

ORISSA HIGH COURT: CUTTACK

AFR

W.P.(C) No. 34332 of 2023

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

Union of India and others Petitioners

-Versus-

Subhankari Das and others Opp.Parties

For petitioners : Mr. Partha Sarathi Nayak,
Sr. Standing Counsel for
Union of India

For opp. parties : M/s. Tanmay Mishra and
D.K. Patnaik, Advocates
[O.Ps.1 to 3]

P R E S E N T:

**THE HONOURABLE DR. B.R.SARANGI, ACTING CHIEF JUSTICE
AND**

THE HONOURABLE MR JUSTICE MURAHARI SRI RAMAN

Date of Judgment: 02.11.2023

DR. B.R. SARANGI, ACJ. The Union of India and its functionaries, being the petitioners, have filed this writ petition challenging the order dated 13.07.2023 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in

O.A. No. 260/00/163 of 2018, whereby direction was given to the present petitioners to regularise the services of the present opposite parties from initial date of their joining with all consequential benefits.

2. The factual matrix of the case, in brief, is that the opposite parties, having possessed with the requisite qualifications and after facing the interview, were appointed against the posts of Library in charge, Technical Assistant and Computer Instructor/ Teacher in Indian Institute of Mass Communication (IIMC), Dhenkanal. While continuing as such, the designation of opposite party no.1 was changed to Library Coordinator, designation of opposite party no.2 was changed to Technical Coordinator and designation of opposite party no.3 was changed to Academic Coordinator (IT) vide order dated 17.10.2017. The opposite parties no.1 and 2 were appointed against their respective posts in the year 1995 and continuing and discharging their duty since then. Similarly, opposite party no.3 was appointed in the year 2002 and since then he has been continuing and discharging his duty. Though

sanctioned posts were made available, but the opposite parties were appointed on contractual/ ad hoc basis and were paid consolidated remuneration per month. However, the said remuneration was enhanced from time to time and they have been continuing in IIMC, Dhenkanal since the date of their appointment uninterruptedly. Even though the opposite parties no.1 and 2 were continuing in service for more than 23 years and opposite party no.3 was continuing for more than 16 years uninterruptedly, instead of regularising their services, since a circular was issued on 15.02.2018 regarding revised procedure for engagement of contractual staff indicating therein that all contractual staff who have been working in IIMC/its regional campuses for more than 5 years have to be discontinued, therefore, the opposite parties approached the Central Administrative Tribunal, Cuttack Bench, Cuttack by filing O.A. No. 260/00/163 of 2018 seeking to quash the order dated 15.02.2018 and to regularise their services from the date of their initial joining and to release all consequential service benefits. The Tribunal disposed of the said Original

Application, vide order dated 13.07.2023, with the following observation and direction:-

“In view of the above discussion, settled position of law and the facts that the applicants are similarly placed to the applicants in the case before Hon’ble High Court of Orissa & New Delhi who have been given regular appointment, on the ground of parity they are to be regularized. The decision relied upon by learned counsel for the respondents are not applicable to the facts and circumstances of this case. Accordingly, the respondents are directed to regularize the services of the applicants from initial date of joining with all consequential benefits. The entire exercise shall be completed within a period of 90 days from date of receipt of copy of this order.”

The present writ petitioners, who were the respondents before the Tribunal, have filed this writ petition challenging the order of the Tribunal, as referred above.

3. Mr. P.S. Nayak, learned Senior Standing Counsel appearing for the petitioners-Union of India contended that the opposite parties are not entitled to get such benefit from the date of their initial joining. At best, their services can be regularised from the date of passing of the order by the Tribunal and not from the date of their initial appointment. According to him, in a similarly situated case, i.e. in the case of **Basanta Kumar Sahoo and others v. Union of**

India (W.P.(C) No. 24759 of 2012) disposed of on 31.07.2017, pursuant to the order passed by this Court, the present petitioners created supernumerary posts since sanctioned posts were not available and accordingly regularised their service in such posts. Therefore, according to him, the order of the Tribunal may be modified by directing the authorities to regularise the service of the opposite parties by creating supernumerary posts from the date of passing of the order.

4. Mr. D.K. Patnaik, learned counsel appearing for opposite parties vehemently disputed such position and contended that the petitioners are trying to mislead this Court by giving information which is not based on record. He further contended that the Tribunal is well justified in passing the order impugned and directing the authorities to extend the benefit of regularisation of the service of the opposite parties from initial date of their joining along with all consequential benefits. He further contended the Tribunal, while passing the order impugned, has taken note of the order passed by the High Court of Delhi in the case of

Amrish Kumar v. Indian Institute of Mass Communication (W.P.(C) No. 5906/2018 & CM APPL 23016/2018 disposed of on 14.02.2020). In **Amrish Kumar** (supra), the High Court of Delhi has also taken note of the order passed by this Court in the case of **Basanta Kumar Sahoo** (supra) and directed for extension of benefit of regularisation from the initial date of joining with all consequential benefits. The order passed by the High Court of Delhi in **Amrish Kumar** (supra) was also challenged by the authorities before the apex Court in Special Leave to Appeal (C) No. 710 of 2010, which was dismissed vide order dated 10.12.2021 and accordingly the authorities implemented the order. Therefore, the order passed by the Tribunal is well justified and, as such, the writ petition is liable to be dismissed.

5. Having heard learned counsel for the parties and after going through the records, it is admitted that the opposite parties are discharging their duties and responsibilities from the date of their initial appointment in the year 1995 and 2002. In the year 2017, their

designations were changed without any change of remuneration. Without regularising their services, the authorities issued a circular on 15.02.2018, which is absolutely a camouflaged way of approach to the difficulties of the opposite parties to deprive them of the benefit of their regularisation after utilising their services from 1995 and 2002, i.e., for more than 23 years and 16 years by then.

6. The reliance was placed by the present petitioners before the Tribunal on the cases of **State of Karnataka v. Umadevi**, 2006 (4) SCC 1; **Government of Tamil Nadu & another v. Tamil Nadu Makkal Nala Paniyalargal & others**, 2023 SCC OnLine SC 393 and **Vibhuti Shankar Pandey v State of Madhya Pradesh and others**, 2023 LiveLaw (SC) 91 and submission was made that there was no sanctioned post available for engagement of the opposite parties and that the process of engagement of the opposite parties was not in accordance with Article 14 of the Constitution of India. Therefore, the opposite parties have no right for regularisation.

7. The above stand of the petitioners cannot have any application to the case of the present opposite parties, as because, in a case of similarly situated persons, i.e. **Basanta Kumar Sahoo** (supra), relying on the decisions rendered in **Umadevi** (supra) and **State of Karnataka v. M.L. Keshari**, 2010 (II) OLR (SC) 932, direction was issued for regularisation of such employees. Similarly, in the case of **Manoj Kumar Jena and others v. Union of India and others**, W.P.(C) No. 24758 of 2012 disposed of 31.07.2017, this Court also took the similar view as was taken in the case of **Basanta Kumar Sahoo** (supra). The order passed in the case of **Manoj Kumar Jena** (supra) was assailed by the authorities before the apex Court in S.L.P. No. 35963 of 2017, which was dismissed vide order dated 05.01.2018. Thereby, the order passed by this Court in **Manoj Kumar Jena** (supra) got affirmed in the apex Court. Here, it is worth mentioning that in both the cases indicted above, i.e. in the case of **Basanta Kumar Sahoo** and **Manoj Kumar Jena** (supra), the orders have been passed by one of us (Dr. B.R. Sarangi, ACJ). The said order having been affirmed by

the apex Court, as a consequence thereof, the same has been implemented. The decision of **Basanta Kumar Sahoo** (supra) was referred to by the High Court of Delhi in the case of **Amrish Kumar** (supra).

8. In **Amrish Kumar** (supra), the High Court of Delhi observed as follows:-

“In the present case too, the workmen admittedly have been working for 23 years. It clearly tantamount to unfair labour practice by denying them the benefits of regular services for 23 years. The objective of the Act is to prevent unfair labour practice which is defined in detail in 5th Schedule of the Industrial Disputes Act, 1947 with reference to section 2A. The specific definition applicable to the present case is clause 10 which reads as under:

“10. To employ workmen as “badlis”, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen”.

7. The facts of the instant case as discussed hereinabove clearly shows that keeping the workmen in uninterrupted service for 23 years as casual workmen and denying them the status and privilege of permanent workmen, constitutes unfair labour practice which is illegal and needs to be quashed. Furthermore, similarly situated workmen of the respondent who worked in its other administrative unit in Orissa (Dhenkanal), for roughly half a century on ad hoc basis, have been directed by the Orissa High Court in *Basanta Kumar Sahoo vs Union of India*, WP(C) 24759/2012, decided on 31.07.2017 to be regularized. The said judgment has referred to and relied upon *Umadevi* (supra) and *State of*

Karnataka and Ors vs M L Kesari (2010) 9 SCC 247. The SLP against the said judgment of the Orissa High Court was dismissed by the Supreme Court on 05.01.2018; therefore, it has attained finality. The case of the present petitioners is identical. That being the position i.e. they had worked for almost 23 years; the employer was same; they had been working against the sanctioned posts; they were not considered as regular employees, therefore, the treatment meted out to them constitutes unfair labour practice. In the circumstances, their services too shall be regularized from initial date of joining, with all consequential benefits.

9. It is pertinent to mention here that the decision rendered by the High Court of Delhi in **Amrish Kumar** (supra) was challenged before the apex Court in Special Leave to Appeal (C) No. 710 of 2021, which was dismissed vide order dated 10.12.2021 and, as a consequence thereof, the same has also been implemented. Therefore, the Central Administrative Tribunal, relying on the said judgment, having passed the order impugned, this Court is not inclined to interfere with the same. As such, the order passed by the Central Administrative Tribunal dated 13.07.2023 in O.A. No. 260/00/163 of 2018 is hereby confirmed and the petitioners are directed to regularise the service of the opposite parties from initial date of their

joining with all consequential benefits within a period of sixty days from the date of receipt of the order.

10. In view of the above, the writ petition merits no consideration and the same stands dismissed. However, there shall be no order as to costs.

M.S. RAMAN, J. I agree.

(DR. B.R. SARANGI)
ACTING CHIEF JUSTICE

(M.S. RAMAN)
JUDGE

Orissa High Court, Cuttack
The 2nd November, 2023, Arun