

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OA) NO.1554 of 2019

Rakesh Kumar Panda **Petitioner**
Mr. B. Mohanty, Adv.
-versus-

State of Odisha & Others **Opp. Parties**
Mr. S. Rath, ASC

CORAM:
JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER
30.06.2023

Order No

- 4.** 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard Mr. B. Mohanty, learned counsel appearing for the Petitioner and Mr. S. Rath, learned Additional Standing Counsel.
3. The Petitioner has filed the present Writ Petition inter alia with the following prayer.

“The Hon’le Tribunal may graciously be pleased to quash the condition available at Clause-II,III and Clause-V of the order of engagement dt.13.12.2018 and this Hon’ble Tribunal may further be pleased to direct the respondents to treat the appointment of applicant dt.13.12.2018 as regular appointment against a substantive post and grant all consequential service and financial benefit as against a regular post with regular sale of pay and allowance w.e.f the date of joining of applicant in pursuance of the order appointment dt.13.12.2018 and also quash letter dt.31.12.2014 and 06.12.2015 under Annexure-16.”

4. It is contended that even though the Petitioner’s father died on 04.04.2012 and the application of the

Petitioner was processed for his appointment under the provisions of Rehabilitation Assistance Rules, 1990, but the matter was kept pending at the level of the Opp. parties and the Petitioner was only appointed vide order dt.13.12.2018 under Annexure-15.

4.1. It is contended that since because of the laches on the part of the Opp. Parties, the Petitioner's appointment was delayed, he should not have been appointed on contractual basis basing on the notification issued by the G.A Department on 12.11.2013 and the applicability of the said notification made to the appointment under the Rehabilitation Assistance Scheme on 6th February, 2015.

4.2. In support of his submission Mr. B. Mohanty, learned counsel appearing for the Petitioner relied on a decision of this Court so passed on 22.03.2023 in WPC (OA) No.2062 of 2017 and batch. This Court in the said order while dealing with similar issue, directed for providing appointment on regular basis from the initial date of appointment. The order so passed by this Court in Paragraph 6 & 6.1 of the said order is quoted hereunder.

*6. Having heard learned counsel for the Parties and after going through the materials available on record, it is found that on consideration of the claim of the Petitioners and similarly situated persons, the list of eligible candidates were published on 09.06.2014 under Annexure-1 for their appointment under the Rehabilitation Assistance Scheme. It is also found that from the list under Annexure-1, persons placed at Sl. Nos.9, 37 and 21 as reflected from Annexure-9, were appointed on regular basis. Not only that in view of the decision of the Hon'ble Apex Court in **AIR 1989 SC-1133**, the clarification issued by the Government in the G.A Department on 06.02.2015 under Annexure-6 cannot take away the benefit available to the Petitioners under the provisions of OCS*

Rehabilitation Assistance Rules, 1990, which is a rule framed under Article-309 of the Constitution of India.

6.1. Placing reliance on the decision of the Hon'ble Apex Court as cited (supra) it is the view of this Court that any clarification issued contrary to the provisions contained in the rule cannot override the statutory rules. Therefore, the action taken by the Opposite Parties in providing appointment to the Petitioners on contractual post relying on the clarification issued on 06.02.2015 under Annexure-6 is not legal and justified.

Therefore, placing reliance on the decision of the Hon'ble Apex Court as well as of this Court as cited (supra) and the benefits extended in favour of similarly situated persons as reflected in Annexure-9, this Court is inclined to quash the order of rejection so passed in the case of **Biplab Kumar Sahoo** in WPC(OAC) No.2062 of 2017. While quashing the said order, this Court directs the Opposite Parties to extend the benefit of regular appointment in favour of the Petitioners from their initial date of appointment. On such extension of the benefit of regular appointment, all service and financial benefit as due and admissible shall also be extended in favour of the Petitioners. This Court directs the Opposite Party No.3 to complete the entire exercise within a period of three months from the date of receipt of this order.

5. Mr. Rath, learned A.S.C does not dispute the order passed in **WPC (OA) No.2062 of 2017 and batch, dt. 22.3.2023** in the case of **Biplab Kumar Sahoo Vs. State of Odisha & Others.**

6. Having heard learned counsel for the parties and considering the materials available on record and the submissions made by the learned counsel appearing parties, this Court dispose of the Writ Petition in the light of the order passed by this Court on 22.3.2023 in WPC (OA) No.2062 of 2017 and batch.

The Writ Petition is accordingly disposed of.

Signature Not Verified

Digitally Signed
Signed by: SANGITA PATRA
Reason: authentication of order
Location: High Court of Orissa, Cuttack
Date: 04-Jul-2023 13:23:42



Sangita

(Biraja Prasanna Satapathy)
Judge