

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.1312 of 2018

In the matter of an application under Section 19 of the Administrative Tribunal's Act, 1985.

.....

Karunakar Dash

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

For Petitioner : M/s. L.K. Mohanty, Advocate

For Opp. Parties :M/s.P. Bharadwaj, A.S.C
PRESENT:

THE HON'BLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 11.05.2022 and Date of Order:30.6.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. L.K Mohanty, learned counsel for the Petitioner and Mr. P. Bharadwaj, learned Additional Standing counsel appearing for the State-Opp. Parties.
3. The Petitioner has filed the present Writ Petition with the following prayer:-

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XXXX

XXXX

(ii) The Respondents be directed to regularize the service of the applicant against the post of Library Watchman from the date of his appointment i.e. on 09.05.2015 with regular scale of pay attached to the post under Annexure-4 and release the arrears as due admissible.

xxx

xxx

xxx

4. It is submitted that the petitioner was initially engaged as a Class-IV employee in the establishment of Opp. Party No.3 w.e.f 28.11.1987. It is submitted that while so continuing and basing on the circular issued by the Finance Deptt. on 4.9.2012 and by the G.A Deptt. on 17.9.2013 under Annexure-2 and 6, the petitioner was granted temporary status vide order dated 18.4.2015 under Annexure-3. It is further submitted that subsequently vide order dated 9.5.2015, the petitioner was appointed as Library Watchman as against a regular Class-IV Post. It is submitted that subsequently when the petitioner, in spite of several approach, was not regularly appointed as against the said post of Library Watchman with regularization of service, the petitioner filed the present Writ Petition with the prayer as indicated above.

5. It is also submitted that in spite of due service of notice on the Opp. Parties, no counter has been filed disputing the stand taken by the petitioner with regard to his claim. Mr.

Mohanty, learned counsel further submitted that during pendency of the matter before this Court, Office of Opp. Party No.3 vide its communication dated 25.5.2021 moved the Opp. Party No.1-Govt. with a prayer to approve the services of the petitioner and to regularize the services of the petitioner as against the existing Group-D post. It is submitted that even though the Opp. party No.1 has been moved by the Opp. Party No.3 since 25.5.2021, but no decision has been taken on such claim of the petitioner. Subsequently, a counter was filed before this Court on 27.4.2022 by the Opp. Party No.3 and in the said counter, it is also indicated that the claim of the petitioner has been recommended for his absorption against the Group-D post to which he was appointed vide order dated 9.5.2015 and the matter was pending before the Opp. Party No.1 till date.

6. Heard learned counsel for the parties.

7. It is not disputed that the petitioner is continuing in the establishment of Opp. Party No.3 since 28.11.1987 and he was temporarily appointed as Library Watchman as against a regular post vide order dated 9.5.2015. As revealed from the order dated 25.5.2021 under Annexure-7, the said post is a

regular sanctioned post available in the establishment of Opp. Party No.3 and there is no difficulty on the part of Opp. Party No.1 to absorb the petitioner as against the said post.

8. Mr. Mohanty, learned counsel in support of his case also relied on a decision of the Hon'ble Apex Court in the case of ***Amarkant Rai Vs. State of Bihar and Others (2015) 8 S.C 265***. In the said reported decision, Hon'ble Apex Court held that if a person is continuing for a long period and the post is available, the authority should have taken steps to regularize the services of the employee from the date the vacancy is made available. The claim of the present petitioner as per the considered view of this Court is squarely covered by the aforesaid decision of the Hon'ble Apex Court. It is further submitted that the petitioner is going to retire from his service within a short period.

9. Considering the prayer made, Opp. Party No.1 is directed to take a decision on the recommendation made by Opp. Party No.3 on 15.5.2021 under Annexure-7 within a period of three months from the date of receipt of this order. It is observed that while taking such a decision, the direction contained in the aforesaid reported decision of the Hon'ble Apex Court be taken

into consideration. The decision so taken by Opp. Party No.1 shall also be communicated to the Petitioner within the time stipulated by this Court.

10. With the aforesaid observation and direction, the Writ Petition is disposed of.

(Biraja Prasanna Satapathy)

Judge

Orissa High Court, Cuttack
Dated the 30th June, 2022/sangita

