunal. Further, the main relief sought for by the petitioner

before learned Tribunal has been granted. Thus, occasion for entertaining the alternative prayer does not arise.

8. It is held in the case of L.Chandra Kumar Vs. Union of India & ors., reported in AIR 1997 SC 1125, that "It will not be open for litigants to

directly approach the High Courts even in cases where they question the vires of statutory legislations by overlooking the jurisdiction of the

concerned Tribunal. It is, therefore, clear that a litigant (government servant) has to approach learned Tribunal at the first instance to redress

his grievance. It is not open to the litigant to raise a grievance or seek a relief for the first time in High Court. Admittedly, the petitioner had not sought

for any relief of regularization of his services before the learned Tribunal.

9. Therefore, we are not inclined to entertain the prayer for regularization of the petitioner in service. It is, however, open to the petitioner to raise his

grievance at the appropriate quarter/forum, if so advised.

10. With the aforesaid observation, the writ petition is disposed of.