

ORISSA HIGH COURT: CUTTACK.

W.P.(C) No. 3415 OF 2004

In the matter of application under Articles 226 and 227 of the
Constitution of India

Shri Ashok Kumar Prusty Petitioner

-Versus-

State of Orissa and others. Opp. Parties.

For Petitioner : M/s. Goutam Mishra

For opp. parties : Addl. Government Advocate.
(for O.P.No.1)

M/s. Sandeep Parida, Rita Mohanty &
Amiya Ranjan Naik.
(for O.Ps 2 to 4)

Decided on 17.05.2013

PRESENT :

**THE HONOURABLE SHRI JUSTICE M.M. DAS
AND
THE HONOURABLE SHRI JUSTICE B.K.MISRA**

M. M. DAS, J.

The petitioner in the present writ petition has challenged the action of Orissa Lift Irrigation Corporation Ltd. (for short, 'the OLIC') for trying to terminate his service in the guise of showing him as a surplus staff on the ground that such action on the part of the OLIC is arbitrary and in contravention of the earlier directives of this Court as well as the Hon'ble Supreme Court.

2. The factual backdrop of this case discloses that the petitioner was appointed as a NMR Electrician under the Lift Irrigation Sub-Division, Sambalpur of OLIC on 1.1.1985 and was continuing as such. Annexure-1 to the writ petition is a gradation list, which indicates the date of engagement of the petitioner as 1.1.1985.

3. In the year 1994, the petitioner apprehending that the OLIC would arbitrarily terminate him filed OJC No. 8068 of 1994 before this Court praying for regularization of his service. The said writ petition was disposed of by order dated 15.7.1998 which is to the following effect:

“ Heard Shri G.B. Dash for the petitioner and Shri Mohanty for the opposite parties.

Considering the submission of the counsel for the parties, we are of the opinion that present case is covered by order dated 2.4.1996 passed in O.J.C. No. 2680 of 1995 (Md. Khan Halder and another v. The Orissa Lift Irrigation Corporation Limited and another). We accordingly dispose of this case in the same terms and conditions and direct that since the petitioner is working as N.M.R. for a pretty long period the opposite parties will take up his case for regularization and grant of regular scale of pay”.

This fact is not disputed by the opp. parties – OLIC. When the petitioner was continuing in service, in 1996, the Government of Odisha took a policy decision to terminate the services of N.M.R. employees. A spate of writ petitions were filed at that point of time. O.J.C. No. 2102 of 1996 was filed by 40 N.M.R. Junior Engineers and in the said writ petition, this Court

directed the OLIC to carry out regularization in a phased manner and before regularizing the petitioners in the said writ petition, the Corporation should not make any fresh recruitment.

4. The Hon'ble Supreme Court in Civil Appeal Nos. 3615 to 3622 of 1991 and Civil Appeal Nos. 1701 to 1705 of 1992 also passed similar directions for carrying out regularization in a phased manner.

5. It is the case of the petitioner that without regularizing him, his juniors were regularized and the OLIC was forcing its employees to go on VRS. In fact, on 2.2.2004 the OLIC came up with the following order:-

“Government of Orissa in W.R. Department in their letter No. 6425 dated 17.2.2004 have been pleased to allow another chance to the left out employees of OLIC who have not applied for VRS/VSS to go with effect from 30.4.2003/31.5.2003. Accordingly, the employees, who are intending to go on VRS/VSS from the above date may apply in proper form in triplicate by 25.3.2004 to the concerned Superintending Engineers/Executive Engineers positively. After receipt of applications, the Superintending Engineers/Executive Engineers will scrutinize the same and submit to Head Office by 31.3.2004. Applications received after the due date will not be taken into consideration and action will be taken to relieve the Zero/Surplus category employees with effect from 30.4.2003/31.5.2003 on VRS/VSS without any further notice”.

Pursuant to the aforesaid general order dated 2.2.2004, the petitioner was served with a letter dated 4.3.2004 (Annexure-3) wherein he was asked to opt for VRS failing which he would be

relieved without any further notice. The petitioner being aggrieved by the aforesaid letter under Annexure-3 has filed the present writ petition praying, inter alia, to quash the order under Annexure-2 dated 23.2.2004 and direct the OLIC to regularize the service of the petitioner from the date, when his juniors have been regularized.

6. During pendency of this writ petition, this Court passed an interim order on 24.3.2004 in Misc. Case No. 3545 of 2004 to the following effect protecting the service of the petitioner:

“Misc. Case No. 3545 of 2004

Issue notice as above accepting one set of process fee.

In the interim, no coercive action shall be taken against the petitioner on the ground and if, he has not exercised option for VRS/VSS, in terms of office order No. 8580 dated 23.2.2004 till 7.4.2004, without prejudice to the rights and contention of the parties.

List this matter on 7th April, 2004”

The said interim order was extended from time to time and is in force.

7. The OLIC on receiving the notice has filed its counter affidavit on 30.6.2004 taking the stand that there were large number of employees in the Corporation who were surplus and the Corporation in order to down-size itself and to reduce the financial burden took steps to retain few employees and all surplus staff were requested to opt for VRS. However, in the counter affidavit, the case of the petitioner that his date of entry

into the service was 1.1.1985 and, about his juniors being regularized, are not specifically refuted.

8. The petitioner has filed a rejoinder reiterating his earlier stand about his juniors being regularized as per the order passed by this Court as well as the Hon'ble Supreme Court. The documents under Annexure-4 series appended to the rejoinder indicate that one Shri Rajendra Prasad Mahanta (N.M.R. Electrician) was regularized on 31.3.1998 though he entered into service in the same category as the petitioner on 17.12.1985, i.e., after eleven months from the date of joining of the petitioner. The petitioner also relies on similar regularization of one Shri Hrusikesh Dehury in the post of N.M.R. (see Annexure-5 to the rejoinder). The said Hrusikesh Dehury also joined after the present petitioner started working on 1.1.1985. Misc. Case No. 1536 of 2009 was filed by the petitioner in the writ petition for an interim order directing the OLIC to release the arrear salary till May, 2009. This Court by order dated 15.4.2009 directed that in the meantime, the arrear salary of the petitioner for the period he has worked shall be computed and paid to him by end of May, 2009. As the aforesaid amount was not paid, the petitioner filed contempt application, being CONTC No. 138 of 2011, and pursuant to the orders passed by this Court, the OLIC paid a portion of the dues to the petitioner. On 3.8.2012, an

additional affidavit was filed by the OLIC, wherein a stand has been taken that the petitioner was a N.M.R. Electrician belonging to Zero category and reliance was placed on the common order dated 3.8.2007 passed in a batch of writ petitions, the operative portion of the said order dated 3.8.2007 relied upon the OLIC reads as follows:-

“This being the position, we are not inclined to accede to the prayer of the petitioners to direct the O.Ps not to dispense with the services of the petitioners and to pass any order for their continuance. So far as payment of compensation to the petitioners is concerned, the same shall be paid by the O.Ps –Corporation. As to the claim of the petitioners for their arrear salary since April, 2007, we make it very clear that if the petitioners have worked and are entitled to the same, their entitlement shall be computed and paid to them along with the retrenchment benefit as early as possible.

9. A bare reading of the aforesaid order would show that the said order did not deal with specific question raised by the present petitioner with regard to his juniors having been regularized prior to him and that the OLIC is flouting the orders passed by this Court in the previous writ petition filed by the petitioner, as stated above. Apart from the above mentioned additional affidavit, the OLIC filed a reply to the rejoinder on 3.8.2012 mentioning therein that on enquiry, the date of joining of the petitioner is found to be 1.9.1987. It appears from Annexure-N/2 dated 23.8.2011 appended to the affidavit filed by the OLIC that the said enquiry was conducted during the

pendency of the writ petition and it has been mentioned in the enquiry report as follows:-

“Regarding actual date of engagement/joining in OLIC Ltd. by Sri Ashok Kumar Prusty, NMR Electrician, it was seen that :-

- (i) The E.E.L.I. Sambalpur had submitted one gradation list of N.M.R. Electrician wherein the date of joining was stated to be 01.01.1985.
- (ii) But, subsequently a good number of correspondences have been made by this division where in the date of joining of Sri Prusty, N.M.R. is mentioned as 01.09.1987 vide letter no .89 dt.11.01.1999 and letter No.821 dt.13.03.2009 of the E.E.L.I. Sambalpur (copy enclosed). The first date of joining as 01.01.1985 could not be established during enquiry.

Hence, the date of engagement may be treated as 01.09.1987 as reported by the E.E.L.I. Sambalpur since, the Division could not produce any supporting records regarding the date of joining as 01.01.1985 and as the period engaged from 01.01.85 to 30.4.85 for different works does not count for continuity of his engagement as Electrician. The observation made in enclosed herewith.

It is therefore, requested to please take expeditious steps for regularization of the matter, as such cases are leading to rise legal complications and very embarrassing situations for OLIC.”.

10. After the aforesaid affidavit was filed, the petitioner filed Misc. Case No. 14399 of 2012 praying therein to initiate a criminal proceeding under section 340 Cr.P.C. against the OLIC for filing a false affidavit. Annexing to the said Misc. Case, the petitioner has filed the following documents:-

- (i) Certificate given on 8.6.1992 mentioning his date of entry into service as January, 1985. The said document has been signed by the Assistant Engineer, Life Irrigation Division, Sambalpur.

- (ii) Certificate dated 18.12.2003 mentioning that the petitioner was under the direct control of the Executive Engineer since 1.1.1985.
- (iii) Chart showing the staff position of OLIC mentioning the date of entry into service of the petitioner as 1.1.1985.
- (iv) Letter dated 2.5.2000 issued by the Executive Engineer, L.I. Division, Sambalpur to the Establishment Officer, OLIC, Bhubaneswar mentioning the date of entry of petitioner as 1.1.1985.
- (v) Letter dated 27.2.2007 issued by the OLIC to the Labour Commissioner, Orissa, mentioning the date of entry of the petitioner into service as 1.1.1985.

11. Mr. Gautam Mishra, learned counsel for the petitioner relying upon the aforesaid additional affidavit filed by the OLIC in the said Misc. Case pressed hard that it is a clear case where a false affidavit has been filed by the officials of the OLIC and action should be initiated under section 340 of the Cr.P.C. as against such deponent. For the aforesaid contention, Mr. Mishra relied upon the decision in the case of **Mohan Singh v. late Amar Singh**, AIR 1999 SC 482, wherein the Hon'ble Supreme Court has held as follows:-

“Tampering with the record of judicial proceedings and filing of false affidavit, in a court of law has the tendency of causing obstruction in the due course of justice. It undermines and obstructs free flow of unsoiled stream of justice and aims at striking a blow at the rule of law. The stream of justice has to be kept clear and pure and no one can be permitted to take liberties with it by soiling its purity. Since, we are prima facie satisfied that the tenant has filed false affidavits and tampered with judicial record, with a view to eradicate the evil of perjury, we consider it appropriate to direct the Registrar of this Court to file a complaint before the appropriate Court and set the

criminal law in motion against the tenant, the appellant in this case namely Mohan Singh”.

Mr. Mishra also relied upon the decision in the case of ***State of Karnataka v. All India Manufacturers Organization***, (2006)4 SCC 683 for substantiating his contention that this is a fit case, where proceeding should be initiated under section 340 Cr.P.C. He submitted that in the present case, there are prima facie materials to indicate that the OLIC in order to justify its stand that the petitioner joined on 1.9.1987 has filed an affidavit through its Law Officer on 3.8.2012 and 15.3.2013 wherein, it has been specifically mentioned that the date of engagement of the petitioner may be treated as 1.9.1987 as reported by the E.E., L.I., Sambalpur. Since the Division could not produce any supporting documents regarding the date of joining as 1.1.1985 and the period of engagement of the petitioner from 1.1.1985 to 30.4.1985 for different works does not count any continuity of his engagement as Electrician. Mr. Mishra further vehemently argued that the aforesaid stand clearly amounts to filing a false affidavit as there are admittedly a serious of documents which have been mentioned herein before indicating that the OLIC itself has mentioned the date of entry of the petitioner into service as 1.1.1985.

12. Learned counsel for the OLIC, on the other hand, strongly relied upon the decision in the case of ***Secretary of***

Karnataka v. Uma Devi , (2006)4 SCC 1 in order to contend that the writ petition is liable to be dismissed . In the case of Uma Devi (supra), in paragraph-53 thereof, the Hon'ble Supreme Court has held as follows:-

“One aspect need 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. Nagarajan 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 the 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 constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme”.

13. Considering the facts of the present case, it is found from the same that the petitioner herein had approached this Court in O.J.C. No. 8068 of 1994 which was disposed of on 15.7.1998 with a categorical direction to regularize the service of the petitioner basing reliance on similar cases. The said order has attained its finality. It also

appears that the OLIC in the Civil Appeals has also made a commitment to undertake regularization in a phased manner. In the case of **Smt. Urmila Senapati v. State of Orissa and others**, 1993 (I) OLR 348, the aforesaid Civil Appeals disposed of by the Hon'ble Supreme Court have been referred to and it has been held as follows:-

“In a recent case of such an N.M.R. worker serving under the Orissa Lift Irrigation Corporation O.J.C. No. 5081 of 1990 (Harihar Pradhan V. Orissa Lift Irrigation Corporation Ltd. and Ors.) decided on 16th April, 1991, this Court had directed to consider the case of the workman for absorption on regular basis and had further indicated to evolve a scheme if such a scheme is not yet under operation on a rational basis for absorbing casual/daily rated workers who have been serving under the corporation for more than one year. The Corporation being aggrieved by the judgment of this Court had carried the matter to the Supreme Court in Civil Appeal nos. 3615, 3628 of 1991. the Supreme Court disposed of the matter by its order dated 13th of October, 1992, a copy where of was produced before us by Mr. Patnaik appearing for the petitioner observing therein that there is no ground to interfere subject to the modification that the scheme for absorption prepared by the Corporation should provide for regularization of all workmen who have put in five years of service with the Corporation instead of one year as directed by the High Court. The petitioner in the present case having served for more than five years also satisfies the guidelines indicated by their lordships of the Supreme Court in relation to regularization of daily rated workers under the Orissa Lift Irrigation Corporation”.

14. Under the aforesaid circumstances, this Court is of the considered view that the decision the case of Uma Devi (supra), cannot be made applicable to the facts of the instant case. It is more so when, there are ample materials on record to indicate that some of the juniors of the petitioner have been

regularized by the OLIC pursuant to the orders of this Court and the Hon'ble Supreme Court as mentioned herein before. This Court further finds that in view of the facts situation of this case, it is clear that the belated stand of the OLIC that the petitioner did not work from 1.1.1985 is an after-thought and such a belated stand cannot be accepted. This is more so in view of the contemporaneous documents produced by the petitioner in Misc. Case No. 14399 of 2012 which have been mentioned above, more particularly, the letter of OLIC issued to the Labour Commissioner.

15. In view of the aforesaid facts and circumstances, this Court finds the claim of the petitioner is acceptable and issue the following directions:

- (a) The OLIC is directed to treat the petitioner at par with his juniors like Shri Rajendra Prasad Mahanta (NMR Electrician), who was regularized on 31.3.1998 (refer Annexure-4 series filed with the rejoinder). This Court further directs the OLIC to comply with the earlier direction of this Court passed in O.J.C. No. 8068 of 1994 within a period of one month from the date of communication of this judgment; and
- (b) In view of the above findings, this Court quashes the order dated 4.3.2004 under Annexure-3 issued to the petitioner and directs that all arrears, as due and

admissible, should be paid to the petitioner within a period of three months from the date of communication of this judgment;

16. Ordinarily, as a prima facie case is made out, this Court would have directed initiation of proceeding against the Law officer of OLIC for filing false affidavit on 3.8.2012, but desist from doing so, in view of the relief granted to the petitioner as above.

17. With the aforesaid observations and directions, the writ petition stands allowed, but in the circumstances, without cost.

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M.M. Das, J.

B.K. MISRA, J. I agree.

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B.K.Misra, J.

Orissa High Court, Cuttack.
May 17th , 2013/Biswal.

