

**ORISSA HIGH COURT  
CUTTACK**

**W. P. (C) NO.4492 OF 2005**

In the matter of an application under Articles 226 & 227 of the Constitution of India.

Chaitanya Jani & others ..... Petitioners

Versus

State of Orissa and  
others ..... Opposite Parties

For Petitioners - M/s Ullash Ch. Mohanty  
and S.C.Mohanty

For Opp.Parties - Addl. Government Advocate

**PRESENT :-**

**THE HON'BLE MR. JUSTICE I.M.QUDDUSI  
AND  
THE HON'BLE MR. JUSTICE PRADIP MOHANTY**

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**PRADIP MOHANTY, J.** In the instant writ application, the petitioners assail the judgment dated 22.03.2005 of the Orissa Administrative Tribunal, Cuttack Bench, in O.A. No.2064 (C) of 1999 on the ground that the same is illegal, arbitrary and contrary to law.

2. The brief fact of the case is that the petitioners were appointed in the year 1991 through a due selection process in the posts of Peon and Night Watchman. Their appointments were ad hoc on spells of 44 days with usual break of 2 days in between. Though usual salary was given to them since 2001, the same is not being paid to them for which direction has already been given by the Tribunal in M.P. No.667 (C) of 2004 to clear up the arrear dues. In

the year 1999, the petitioners approached the Orissa Administration Tribunal in O.A. No.2064 (C) of 1999 with a prayer to regularize them from the date of their appointment with all consequential financial benefits and direct the opposite parties not to terminate them. The case of the opposite parties before the Tribunal was that there was no regular recruitment and as because the engagement of Peon and Night Watchman was necessary, the petitioners were engaged and have been continuing as such on spells of 44 days with break. The appointment of the petitioners was made without following the Recruitment Rules and they are not working against any permanent post, for which, the question of their regularization does not arise. The Tribunal after hearing the parties by its judgment dated 22.03.2005 disposed of the O.A. with a direction to the opposite parties to take steps for recruitment to the aforesaid Class-IV posts according to law. If the petitioners are eligible for the aforesaid posts, they should be given chance to take part in the recruitment by condoning their upper age limit.

3. Mr. Mohanty, learned counsel for the petitioners contended that the petitioners are entitled to be regularized in view of the Finance Department Scheme dated 15.05.1997, since they are working from 1993 and they have the requisite qualification for the posts they are holding. He also contended that the petitioners have completed more than ten years of service and have gathered enough experience but without considering the same the Tribunal has disallowed the prayer for their regularization.

4. Learned Additional Government Advocate vehemently contended that the appointment of the petitioners was not through regular selection and, therefore, they cannot be regularized with the aid of the Scheme dated 12.4.1993. Further, appointment of the petitioners having been made after the cut off date indicated in the aforesaid Scheme, the said Scheme cannot be made applicable to them.

5. Perused the judgment of the Tribunal and documents available on record. The Tribunal has directed the respondents to take steps for recruitment to the aforesaid Class-IV posts according to law and to allow the petitioners to take part in the recruitment, if they possess the requisite qualification to hold the post by condoning the upper age limit. There is no illegality, impropriety or manifest in the above judgment of the Tribunal so as to warrant our interference. However, considering the facts and circumstances of the case, this Court directs that in the recruitment to be held, weightage should be given to the petitioners by taking into account their experience. This Court further directs that till completion of the selection process, the petitioners should be allowed to continue in the posts they are holding.

With the above observation, the writ petition is disposed of.

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**Pradip Mohanty, J.**

**I.M.QUDDUSI, J.**      I agree.

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**I.M.Quddusi,J.**

Orissa High Court, Cuttack  
 December 23, 2005 / *Samal*