

07. 07.02.2013

Heard learned counsel for the parties.

2. This review petition has been filed seeking review of the judgment dated 228.7.2011 passed in W.P. (C) No. 11684 of 2009.

3. The petitioners, who are continuing as Junior Assistants in the office of the Engineer-in-Chief, Water Resources Department, Orissa, Bhubaneswar allegedly since 1992 filed the aforesaid writ petition challenging the judgment dated 3.8.2009 passed by the learned Orissa Administrative Tribunal in O.A. No. 754 of 2009 as well as the order dated 28.7.2009 under Annexure-9 to the writ petition passed by the Engineer-in-Chief, Water Resources Department, Orissa, Bhubaneswar and the order dated 2.7.2009 under Annexure-10 to the writ petition passed by the State Government. A further prayer was made in the writ petition to issue a direction to the opp. parties to regularize the services of the petitioners against the post of Junior Assistants in terms of the recommendation made by the Engineer-in-Chief under Annexures – 4 and 7 and in terms of the direction given by the learned Tribunal in two other Original Applications, being O.A. Nos. 604 of 2006 and 1083 (C) of 2007.

4. This Court by the judgment under review considering the case of the petitioners ultimately dismissed the writ petition finding no merit therein.

5. Mr. Routray, learned senior counsel appearing for the review petitioners vehemently urges that even though a question was raised while hearing the writ petition on behalf of the petitioners that in similar identical cases, the State Government has relaxed the rules and regularized the services of the employees of other departments, the same having not been done in the case of the petitioners, and instead, the recommendation of the Engineer –in-Chief for regularizing the services of the petitioners has been rejected by the Government by order dated 27.10.2007, the same amounts to discrimination resulting in violation of Article 14 of the Constitution of India and this aspect has not been taken into consideration in the judgment under review. Non-consideration of the above submission which was also given in the note of submissions by the petitioners during hearing of the writ petition amounts to an error on the face of the judgment and the same is liable to be reviewed. He further submits that during the course of hearing of the writ petition, orders of relaxation made by the State Government in exercise of Rule 14 read with Rule 22 of the Orissa Ministerial Service Rules, 1994 were produced before this Court and brought to the notice of the Court and this Court has held in the judgment that even if a Department of the State Government has committed a mistake and has taken a decision contrary to the decision of the apex Court, the said decision cannot be said to be binding on the State

Government. It is further submitted by Mr. Routray that if the State Government has invoked the power of relaxation under the self-same rules to different set of employees of different Departments, there is no reason as to why the said power of relaxation cannot be invoked in view of the law laid down in the case of **Ashok Kumar Uppal v. State of J & K**, AIR 1998 SC 2812.

6. A counter affidavit to the review petition has been filed on behalf of the State taking a stand that the review petition is not maintainable as this Court in the judgment under review has considered the plea of relaxation of Orissa Ministerial Services Rules, 1994 in proper perspective and the judgment does not suffer from any error apparent on the face of the record. Learned counsel for the State also submits that on perusal of the judgment under review, it would be seen that this Court considering all issues involved in the case and all contentions raised before it by the petitioners passed the judgment which neither suffers from any error apparent on the face of record nor the judgment leads to failure of justice. Learned counsel for the State has further contended that once the case has been fully argued on merits and decided on merits, no application for review lies for re-appreciating and/or rehearing the contentions already raised and considered at the time of hearing. Reviewing the judgment on the grounds taken by the petitioners would amount to giving the petitioners a fresh innings. Thus, it is contended that there being no cause

for reviewing the judgment, the review petition is liable to be dismissed.

7. Mr. Routray, learned senior counsel for the petitioners draws our attention to the notes of submissions filed during the course of hearing of the writ petition, where, it was specifically stated that in case of different departments including the Departments of Agriculture and Law, services of the similar employees have been regularized by relaxing the provision of Rule 14 read with Rule 22 of the Orissa Ministerial Service Rules, which documents were produced before this Court.

8. On perusal of the judgment under review, it is seen that the plea of the petitioners that they are continuing from 1992 on ad hoc basis was, in fact, the result of an interim order passed by the learned Tribunal by which they were permitted to continue as such and the learned Tribunal in the said Original Application, being O.A. No. 629 (C) of 1992, in respect of some of the employees directed that they may be allowed to continue on ad hoc basis until regular selection is made and they should be given chance to apply for the post and compete with others and, if necessary, their upper age limit be relaxed. Thus, this Court found that it is clear that the petitioners have worked from 1992 to 1996 on ad hoc basis without intervention of the Court and since 1996, they have been continuing on ad hoc basis because of the order passed by the learned Tribunal.

9. This Court considering the exception made in the decision of the apex Court in the case of **Secretary, State of Karnataka and others v. Umadevi and others**, (2006)4 SCC 1 and accepting the contention of the petitioners that appointment of the petitioners, even though irregular, found that the petitioners have not completed ten years of service without intervention of the Court.

10. With regard to discrimination, as alleged in the review petition, in the judgment under review, this Court categorically took note of the said submission made on behalf of the petitioners and held that as per the ratio of the judgment in the case of Secretary, State of Karnataka and others v. Umadevi and others (supra), no such regularization could be made by any Department ignoring the law laid down by the apex Court and, therefore, merely because one Department has committed a mistake, the Resources Department cannot be directed to commit the same mistake, specially, on the face of the judgment of the apex Court in the case of Secretary, State of Karnataka and others v. Umadevi and others (supra).

11. We, therefore, repel the contention of the review petitioners that the submission with regard to discrimination on the ground that relaxation of Rules 14 and 22 of the Orissa Ministerial Service Rules has been made by some of the Departments was not taken into consideration is incorrect. We find no error apparent on

the face of the judgment under review so as to exercise the power of review of this Court.

The RVWPET stands dismissed.

Urgent certified copy of this order be granted as per rules.

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***M.M. Das, J.***

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***B.K. Misra, J.***

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***Subha***