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ORISSA HIGH COURT : CUTTACK

W.P.(C) No.409 of 2021

In the matter of an Application under
Articles 226 and 227 of the Constitution of India, 1950

* * *

Sashibhusan Rath
Aged about 44 years
Son of Sri Ghanashyam Rath
At: Urali, P.O.: Sabhamul
P.S.: Jagatsinghpur, District: Jagatsinghpur,
At present working as
Multi-Purpose Health Worker (Male)
Mandasahi Community Health Centre,
At: Mandasahi
District: Jagatsinghpur ... Petitioner.

-VERSUS-

1. State of Odisha
Represented through
Principal Secretary
Health and Family Welfare Department
Loka Seva Bhawan, Bhubaneswar,
District-Khordha.
2. Director, Health Services, Odisha
Heads of the Department Building
Bhubaneswar, District: Khordha.
3. Chief District Medical &
Public Health Officer, Jagatsinghpur,
At/P.O.: Jagatsinghpur
District: Jagatsinghpur. ... Opposite parties.



Counsel appeared for the parties:

For the Petitioner : M/s. Sameer Kumar Das,
Prakash Kumar Behera and
Nirnanjan Jena, Advocates

For the Opposite parties : Mr. Arnav Behera,
Additional Standing Counsel

P R E S E N T:

**HONOURABLE
MR. JUSTICE MURAHARI SRI RAMAN**

Date of Hearing : 24.09.2024 :: Date of Judgment : 21.10.2024

JUDGMENT

MURAHARI SRI RAMAN, J.—

Assailing Order *vide* File No.HFW-FW-CASE-0072-2020/28589/H&F.W., dated 09.12.2020 issued by the Health & Family Welfare Department, Government of Odisha, the opposite party No.1, as communicated to the petitioner by the Office of the District Medical & Public Health Officer, Jagatsinghpur, opposite party No.3 *vide* Letter No.10067/CDM&PHO, Jspur, dated 23.12.2020 (Annexure-13), wherein and whereby the proposal for regularization of the petitioner submitted by the Director of Public Health (DPH), Odisha in his Letter No.20195—M&F(NVBDCP)-VII-Estt-02/19, dated 21.10.2019 has been rejected, this writ petition has been filed craving to



invoke extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, with the following prayer(s):

“Under the above circumstances, it is therefore, humbly prayed that the Hon’ble Court be graciously pleased to quash the order dated 09.12.2020 communicated on 23.12.2020 under Annexure-13 and direct the opposite parties to regularize service of the petitioner as Multi-Purpose Health Worker (Male) with effect from 08.02.2016 and to grant him all consequential service and financial benefits within a stipulated period as deem fit and proper;

And/or pass any other writ/writs, order/orders, direction/directions in the fitness of the case;

And for this act of kindness as in duty bound the petitioner shall ever pray.”

Facts:

2. The writ petitioner stated to have applied for the post of Multi-Purpose Health Worker (Male) (for brevity, “MPHW(M)”) in response to advertisement published on 30.07.2005 in daily newspaper “*The Pragatibadi*” and “*The Matrubhasa*” read with the first corrigendum to Notice No.69E.

2.1. Having qualified in the High School Certificate Examination conducted by the Board of Secondary Education, the Higher Secondary Examination conducted by the Council of Higher Secondary



Education and possessed the Diploma in Pharmacy Certificate issued by the Odisha State Board of Pharmacy, Government of Odisha, in response to aforesaid advertisement, the petitioner, belonging to General category, submitted his candidature as against the vacancies advertised. Though the petitioner was found eligible and his application was found to be in order after scrutiny of all original documents, he was not issued with any appointment order even as persons securing less marks than the petitioner, namely, Sk. Najim and Mahamad Habib were issued with appointment orders *vide* Order No.2220 dated 28.03.2008.

- 2.2. During the year 2007, 390 posts of HMHW(M) were created in Health and Family Welfare Department by the Government of Odisha with the following terms:

*“Government of Orissa
Health & Family Welfare Department
No.MSNG-IM-59/06(Pt.)-1279/H, Bhubaneswar,
dated 16.01.2007*

From:

*Shri A.K. Sahoo
Under Secretary to Government.*

To

The Director



Health Services, Orissa
Bhubaneswar.

Sub.: Creation of **contractual base level posts** against equal number of abolished vacant regular posts under Health and Family Welfare Department.

Madam,

In pursuance of Finance Department letter No.38737(45)/F., dated 13.09.2006 and in continuation of this department Letter No.34462/H., dated 15.11.2006 on the above subject, I am directed to say that Government after careful consideration have been pleased to abolish further 1015 numbers of different categories of regular base level vacant posts vide this department Letter No.1120/H., dated 15.01.2007 and in lieu of the said posts create equal nos. of posts i.e. 1015 numbers, on contractual basis with consolidated remuneration as indicated below with effect from the date of joining of the respective contractual employees. The district-wise **revised creation** list of such **contractual posts** are given in the enclosed statement.

Sl. No.	Name of the post	Consolidated remuneration per month	No. of contractual posts created
1.	Staff Nurse	Rs. 4000/-	83
2.	Pharmacist	Rs. 4000/-	49
3.	Junior Radiographer	Rs. 4000/-	13
4.	M.P.H.W.(M)	Rs. 3500/-	390
5.	Laboratory Tech.	Rs. 4000/-	3
6.	Attendant	On daily wage basis equivalent to the rate notified by Labour & Employment Department from time	230



		to time	
7.	Sweeper		247
		Total:	1015

The post created on consolidated salary basis would remain valid up to the end of February of the financial year in which the post is created and would automatically stand abolished from 1st March of the said financial year unless the creation of the post is renewed after proper review.

It is requested that the scheme under which the posts were created and the institutions where the vacancies are available may be intimated to this department immediately. The said institution may also be instructed about the contractual creation. This has already been concurred by Finance Department vide their U.O.R. No.445-SS.I dated 08.09.2006 and approved by Government on 30.12.2006.

*Yours faithfully,
Sd/-*

Under Secretary to Government”

2.3. Since the petitioner has not been issued with appointment letter despite having secured higher marks in the High School Certificate Examination than certain other candidates who secured lesser marks, he approached the Odisha Administrative Tribunal, Cuttack Bench, Cuttack by way of filing Original Application under Section 19 of the Administrative Tribunals Act, 1985, giving rise to registration of O.A. No.1972(C) of 2008. In pursuance of the direction issued *vide* Order



dated 21.10.2008 by the learned Odisha Administrative Tribunal, Cuttack Bench, Cuttack in the said O.A., the CDMO, Jagatsinghpur issued Letter No.324/CDMO, dated 14.01.2009 to the petitioner calling upon him to produce necessary original documents for verification. Upon verification, the CDMO issued Letter No.1305/CDMO, dated 02.03.2009 requesting the Director of Health Services, Odisha to accord necessary approval.

2.4. Responding to such letter, the Director of Health Services issued Letter No.2700— MF-XIII.MPHW(M)/3/2009, dated 16.07.2009 by observing thus:

*“Please refer to your Letter No.2700, dated 15.07.2009 on the subject noted above. It appears from the records/documents furnished by you vide Letter under reference that **one Mahamad Habib who have got less marks than Sri Sashibhusan Rath has been appointed in the post of MPHWM(M) ignoring the case of Sri Sashibhusan Rath who has secured higher marks in HSC than Sri Mahamad Habib.***

*As such you are requested to take appropriate action immediately in the matter observing the criteria that are issued by Government of Odisha, Health and Family Welfare Department from time to time at your end **being appointing authority** under intimation to this Directorate at an early.”*



2.5. An Office Order No.756/CDMO, dated 03.02.2010 has been issued appointing the petitioner, terms of which read thus:

*“Office of the Chief District Medical Officer, Jagatsinghpur
No.756/CDMO, Jspur dated 03.02.2010
OFFICE ORDER*

In pursuance with the orders of Hon’ble O.A.T. Cuttack in case No.1972(C)/2008 and D.H.S.(O), BBSR Letter No.2706, dt.16/07/2009 read with Govt. of Orissa, Health & Family Welfare Department Letter No.26198/H, dt. 25/11/2008 the candidate named below is hereby appointed as M.P.H.W.(Male) on contractual and yearly basis with consolidated monthly remuneration of Rs.4440/- (Rupees four thousand four hundred forty) only per month until further orders.

<i>Name and address of the candidate</i>	<i>Category</i>	<i>Place of Posting</i>
<i>1</i>	<i>2</i>	<i>3</i>
<i>Shri Sashi Bhusan Rath, Son of Ghana Shyam Rath, At: Urali, P.O.: Savamula P.S./District: Jagatsinghpur</i>	<i>General</i>	<i>CHC, Raghunathpur</i>

*** The appointment is purely on temporary basis and may be terminated at any time without assigning any reason thereof.**

**** The appointment is valid upto the end of February, 2010 and renewal of the contract appointment can be considered only if the concurrence of the post is extended and subject to satisfactory performance to be evaluated by the appropriate authority. If the performance is**



found not satisfactory, his services will be terminated after giving one month notice.

A) The appointee is posted to the Medical Institutions as mentioned against his name and subject to the following terms and conditions:-

- a) The appointee is directed to report for joining before the M.O. I/c of PHC/CHC mentioned against his name, within a period of 15 days from the date of receipt of this order, failing which his appointment order will stand cancelled.*
- b) Continuous absence for a period of 10 days or more shall be treated as terminated from service.*
- c) There shall be no leave other than C.L. for 15 (fifteen) days in a Calendar year proportionately as per rule.*
- d) He shall be responsible for safety maintenance of all records, articles entrusted to him by the immediate authority.*

B) Following documents are required to be submitted by the appointee at the time of his joining at the station.

- i) One written undertaking prescribed by Finance Department (model from Annexure-‘A’) enclosed.*
- ii) Certificate of physical fitness from a Doctor not below the rank of Asst. Surgeon of Govt. Medical Institution.*



- iii) *Oath of allegiance to the constitution of India.*
- iv) *A declaration towards non-contract of plural marriage.*
- v) *Certificate of character / antecedents from two respective Gazetted officers.*

No T.A. is allowed for joining in the post.

*Sd/-
Chief District Medical Officer,
Jagatsinghpur”*

2.6. In pursuance of the said order of appointment dated 03.02.2010, the petitioner submitted his joining report on 08.02.2010 and has been continuing to function on contractual basis against the post of MPHW(M) under the CDMO, Jagatsinghpur-opposite party No.3 till date.

2.7. Following are the General Administration and Public Grievance Department Resolutions applicable to all contractual appointees:

*“GAD-SC-RULES-0009-2013—26108/Gen
Government of Odisha
General Administration Department*

RESOLUTION

Bhubaneswar dated the 17th September, 2013.

SUB: Regular appointment of existing contractual Group C and Group D employees who are not holding any post in contravention of any statutory Recruitment



Rules made under the proviso to Article 309 of the Constitution of India or any executive instruction in absence of such rules.

The policy regarding regular appointment of following categories of contractual Group 'C' and Group 'D' employees appointed under the State Government was under active consideration of Government for some time past.

Contractual appointments/engagements made against contractual posts created with the concurrence of Finance Department on abolition of the corresponding regular posts or contractual appointments/engagements made against contractual posts created with the concurrence of Finance Department without abolition of any corresponding regular post in case of new offices or for strengthening of the existing offices/services, following the recruitment procedure prescribed for the corresponding regular posts and the principle of reservation of Posts and services for different categories of persons decided by the state Government from time to time.

Government after careful consideration and in supersession of the Resolutions/Orders/Instructions issued by different Departments of Government to that effect; except as respects things done or omitted to be done before such supersession, have been pleased to decide as follows:

1. Regular Appointment.—

- (1) A gradation list of such contractual employees shall be prepared by the Appointing Authority on the basis of their date of appointment. In case, the dates of*



appointment of two or more employees are the same their inter-se position may be decided on the basis of their date of birth, taking the elder as senior.

- (2) Regular appointment of the above categories of contractual employees shall be made on the date of completion of six years of service or from the date of publication of this Resolution, whichever is later, in the order in which their names appear in the gradation list prepared under para 1. The period of six years shall be counted from the date of contractual appointment prior to publication of this Resolution.*
- (3) Consequent upon regular appointment under the contractual post, if any, shall get re-converted to regular sanctioned post.*
- (4) In case the person concerned has crossed the upper age limit for entry into Government service on the date of contractual appointment for the corresponding regular post, the appointing authority shall allow relaxation of upper age limit.*

2. Conditions of Service on Regular Appointment.—

(1) Regular Appointments:

On the date of satisfactory completion of six years of contractual service or from the date of publication of this Resolution, whichever is later, they shall be deemed to have been regularly appointed. A formal order of regular appointment shall be issued by the appointing authority.

(2) Pay and other benefits:



On regular appointment they shall be entitled to draw the time scale of pay plus Grade Pay with DA and other allowances as admissible in the corresponding pay band.

(3) Other conditions of service:

- (a) The other conditions of service shall be such as has been provided in the relevant recruitment rules.*
- (b) The conditions of service in regard to matters not covered by this Resolution shall be the same as are or as may from time to time be prescribed by the State Government.*

3. Interpretation.—

If any question arises relating to the interpretation of this Resolution, it shall be referred to the State Government whose decision thereon shall be final.

- 4. This has been concurred in by Finance Department and Law Department vide their UOR No.2909-ACSF, Dated 09.07.2013 and UOR No.1687/L., Dated 19.07.2013 respectively.*

ORDER: Ordered that the Resolution be published in the extraordinary issue of the Odisha Gazette. Ordered also that copies of the Resolution be forwarded to all Departments of Government / all Heads of Departments/all Collectors / Registrar, Odisha High Court / Registrar, Odisha Administrative Tribunal Special Secretary, Odisha Public Service Commission / Secretary, Odisha Staff Selection Commission/



Secretary, Odisha Sub-ordinate Staff Selection
Commission, Bhubaneswar.

By Order of the Governor
NITEN CHANDRA
Special Secretary to Government”

*** **

[No. 1066-GAD-SC-RULES-0009/2013/Gen.]
General Administration Department
RESOLUTION

The 16th January, 2014

Sub: **Regular Appointment of existing Contractual Group C and Group-D employees** who are not holding any post in contravention of any statutory Recruitment Rules made under the proviso to Article 309 of the Constitution of India or any executive instruction in absence of such rules.

1. As per General Administration Department Resolution No. 26108/Gen., Dated the 17th September, 2013, the following are the mandatory eligibility conditionalities for regularlization of contractual appointees/engagements.
 - (i) Contractual appointments/engagements must have been made against contractual posts created with the concurrence of Finance Department on abolition of the corresponding regular posts or contractual posts created with the concurrence of Finance Department without abolition of any corresponding regular post in



case of new offices or for strengthening of the existing offices/ services,

(ii) **Such Contractual appointments/engagements must have been made following the recruitment procedure prescribed for the corresponding regular posts, and**

(iii) *Principle of reservation of Posts must have been followed in case of such Contractual appointments/engagements.*

In other words, no contractual appointee shall be eligible for regular appointment as per the aforesaid Resolution unless the mandatory eligibility conditionalities described above are fulfilled.

2. *A part from the contractual employees fulfilling the conditionalities elucidated in Para. 1 above, there are other categories of contractual employees engaged with or without creation of posts with the concurrence of Finance Department, without following the relevant recruitment and reservation Rules. There are also contractual employees engaged on out sourcing basis through service providing agencies. These contractual employees are not eligible for regularization as per the aforesaid Resolution.*
3. *In order to prevent misuse of the aforesaid Resolution, it is felt necessary to put appropriate mechanism in place to ensure that the necessary conditionalities as mentioned in Para. 1 are met.*



4. *Government, therefore, after careful consideration have been pleased to decide in the following manner.*

- (a) Proposal for regularization of contractual appointees/engagements as per the aforesaid Resolution shall be considered and approved by a High Power Committee to be constituted under the Chairmanship of the Secretary of the relevant Department in which the concerned Head of Department and FA/AFA of the Department shall be Members.*
- (b) In case the matter pertains to Administrative Department, then the High Power Committee shall be constituted under the Chairmanship of the Secretary of the Department with Special Secretary/Additional Secretary in-charge of the office establishment and FA/AFA of the Department as Members.*
- (c) While considering the cases of regularization, High Power Committee shall at the outset ensure that the concerned appointments fulfil the mandatory eligibility conditionalities as elucidated in Para. 1 above and thereafter consider the case on the basis of the stipulations contained under the heading 'Regular Appointments' of the General Administration Department Resolution No.26108/Gen, Dated the 17th September, 2013.*

5. *This Resolution has been issued with the advice of Finance Department communicated to General*



Administration Department vide their DOR No.5660-ACSF, dated the 19th December, 2013.

Order: Ordered that the Resolution be published In the Extraordinary Issue of the Odisha Gazette. Ordered also that copies of the Resolution be forwarded to all departments of Government/ all Heads of Departments/all Collectors/ Registrar, Odisha High Court/Registrar, Odisha Administrative Tribunal/Special Secretary, Odisha Public Service Commission/Secretary, Odisha Staff Selection Commission/Secretary, Odisha Sub-ordinate Staff Selection Commission. Bhubaneswar.

*By Order of the Governor
NITEN CHANDRA
Special Secretary to Government”*

2.8. The petitioner having joined on 03.02.2010 in connection with the advertisement of the year 2005 in consideration of the case of the petitioner as directed by the Odisha Administrative Tribunal. He was appointed against contractual post of MPHWM created with concurrence of the Finance Department vide UOR No.445-SS.I, dated 08.09.2006 on abolition of corresponding regular post, which is Group-C post under the Health and Family Welfare Department as is evident from Letter dated 16.01.2007. On completion of six years of contractual service, i.e., on 08.02.2016, the petitioner is entitled to be regularised in service with all



consequential benefits that is extended to the similarly situated personnel. The grievance of the petitioner is that his case has not been considered for regularisation in service even though there is no complaint with regard to his performance in duty. The petitioner made representation before the CDMO, Jagatsinghpur, opposite party No.3 for regularization in his service against the vacant post of MPHWM).

2.9. Although the representation of the petitioner seeking regularization in service was not considered within reasonable period, the CDMO, Jagatsinghpur, opposite party No.3, who is the Appointing Authority, by issue of Letters dated 24.11.2018 and 19.02.2019 addressed to the Director of Health Service, Odisha, opposite party No.2 submitted proposal for regularization in service of the petitioner with necessary information.

2.10. The Director of Public Health, Odisha *vide* his Letter dated 21.10.2019 made the following recommendations in favour of the petitioner:

*“Director of Public Health : Odisha : Bhubaneswar
Letter No.____/M&F(NVBDCP)-VII-Estt.-02/ 19,
dated the ____th October, 2019*

To

*The Joint Secretary to Government of Odisha
Health & F.W. Department.*



Sub.: Regularization of services of contractual MPHWM

Sir,

*With reference to Government Letter No. 15990/H dated 11.06.2018 & 27125/M dated 22.10.2018 on the above noted subject, I am to state that, the CDM & PHO Bhadrak, Jagatsinghpur and Nayagarh **have furnished proposals for regularization of contractual services of the MPHWM working under his administrative control. But on scrutinisation of the said proposals it is found that the same are not in accordance with G.A. Department Resolution No.26108/Gen., dated 17.09.2013 and No. 1066/Gen., dated 16.01.2014.** But as the said proposals are related with OAT case and as per the direction of Hon'ble Tribunal they have been appointed without observing prescribed Guideline.*

Further the case of Sri Saroj Kumar Pradhan & Sri Ni Zimuddin received from CDM & PHO, Nayagarh & Jagatsinghpur respectively are dealt as per Government, in Health & Family Welfare Department Letter No. 30438/H, dated 27.10.2007, & No.32113, dated 07.12.2010 & Letter No. 14969, dated 03.10.2008 of DFW(O) the same have not also been followed with the Government Guidelines during their appointment.

The details of the appointment of the above employees along with the minutes of the Sub-Committee Meeting held on 19.10.2019 with other documents received from concerned CDM & PHOs are enclosed herewith for kind perusal of Government.

It is therefore requested that Government may be pleased to take a decision on the matter and communication their orders to this Directorate at an early date.



Yours faithfully

Sd/-

*Director of Public Health,
Odisha*

Memo No.20196

21.10.2019

Copy forwarded to the Chief District Medical & Public Health Officer, Bhadrak, Nayagarh & Jagatsinghpur for information & necessary action.

Sd/-

*Director of Public Health,
Odisha”*

2.11. The petitioner having waited for some time with the hope to get favourable orders from the Government of Odisha, approached this Court in by way of filing writ petition, being W.P.(C) No.15170 of 2020, which came to be disposed of by Order dated 30.06.2020 with the following observation:

“This matter is taken up through Video conferencing.

Heard learned counsel for the parties.

This writ petition has been filed with the following prayer:

‘Under the above circumstances, it is, therefore, prayed that this Hon’ble Court may be graciously pleased to issue a Writ in appropriate nature directing the respondents to regularize the services of the petitioner as MPHW(M) retrospectively from the date of completion of 6 years of service as per the Policy of Govt. on consideration of the proposal submitted by CDMO, Jagatsinghpur in its



letter dated 19.02.2019 (Annexure-1 series) forthwith or within a time to be stipulated by this Hon'ble Court.'

Drawing the attention of this Court to the communication vide Annexure-8 learned counsel for the petitioner submitted that in spite of the case of the petitioner being taken care of, no final decision has been taken in the matter as yet.

Considering the above submission and perusing the grounds stated in this Writ Petition, this Court disposes of this Writ Petition directing the opposite party nos.1 & 3 to take a final decision on the request of the petitioner keeping in view the order vide Annexure-8.

The entire exercise shall be completed giving opportunity of hearing to the petitioner within a period of two months from the date of communication of a copy of this order by the petitioner."

2.12. Such order being not carried out, contempt petition, being CONTC No.3864 of 2020 was filed, which was disposed of by Order dated 21.10.2020 with the following observation:

"This matter is taken up through Video Conferencing.

Heard learned counsel for the petitioner.

This Contempt Petition is filed alleging violation of this Court's order dated 30.06.2020 passed in W.P.(C) No.15170 of 2020.

Considering the submissions made and as this Court finds, no purpose will be served in issuing notice in such



matter, the Contempt Petition stands disposed of with a direction to the O.P(s) to work out the direction of this Court issued in W.P.(C) No.15170 of 2020 on 30.06.2020, if not worked out in the meantime, within a period of fifteen days from the date of service of a copy of this order by the petitioner. Failure of compliance of this Court's direction, a suo motu contempt proceeding will be initiated against the O.P(s).

Learned counsel for the petitioner may utilize the soft copy of this order available in the High Court's website or print out thereof at par with certified copies in the manner prescribed, vide Court's Notice No.4587, dated 25.03.2020."

2.13.The Health and Family Welfare Department through Additional Chief Secretary to Government of Odisha having taken decision to negative the proposal for regularisation in service of the petitioner, issued following Officer No.28589— HFW-FW-CASE-0072-2020/H&FW, dated 09.12.2020:

*"Government of Odisha
Health & Family Welfare Department
File No.HFW-FW-CASE-0072-2020-28589/H&F.W.,
Date 09.12.2020.*

ORDER

Whereas, Sri Sashibhusan Rath filed W.P.(C) No.15170/2020 before the Hon'ble High Court with prayer to issue direction to the respondents to regularize his services as MPHWM(M) retrospectively from the date of completion of 6 years of service as per the policy of Govt.



on consideration of the proposal submitted by the CDMO, Jagatsinghpur in its letter dated 19.02.2019 forthwith or within a time to be stipulated by the Hon'ble Court.

And whereas, the Hon'ble High Court disposed of the above writ petition vide order dated 30.06.2020 with direction as below:

*‘*** Considering the above submission and pursuing the grounds stated in this Writ Petition, this Court disposes of the Writ Petition directing the opposite party nos.1 & 3 to take a final decision on the request of the petitioner keeping in view the order vide Annexure-8.*

The entire exercise shall be completed giving opportunity of hearing to the petitioner within a period of two months from the date of communication of a copy of this order by the petitioner.’

And whereas, alleging non-compliance of the order dated 30.06.2020 of the Hon'ble High Court passed in W.P.(C) No.15170 of 2020 in due time, the petitioner filed a contempt petition vide CONTC No.3864 of 2020 before the Hon'ble High Court against the opposite parties. The said contempt petition disposed of by the Hon'ble High Court vide order dated 21.10.2020 with the following direction:

‘This Contempt Petition is filed alleging violation of this Courts order dated 30.06.2020 passed in W.P.(C) No.15170/2020.

Considering the submissions made and as this Court finds, no purpose will be served in issuing notice in such matter, the Contempt Petition stands disposed of with a direction to the O.P.(s) to work out the direction of this Court issued in W.P.(C) No.15170 of 2020 on 30.06.2020,



if not worked out in meantime, within a period of fifteen days from the date of service of a copy of this order by the petition. Failure of compliance of this Court's direction, a suo motu contempt proceeding will be initiated against the O.P.(s).'

And whereas, the petitioner also filed second contempt bearing CONTC No.5137 of 2020 alleging non-compliance of the order dated-30.06.2020 passed in W.P.(C) No.15170 of 2020 and order dated 21.10.2020 passed in CONTC No.3864 of 2020 before the Hon'ble High Court against the opposite parties.

And whereas, in pursuance of the above orders passed by the Hon'ble High Court, the Petitioner was given the opportunity of being heard in person by the Additional Chief Secretary to Government, H & FW Department on 29.10.2020 at 4.45 PM through virtual mode, i.e. on Microsoft Team. The following decisions were taken in the said virtual meeting.

- 1. To request the petitioner to submit written statement in detail on the points expressed in the virtual meeting.*
- 2. The CDM & PHO, Jagatsinghpur shall submit the personal file of the petitioner as well as all files and documents relating to the selection and appointment of the petitioner by a special messenger by 03.11.2020 for necessary examination at the departmental level.*
- 3. To place the matter before the High Power Committee (HPC) for taking a decision after scrutiny of the documents after receipt of the personal file of the petitioner.*



And whereas, as decided in the above said virtual meeting, the sitting of the High Power Committee (HPC) was convened on 01.12.2020 at 4.30 PM in the conference hall of H& FW Department under the chairmanship of Additional Chief Secretary to Govt., H & FW Department to consider the regularisation proposal of petitioner submitted by the Director Public Health, Odisha as at Annexure-8 of the writ petition No.15170/2020 in compliance to order dated 30.06.2020 and 21.10.2020 passed by the Hon'ble High Court of Orissa in W.P.(C) No.15170/2020 and CONTC No.3864/2020 arising thereof.

And whereas, after going through all the available records and the regularization proposal submitted by the DPH(O) in his letter No.20195, dated 21.10.2019 as at Annexure-8 of the writ petition, the Committee considered the case of the petitioner as follows:

- (i) As Sri Rath was not selected for the post because of securing less mark in HSC than the cut off marks, his claim for appointment must have been rejected by the CDM&PHO, Jagatsinghpur in compliance to the Order dated 21.10.2008 passed in OA No.1972/2008. Instead, the CDM&PHO, Jagatsinghpur issued appointment letter in 2010 in favour of the petitioner, Sri Rath, without proper application of mind.*
- (ii) Appointment against subsequent vacancies during the year 2010 cannot be given out of the applications received against vacancies advertised for the year 2005-06 rather appointments against these vacancies must have been made through fresh advertisement/recruitment/selections observing all*



recruitment procedures & following ORV Act. The Committee termed the appointment of the petitioner by the CDMO, Jagatsinghpur as illegal and hence unanimously recommended not to consider the regularization of the contractual services of the petitioner. The committee also did not find the petitioner eligible for regularization as per GA & PG Department Resolution No.26108, dated 17.09.2013 as he had not been appointed following a transparent selection procedure.

Now, therefore, as the High Power Committee (HPC) did not find the petitioner eligible for regularization as per GA & PG Department Resolution No.26108, dated 17.9.2013 as he had not been appointed following a transparent selection procedure, the proposal for regularization of the petitioner submitted by the Director of Public Health (DPH), Odisha in his letter No.20195, dated 21.10.2019 as at Annexure-8 of the writ petition is liable to be rejected and hence accordingly, rejected.

Sd/-

Additional Chief Secretary to Govt.”

2.14. Aggrieved by refusal of regularisation in service of the petitioner for no fault of his, the instant writ petition has been filed.

Hearing:

3. On being noticed, the opposite parties have filed counter affidavit and additional affidavit. The petitioner has also filed rejoinder affidavit in reply thereto. Pleadings being



completed and exchanged, on consent of counsel for the respective parties, this matter is taken up for final hearing at the stage of admission.

- 3.1. Accordingly, heard Sri Sameer Kumar Das, learned Advocate for the petitioner and Sri Arnav Behera, learned Additional Standing Counsel for the opposite parties and the matter stood reserved for preparation and pronouncement of Judgment.

Rival contentions and submissions:

4. Sri Sameer Das, learned counsel appearing for the petitioner submitted that the Director of Public Health misdirected himself while suggesting the matter for consideration to the Government in Health and Family Welfare. It is not borne on record that the engagement of the petitioner was made after consideration of necessary testimonials in the process of selection. His application for the post of MPH(M) was considered on the basis of marks secured in the High School Certificate Examination, which is in tune with the criteria for selection specified in the advertisement read with the corrigendum (Annexures-1 and 2).

- 4.1. He submitted that it was for the Appointing Authority to take care of application of the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes



and Scheduled Tribes) Act, 1975 (“ORV Act”, for brevity), which could not be attributed to the petitioner. For non-compliance of thereof, the petitioner cannot be made to suffer and such fact cannot pose detriment to his service career.

4.2. Sri Sameer Kumar Das, learned Advocate submitted that Gradation List (Annexure-16) prepared for the year 2018 in respect of MPHW(M) of Jagatsinghpur district starting from Serial No.13, *i.e.*, Sri Dillip Kumar Ram (ST category) till Serial No.40, *i.e.*, Sri Deba Prasad Tripathy (General category) have been selected and appointed pursuant to the advertisement dated 30.07.2005. The petitioner being selected and appointed, in connection with said advertisement dated 30.07.2005, he should not have been denied regularisation in service. No discriminatory treatment ought to have been shown to the petitioner while taking up his case for consideration of regularization in service as he is equally similarly circumstanced personnel appointed pursuant to the advertisement dated 30.07.2005 *vide* Annexure-1 read with corrigendum *vide* Annexure-2.

4.3. The learned counsel with reference to the Odisha Group-‘B’, ‘C’ and Group-‘D’ Posts (Repeal and Special Provisions) Rules, 2022, submitted that in pursuance of Rule 4 *ibid.* the petitioner is eligible for regularization in



view of the legal fiction. Since the petitioner has not committed any error or illegality, and the authority concerned having verified documents and testimonials in connection with the Order dated 21.10.2008 passed in O.A. No.1972(C) of 2008, being satisfied with the compliance of the terms of the advertisement dated 30.07.2005 read with the corrigendum thereof, issued appointment letter and accepted the joining report of the petitioner to work as MPHWM on contractual basis. The petitioner has been allowed to continue in service till date with no fault attributed to him.

4.4. To buttress his submission, Sri Sameer Kumar Das, learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of *Vikash Prasad Singh Vrs. State of Chhatisgarh*, (2013) 14 SCC 495 and judgment of this Court rendered in the case of *Bikash Mahalik Vrs. State of Odisha*, W.P.(C) No.923 of 2015, disposed of on 03.12.2021 [reported at 2022 (I) ILR-CUT 108].

4.5. In the case of *Vikash Prasad Singh (supra)*, the Hon'ble Supreme Court has been pleased to observe as follows:

“28. In our considered view, the appellants have successfully undergone training and are efficiently serving the respondent State for more than three years and undoubtedly their termination would not



only impinge upon the economic security of the appellants and their dependants but also adversely affect their careers. **This would be highly unjust and grossly unfair to the appellants who are innocent appointees of an erroneous evaluation of the answer scripts. However, their continuation in service should neither give any unfair advantage to the appellants nor cause undue prejudice to the candidates selected qua the revised merit list.**

29. Accordingly, we direct the respondent State to appoint the appellants in the revised merit list placing them at the bottom of the said list. The candidates who have crossed the minimum statutory age for appointment shall be accommodated with suitable age relaxation.

4.6. In the case of *Bikash Mahalik (supra)*, this Court has held as follows:

“27. In *Pratima Sahoo (supra)*¹, this Court held that the order of disengagement of the petitioner from the post of *Sikhya Sahayak*, pursuant to decision of the district administration, having found qualified in the selection process and appointed after resigning from her erstwhile post of *Anganwadi Worker* and having worked for six to eight months, amounts to putting the petitioner in prejudicial and disadvantageous position and the reason assigned for later finding the petitioner not suitable for securing less marks than other meritorious candidates do holds good, the petitioner cannot be found faulted by the mistake

¹ *Pratima Sahoo Vrs. State of Odisha*, 2021 (I) OLR 174.



committed by the appointing authority in calculating the percentage. Consequentially, direction was given to absorb the petitioner forthwith applying the doctrine of promissory estoppel in the said case.

28. *In view of the law and fact, as discussed above, the irresistible conclusion is that the show-cause notice dated 31.03.2015 under Annexure-13 issued by opposite party No.3, the letter dated 09.02.2015 under Annexure-13/1 issued by opposite party no.2 to opposite party No.1 and letter dated 26.03.2015 under Annexure-13/2 issued by the Government of Odisha, Revenue and Disaster Management Department to opposite party No.2 cannot sustain. Therefore, the same are liable to be quashed and hereby quashed. Pursuant to interim order passed on 07.04.2019 by the Odisha Administrative Tribunal since the petitioner is still continuing, he shall be allowed to continue with all service and financial benefits as due and admissible to him in accordance with law.”*

4.7. Further arguments are advanced to the effect that though the petitioner was eligible for the post of MPHWM in terms of qualification specified in the advertisement dated 30.07.2005, the authority for the reasons best known deprived him of appointment in the said post at the relevant point of time, which resulted in direction of the Odisha Administrative Tribunal on an application under Section 19 of the Administrative Tribunals Act, 1985. Pursuant to such direction of the learned Tribunal, the CDM & PHO, Jagatsinghpur has



issued letter to the petitioner calling upon him to produce testimonials for verification and after verification he found the petitioner entitled to get the post. At this distance of time when the matter came up for consideration of regularisation in service of the petitioner, the Health and Family Welfare Department through the Additional Chief Secretary on specious plea, that “transparent selection procedure” was not followed at the relevant point of time, refused benefit of regularisation.

4.8. It is vehemently contested by Sri Sameer Kumar Das, learned counsel that such a plea is contrary to what is laid down by a Division Bench of this Court in *Union of India Vrs. Subhankari Das, 2023 (III) ILR-CUT 979*, wherein it has been stated that,

“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 Vrs. Umadevi, (2006) 4 SCC 1; Government of Tamil Nadu Vrs. Tamil Nadu Makkal Nala Paniyalargal, 2023 SCC OnLine SC 393 and Vibhuti Shankar Pandey Vrs. State of Madhya Pradesh, 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 Vrs. Union of India, W.P.(C) No.24759 of 2012, disposed of on 31.07.2017, relying on the decisions rendered in Umadevi (3), (2006) 4 SCC 1 and State of Karnataka Vrs. M.L. Keshari, 2010 (II) OLR (SC) 932 = (2010) 9 SCC 247, direction was issued for regularisation of such employees. Similarly, in the case of Manoj Kumar Jena Vrs. Union of India, 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 Vrs. Indian Institute of Mass Communication, W.P.(C) No.5906 of 2018 & CM Appl No.23016 of 2018, disposed of on 14.02.2020 [2020 SCC OnLine Del 1915].

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 Vrs. 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 Vrs. 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.***

4.9. Due to fault of the authorities in appointing the petitioner in the post of MPHWM at appropriate time, he could not have been denied to be regularised since the date of his initial appointment, i.e., 08.02.2010. Urging that though the petitioner was entitled to be adjusted against the vacancies as reflected in the advertisement dated 30.07.2005, complying with the direction of the learned Odisha Administrative Tribunal, the authority after verifying necessary documents appointed the petitioner in the post of MPHWM, the learned counsel submitted that notwithstanding the fact that fresh appointees have come to occupy the vacant posts, that would not deprive the petitioner from getting the legitimate position.

4.10. In this respect, Sri Sameer Kumar Das, learned Advocate relied on the Judgment dated 29.09.2023 of Division Bench of this Court rendered in *Anita Mohapatra Vrs. State of Odisha*, W.A. No.1437 of 2022 & batch, affirming



Judgment of Single Bench Judgment reported at 2023 SCC OnLine Ori 4070 with variation on one point. The Division Bench in the said Judgment observed as follows:

*“We do not find any illegality in such directions. But, on one point, we need to differ. Learned Single Judge, by discarding Rajesh Kumar Vrs. State of Bihar, (2013) 4 SCC 690, has held that the petitioners have continued in the post for long time but they so continued by virtue of interim order and hence, the ratio of Rajesh Kumar (supra), cannot be of any help to them if their places are taken by the eligible candidates. No further vacancies will be available for their adjustment at the bottom of the list in the manner as done in Rajesh Kumar (supra). In Vikas Pratap Singh, (2013) 14 SCC 494, it has been laid down that the principle of equity shall be applied to protect the candidates who will be the casualty for implementation of the revised merit list. It has emerged that the Appellants, except the Appellant in W.A. No.1437 of 2022 have put in unblemished service for eight years, even though by virtue of the interim order. **But, if they are terminated, they will be terminated for no fault of theirs. Error committed by the respondent-Board in the matter of evaluation of the answers cannot be attributed to the Appellants, as they have not committed any fraud, nor they made any misrepresentation for being appointed. It has been observed in Vikas Pratap Singh (supra) that termination would not only impinge upon the economic security of the Appellants and their dependants, but will also adversely affect their careers and they might lose the chance of further employment. That will be***



highly unjust and grossly unfair. Such devastation has to be adjusted under the principle of equity, as the erroneous evaluation of the answers cannot be attributed, by any means, to the Appellants. Except the Appellant in W.A. No.1437 of 2022, all the Appellants have successfully qualified in the Computer Practical Skill Test. In *Richal Vrs. Rajasthan Public Service Commission*, (2018) 8 SCC 81, a different approach has been taken by the apex Court. According to them, the revised merit list shall not be effected, so far as the incumbents who got appointment on the basis of the first merit list are concerned, rather the revised merit list shall be utilized for appointing the candidates, who were not selected for erroneous answer keys. In *Gaurav Pradhan Vrs. State of Rajasthan*, (2018) 11 SCC 352, the apex Court had directed the State of Rajasthan to create supernumerary posts for adjustment. In Para-11 of the additional affidavit, it has been stated that at present there are 29 posts of Junior Clerks lying vacant in the district of Jagatsinghpur. To avert unwarranted human consequences, the equitable adjustment is warranted.”

4.11. Under the aforesaid premises, Sri Sameer Kumar Das, learned Advocate fervently prayed for setting aside the impugned Order dated 09.12.2020 of the Health and Family Welfare Department refusing to regularise the service of the petitioner in the post of MPHWM and issue of *mandamus* to the opposite parties to extend the similar benefit as that is given to the similarly circumstanced personnel.



5. At this stage, Sri Arnav Behera, learned Additional Standing Counsel appearing for the opposite parties raised objection to the contention of the learned counsel for the petitioner and has drawn attention of this Court to paragraph-6 of the affidavit dated 04.08.2023 filed on behalf of the opposite parties which is to the following effect:

“6. That, it is further humbly submitted that an advertisement was published for filling up of 52 Nos. of post of MPHW(M) out of which 8 Nos. posts were earmarked for SC category, 12 Nos. for ST category, 14 Nos. of SEBC category & 18 Nos. for UR category were reserved. During the process of recruitment a category wise merit list was prepared on the basis of 1:3 ratio where 147 Nos. of candidate were placed in the said list. In the said merit list Deba Prasad Tripathy was in Sl. No.6 under UR Category & Dillip Kumar Ram was in the Sl. No.131 under ST Category. But, the petitioner is did not rank anywhere in the said merit list. The last cut off mark was 79.07% for the candidates who were included under UR category and the applicant was not positioned anywhere in the said list. So the question of similar situated person doesn't arise in case of the petitioner.”

5.1. Though the learned Additional Standing Counsel conceded, as stated in paragraph 9 of the counter affidavit filed by the opposite parties that, “the petitioner has completed six years of contractual service in the



post of NPHW (M)” and did not dispute the fact of proposal of regularisation of contractual service being sent by the Director of Public Health, Odisha, to the Health & Family Welfare Department for reference to the High Power Committee. The High Power Committee has turned down the proposal of the CDMO, Jagatsinghpur as appreciated by the Director of Public Health on the grounds that:

1. The petitioner being appointed in the year 2010 pursuant to direction contained in Order dated 21.10.2008 passed in O.A. No.1972 of 2008 of the learned Odisha Administrative Tribunal against vacancies advertised for the year 2005-06 the regularisation of service of the petitioner is not permissible;
2. The provisions of the ORV Act was not followed by the Appointing Authority-CDMO, Jagatsinghpur;
3. Transparent selection procedure being not followed, the regularisation in service would be contrary to terms of the General Administration and Public Grievance Department Resolution dated 17.09.2013 read with Resolution dated 16.01.2014.

5.2. Sri Arnav Behera, learned Additional Standing counsel further submitted that the petitioner appears to have not



secured cut-off mark for consideration of eligibility to the post of MPHWM. Being given appointment by the CDMO, Jagatsinghpur not in conformity with eligibility specification reflected in the advertisement dated 30.07.2005, the High Power Committee has rightfully rejected the claim of the petitioner for regularisation of his contractual service.

Analysis and discussions:

6. With these background facts, this Court diligently considered the submissions and averments. This Court on perusal of evidence adduced by both the sides, observes that the petitioner being qualified in the High School Certification Examination and the Higher Secondary Certificate Examination and having in possession of the Diploma in Pharmacy awarded under Rule 13 of the Education Regulation framed under Section 10 of the Pharmacy Act, 1948 with Certificate of Registration issued by the Registrar, Odisha Pharmacy Council, Bhubaneswar, applied for the post of MPHWM. Thus, it is manifest that he has the requisite qualification specified in advertisement for appointment/engagement of contractual MPHWM. In the First Corrigendum issued by CDMO, Jagatsinghpur it is specified in revised Guidelines in connection with the advertisement dated 30.07.2005 that:



“The selection of MPHWS (M) shall be made purely on merit basis on the mark secured in HSC examination only there shall be no written/viva voce test.”

6.1. While complying with the direction of the Odisha Administrative Tribunal dated 21.10.2008 passed in O.A. No.1972 (C) of 2008, the CDMO, Jagatsinghpur issued Letter No. 324/CDMO, dated 14.01.2009 stating as follows:

“In view of the orders passed in O.A. Case No.1972(C) of 2008 you are directed to produce the following documents in original for verification:

- 1. HSC pass certificate with mark sheet*
- 2. Diploma in Pharmacy Certification together with mark sheet*
- 3. Fresh residence/nativity certificate*
- 4. Caste certificate, if any,”*

6.2. The CDMO, Jagatsinghpur after having verified the testimonials as produced for verification in compliance of instruction as aforesaid, issued Letter No.1305/CDMO dated 02.03.2009 informing the Director of Health Services, Odisha that:

*“*** After verifying the original documents of the candidate (a copy verification report annexed), I am to request that necessary approval may kindly be issued for taking appropriate action at this end.”*

6.3. It is the Appointing Authority-CDMO, Jagatsinghpur, in absence of recruitment Rules, issued Guidelines through



advertisement duly publicised in daily newspapers and acted in accordance with said Guidelines for selection of the candidates including the petitioner. For laying down Guidelines for selection process with respect to the post of MPHWM, the petitioner had no involvement. The petitioner applied for the said post *bona fide* by filling up relevant information as per requirement of the Application Form prescribed by the Appointing Authority for appointment/engagement of contractual staff under the CDMO Jagatsinghpur. In view of legal position set forth in *Vikas Pratap Singh Vrs. State of Chhatisgarh; (2013) 14 SCC 494* and discussions made in *Bikash Mahalik Vrs. State of Odisha, 2022 (I) ILR-CUT 108*, there is no ambiguity or confusion in mind to hold that the petitioner having been found qualified for the post of MPHWM by the Appointing Authority at the relevant point of time, it would be highly unjust and grossly unfair not to consider the claim of the petitioner in proper perspective.

- 6.4. It remains uncontroverted by the opposite parties that the petitioner has been working since more than fourteen years by now in the sanctioned post of MPHWM to the satisfaction not only with regard to educational qualification in terms of advertisement dated 30.07.2005 read with the corrigendum, but also there has been no



adverse remarks with respect to performance of the petitioner throughout these years. *Ergo*, the petitioner ought not to have been denied regularisation in service on the ground that he is not eligible in terms of the General Administration Department Resolution dated 17.09.2013.

6.5. Therefore, the impugned Order dated 09.12.2020 issued by the Additional Chief Secretary of Health and Family Welfare Department indicating that the petitioner “had not been appointed following a transparent selection procedure” is *de hors* material on records.

7. The learned Additional Standing Counsel made valiant attempt to justify the impugned Order dated 09.12.2020 stemming on the reason ascribed therein that “As Sri Rath was not selected for the post because of securing less mark in HSC than the cut-off marks, his claim for appointment must have been rejected by the CDM&PHO, Jagatsinghpur in compliance to the Order dated 21.10.2008 passed in O.A. No.1972(C) of 2008”. It is the objection of Sri Sameer Kumar Das, learned counsel for the petitioner that the advertisement has not carved out any cut-off marks. In absence of any such Rule/Regulation or Guidelines, such contention of learned Additional Standing Counsel is not tenable. The learned counsel for the petitioner having taken this



Court to the Order dated 08.01.2008 passed in the case of *Mahamad Habib Vrs. State of Odisha, W.P.(C) No.8890 of 2007* (Annexure-E/3 of the counter affidavit), submitted that the Appointing Authority in consideration of representation as directed by this Court in the said order granted appointment to Mahamad Habib. He has also referred to Letter dated 16.07.2009 (Annexure-7) issued by the Director of Health Services, Odisha which runs to the effect that *“It appears from the records/ documents furnished by you vide Letter under reference that one Mahamad Habib who have got less marks than Sri Sashibhusan Rath has been appointed in the post of MPHW(M) ignoring the case of Sri Sashibhusan Rath who has secured higher marks in HSC than Sri Mahamad Habib.”* This Court, thus, is of the considered view that the Government of Odisha in Health and Family Welfare Department has ignored such relevant and vital factual position. Therefore, the suggestion of the High Power Committee as carried out by the Additional Chief Secretary to the Government of Odisha that *“the CDM&PHO, Jagatsinghpur issued appointment letter in 2010 in favour of the petitioner, Sri Rath, without proper application of mind”* is perverse finding of fact.



8. Perusal of copy of communication of the Government at Annexure-K/3 forming part of the counter affidavit of the opposite parties reveals as follows:

*“Government of Odisha
Health and Family Welfare Department
No 2262— MSNG-III-M-52/2013, dated the 30.01.2014*

From

*Sri B.K. Behera, IAS
Additional Secretary to Government*

To

*The Director Health Services, Odisha, Bhubaneswar
The Director Capital Hospital Bhubaneswar
All Chief District Medical Officer
All Dean & Principal of Government Medical College
All Superintendent of Government
Medical College & Hospital
Chief Medical Officer, RGH Rourkela*

*Sub.: Regularisation of contractual service of Group ‘C’ &
Group ‘D’ employees working under the
administrative control of Health & F.W Department.*

Sir,

*I am directed to say that General Administration
Department vide their Notification No.32010/GAD,
dated 12.11.2013 have outlined the detail procedure
for contractual appointment and regularisation of
contractual service of Group ‘C’ & Group ‘D’
employees of the State. Before regularisation of the
service of the Group ‘C’ & Group ‘D’ employees
working under the administrative control of Health &*



Family Welfare Department, the following points are to be ascertained.

- 1. Whether the contractual Group C & Group 'D' employees have been appointed against the contractual posts created by abolition of regular posts and with due concurrence of Finance Department;*
- 2. Whether the contractual engagement were made by observing proper recruitment procedure (open advertisement);*
- 3. Whether the provisions of ORV Act has been rightly followed;*
- 4. Whether the contractual employees have completed 06(six) years of continuous contractual service.*

To ascertain the above information, all CDMOs are requested to prepare the post wise gradation list of contractual Group 'C' & Group 'D' employees of their establishment and the same gradation list to be certified by the CDMOs and countersigned by the Director of Health Services, Odisha, Bhubaneswar. The creation G.O. against which the contractual appointment is made has also to be submitted to Government as well as to DHS, Odisha, Bhubaneswar for verification in order to ascertain the genuineness of the information supplied by the CDMOS.

In order to have the regularisation in a clear and transparent manner the CDMOs are requested to



furnish the detail information as per the format enclosed.

This may be treated as extremely urgent.

*Yours faithfully,
Sd/- 30.01.2014
Additional Secretary
to Government.”*

8.1. Recapitulating the facts already culled out above, it may be worth noting that the CDMO, Jagatsinghpur has appraised the Director, Health Services by issue of Letter dated 19.02.2014 enclosing therewith details of service particulars of the petitioner in the specified formats as required under the Letter dated 30.01.2014 of the Health and Family Welfare Department. He sent another Letter dated 24.11.2018 to the Director of Health Services, Odisha with identical details in specified formats. Even though the Letter dated 30.01.2014 of the Government of Odisha clearly stated that the instructions contained therein are “extremely urgent”, there is no reason put forth by the opposite parties with regard to delay. However, it is after intervention of this Court in writ petition as also contempt petition made the Government of Odisha to wake from slumber and consider the case of the petitioner only to deny on flimsy grounds, which has no foundation to support by evidence on record.



- 8.2. It is impressed upon the Appointing Authority in the respective institutions functioning under the aegis of the Health and Family Welfare Department that at the time of regularisation of contractual service of Group-‘C’ and Group-‘D’ employees working under the administrative control of the Health and Family Welfare Department the authority is required to ascertain four aspects.
- 8.3. Firstly, it is to be ascertained as to whether the contractual Group ‘D’ employees have been appointed against the contractual posts created by abolition of regular posts and with due concurrence of Finance Department. It is apparent from the Letter dated 16.01.2007 (Annexure-3) that the Government of Odisha has created *inter alia* 390 contractual base level posts of MPHW(M) against equal number of abolished vacant regular posts under the Health and Family Welfare Department with due concurrence of Finance Department *vide* UOR No.445-SS.I, dated 08.09.2006.
- 8.4. Secondly, it is to be ascertained whether the contractual engagement was made by observing proper recruitment procedure (open advertisement). It is fact on record as depicted from the corrigendum to the advertisement dated 30.07.2005 that,

“Continuation to advertisement published on 30.07.2005 in the daily newspaper “The Pragatibadi” and “The



Matrubhasa” and in the Notice Board of the Offices cited above regarding filling up of paramedical posts/ attendants/sweepers posts in Jagatsinghpur District has been modified by Government of Odisha, Health and Family Welfare Department vide letter No.19128/H, dated 10.08.2005”.

Appended thereto was the Revised Guidelines prescribing the manner of selection process for the post of MPHW(M), which is to the following effect:

“The selection of MPHW(M) shall be made purely on merit basis on the marks secured in HSC Examination only. There shall be no written/viva voce test”.

The Appointing Authority before selecting candidates for the post of MPHW(M), due publication was made by way of open advertisement.

8.5. Third aspect specified in Letter dated 30.01.2014 that, whether the provisions of the ORV Act has been rightly followed. The copy of advertisement inviting applications as published in *the Pragatibadi* on 30.07.2005 (enclosed to the counter affidavit by the opposite parties as Annexure-C/3) reveals as follows:

Sl. No.	Category of posts	No. of posts	Consolidated salary	Qualification
***	***	***	***	***
3.	MPHW(M) (Only male	52 SC – 8	Rs. 4,000/-	² Passed HSC or equivalent Examination.

² The First Corrigendum to Notice No.69E reads thus:
“1st Corrigendum to Notice No.69-E



	candidates)	ST – 12 SEBC – 14 UR – 18		Selection should be made on merit in HSC Examination. Written Viva Voce test to be conducted by Selection Committee.
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It is also specified in the said advertisement under the heading “General Conditions for Contractual Appointment to the Paramedical posts” that “ORV Act shall be applicable on 80 point roster”. It is, thus, abundantly clear that in the process of selection for the post of MPHW(M), the provisions of the ORV Act was followed. No dispute has been raised by the opposite parties that the personnel appointed pursuant to said

109-E: Continuation to Advertisement published on 30.07.2005 in the daily Newspaper “The Pragatibadi” & “The Matrubhasa” & in the Office Notice Board of the offices cited above regarding filling up of paramedical posts/Attendants/Sweepers posts in Jagatsinghpur District has been modified by Government of Odisha, Health & Family Welfare Department vide Letter No.19128/H., dated 10.08.2005.

Revised Guideline:

1. *The selection of MPHW(M) shall be made purely on merit basis on the marks secured in H.S.C. Examination only. There shall be no written / viva-voce test.*
2. *Fresh applications are invited from the candidates for Attendant/ Sweeper posts as per previous advertisement published on dt.28.01.05 in the Notice Board of different offices of Jagatsinghpur District:*
 - a. *Qualification: Candidates must have passed class VII.*
 - b. *Additional Documents to be produced: Attested copy of mark sheet cum pass certificate of M.E. School Certificate Examination.*
 - c. *Criteria: The selection shall be made purely on merit basis basing on the marks secured in M.E. School certificate examination only, there shall be no viva-voce test.*
 - d. *Last date of receipt of application: The application with relevant documents must reach in the office of the C.D.M.O., Jagatsinghpur on or before 09.09.05 by Regd. Post/ Speed Post only. Other communication will not be accepted.*

NOTE:

The candidates who have already applied for the post of Attendant/ Sweeper are to produce pass certificate of M.E. School Certificate Examination & mark sheet, if not submitted. All other conditions remain unchanged.

*Chief District Medical Officer,
Jagatsinghpur”*



advertisement have been regularised in such contractual service.

It may also be worthy to say that so far as engagement of employees holding contractual posts are concerned the provisions of the ORV Act have got no application, as held by a Division Bench of this Court *vide Order dated 10.05.2018* passed in the matter of *State of Odisha Vrs. Jatin Kumar Das, W.P.(C) No.6661 of 2018*³, which pertains to regularisation in service of Data Entry Operators engaged on contractual basis in the Commercial Tax Organization.

Following observation made by the Division Bench of this Court in Order dated 10.05.2018 in *State of Odisha Vrs. Jatin Kumar Das, W.P.(C) 6661 of 2018* is noteworthy:

“2. This writ petition has been filed by the functionaries of the State assailing the correctness and legality of the common order dated 17.05.2017 passed by Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A.No.2172(C) of 2015 along with similar batch of Original Applications, wherein the respondent-State Government was directed to issue

³ In *State of Odisha Vrs. Jatin Kumar Das, S.L.P.(C) No. 18642 of 2018* [Arising out of impugned final judgment and order dated 10.05.2018 in *W.P.(C) No.6661 of 2018* passed by the High Court Of Orissa at Cuttack] the Hon'ble Supreme Court of India has been pleased to pass the following Order on 06.08.2018:
*“No ground for interference is made out in exercise of our jurisdiction under Article 136 of the Constitution of India.
The special leave petition is accordingly dismissed. Pending application, if any, stands disposed of.”*



formal order of regular appointment in favour of the applicants therein, who were initially engaged in 2005 as Data Entry Operators and Junior Programmers engaged in IT Organization on outsourcing basis and thereafter with effect from 17.09.2013, on annual contract basis directly by the Commercial Taxes Department, with all consequential service and financial benefits.

3. *Narrating the admitted factual scenario, i.e., engagement of IT personnel on outsourcing basis thereafter on direct contractual basis by the Commercial Taxes Organization Mr. Sahu, learned Additional Government Advocate assails the impugned order on the ground that the direction for regular appointment of those IT personnel **violates the Government of Odisha in G.A. Department Resolution dated 17.09.2013** fixing certain mandatory norms for regularization of contractual appointees. **Secondly**, 2 persons whose initial appointment was on outsourcing basis, cannot come under the regular establishment because **no open and transparent recruitment procedure has been adopted. Thirdly, provisions of ORV Act has not been followed while appointing them on outsourcing and direct contractual basis.***
4. *Learned Tribunal, taking into consideration the facts and circumstances of the case as well as submissions of learned counsel for the parties, has arrived at the aforesaid conclusion, which is clear, cogent and well-reasoned, which hardly requires any interference under writ jurisdiction. **Therefore, we are in agreement with the reasons assigned***



and findings arrived at by learned Tribunal in directing for regular appointment of the contractual employees in question, including the opposite party No.1 herein.

*However, while parting with the order, we may note that whatever may be the mode of engagement/appointment, there is concurrence of the Finance Department and the employees in question were engaged in different Departments of the Government and rendered their services uninterruptedly. Besides that, mode of engagement adopted and selection process followed was consciously adopted and law prevalent at the relevant time for engagement of contractual employees was scrupulously followed under the aegis of Government functionaries. **But, surprisingly, after utilizing their services for more than a decade, when question of bringing them under regular establishment arises, they (employees) are pushed to a corner. Government functionaries in a welfare State should refrain from adopting hire and fire policy. The action taken amounts to gambling with the career of the employees, some of whom might have been overaged to compete for employment.***

At this juncture this Court feels it apposite to examine the provisions of the ORV Act and applicability thereof to the fact-situation of the present case. Even if it is assumed that the petitioner was not appointed by following the provisions of the ORV Act during the course of selection procedure, the provisions of the Act



being not applicable to the engagees on contract basis prior to introduction of sub-section (2) to Section 3 for the purpose of regularisation in service. The letter of appointment of the Appointing Authority-CDMO clearly spells out that the petitioner has been engaged on contractual basis. This fact is also manifest from the terms of the advertisement dated 30.07.2005. For that the State Government has introduced amendment to Section 3⁴ thereof by virtue of the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes

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- ⁴ Section 3 of the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975, after insertion of sub-section (2) would read thus:
- “3. Applicability.—*
- (1) This Act shall apply to all appointments to the Posts and Services under the State except—*
- (a) Class-I posts which are above the lowest rung thereof and meant for conducting or guiding or directing Scientific and Technical research;*
 - (b) Class-I Posts which are above the lowest rung thereof and classified as scientific posts;*
 - (c) tenure posts;*
 - (d) **those filled up on the basis of any contract;***
 - (e) ex-cadre posts;*
 - (f) those which are filled up by transfer within the cadre or on deputation;*
 - (g) the appointment of such staff the duration of whose appointment does not extend, beyond the term of office of the person making the appointment and the work charged staff which are required for emergencies like flood relief work, accident restoration and relief etc.;*
 - (h) temporary appointments of less than forty-five days duration;*
 - (h-I) those which are required to be filled up by appointment of persons under the rehabilitation assistance given to the members of the family of the deceased or permanent disabled employees who suffer from the disability while in service;*
 - (i) those in respect of which recruitment is made in accordance with any provision contained in the Constitution.*
 - (j) Schematic posts.*
- (2) Notwithstanding anything contained in sub-section (1), reservation shall apply to appointment made or to be made to all tenure posts or **contractual posts** or schematic posts which are to be regularized against the sanctioned posts.”*



and Scheduled Tribes) Amendment Ordinance, 2023 [published in Odisha Gazette, Extraordinary No.1996, dated 19.08.2023], which has been given effect to “at once”. Later said Ordinance has been promulgated as the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Amendment Act, 2023 [published in Odisha Gazette, Extraordinary No.2543, dated 07.11.2023], which came into force with effect from 19.08.2023⁵. Sub-section (2) of Section 3 as inserted by virtue of said amendment

⁵ The Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Amendment Act, 2023 (Odisha Act 10 of 2023) stands as follows:
[Be it enacted by the Legislature of the State of Odisha in the Seventy- fourth Year of the Republic of India, as follows:

1. *Short title and commencement.—*
 - (1) *This Act may be called the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Amendment Act, 2023.*
 - (2) *It shall be deemed to have come into force on the 19th day of August, 2023.*
2. *Amendment of Section 3.—*

In the Odisha Reservation of Vacancies In Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 [Odisha Act No. 38 of 1975], Section 3 shall be re-numbered as sub-section (1) thereof and in sub-section (1) as so re-numbered, —

 - (i) *after clause (i), the following clause shall be inserted, namely:*
“(j) Schematic Posts.”
 - (ii) *after sub-section (1) so re-numbered, the following sub-section shall be inserted, namely:*
“(2) Notwithstanding anything contained in sub-section (1), reservation shall apply to appointment made or to be made to all tenure posts or contractual posts or Schematic posts which are to be regularised against the sanctioned posts.”
3. *Repeal and Savings.—*
 - (1) *The Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Schedule Tribes) Amendment Ordinance, 2023 [Odisha Ordinance No.3 of 2023] is hereby repealed.*
 - (2) *Notwithstanding the repeal under sub-section (1), anything done or any action taken under the said Ordinance so repealed shall be deemed to have been done or taken under this Act.]*



does not admit of any ambiguity. Cursory glance at said amendment, which specifies the effective date as 19.08.2023 (prospective amendment), suggests that prior thereto the provisions introduced by way of amendment to the ORV Act, 1975, had no application to contractual engagements for consideration of regularisation against the sanctioned posts.

It may be stated that recourse to a subsequent legislation is permissible if there exists any ambiguity in the earlier legislation for the purpose of ascertaining as to whether by a subsequent legislation proper interpretation has been fixed which is to be put upon the earlier Act. [*Mahim Patram Private Ltd. Vrs. Union of India, 2007 (3) SCC 668*]. Glaringly, in the present context, the case of the petitioner emanated prior to the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Amendment Act, 2023 came into force. Before said amendment Act, 2023 came into effect, the petitioner had already been eligible for consideration of regularization in service.

In such view of the matter, the ground for rejection of claim of the petitioner by the Health & Family Welfare Department in the impugned Order dated 09.12.2020



that the provisions of the ORV Act was not followed seems to be based on incorrect appreciation of fact.

- 8.6. Fourthly, the authority was required in terms of Letter dated 30.01.2014 to ascertain whether the contractual employee has completed six years of continuous contractual service. In this regard, the documents forming part of pleadings evince that the CDMO having allowed the petitioner to join on 08.02.2010 in the post of MPHWM in pursuance of Office Order dated 03.01.2010 (Annexure-8), the petitioner is treated to have completed six years of continuous contractual service by 07.02.2016.

Ex facie the criteria specified in the Health & Family Welfare Department letter dated 30.01.2014 have been fulfilled by the petitioner. On the anvil of proposition of law laid down in *Bikash Mahalik Vrs. State of Odisha, 2022 (I) ILR-CUT 108*, the action of the opposite parties is hit by the principles of estoppel. Having exploited the services of the petitioner for more than fourteen years, he could not have been denied consideration of regularisation in service to his detriment and thereby the opposite parties, on an erroneous appreciation of factual position that he was not the appointee in pursuance of advertisement dated 30.07.2005 read with the corrigendum, should not have relegated him to



disadvantageous position. The information supplied to the Director of Health Services, Odisha *vide* Letter dated 19.02.2019 (Annexure-11 series), clearly depict under the column— “whether advertisement was published during recruitment of such contractual employment” that the petitioner was “an applicant for the post of MPHW(M) during the recruitment process 2005-06, appointed as per the outcome of W.P.(C) No.8890 of 2007”. This glaring information has been ignored by the Additional Chief Secretary to Government of Odisha in Health and Family Welfare Department in his Order dated 09.12.2020. Merely by contending that the petitioner, having secured less marks in HSC, could be found to be ineligible for the post of MPHW(M) would be against equity as he has been appointed being found suitable on verification of necessary documents by the Appointing Authority after his candidature being considered in response to the advertisement dated 30.07.2005.

Taking note of the fact that the petitioner has been discharging his duties and responsibilities since 2010 till date without any blemish, in view of decision rendered by a Division Bench of this Court in *Subhankari Das, 2023 (III) ILR-CUT 979* the petitioner is entitled to be considered for regularisation in service.



8.7. The above observations made on the analysis of the official documents of the Government forming part of the writ petition and made available for perusal and consideration of this Court as urged by respective counsel for the parties, would indicate that the Order dated 09.12.2020 of the Additional Chief Secretary to Government is not based on germane consideration of the criteria for ascertaining eligibility of contractual employees for regularisation in service in terms of Letter dated 30.01.2014 of the Health and Family Welfare Department (Annexure-K/3 to the counter affidavit), as referred by the learned Additional Standing Counsel.

9. It may be significant to have reference to the Odisha Group-‘B’, ‘C’ and Group-‘D’ Posts (Repeal and Special Provisions) Rules, 2022 (Annexure-17). Provisions of Rules 3 and 4 *ibid.* stand thus:

“3. *Repeal.*—

Save as otherwise provided in rule 4, the Odisha Group-B Posts (Contractual Appointment) Rules, 2013 and the Odisha Group “C” and Group “D” Posts (Contractual Appointment) Rules, 2013 are hereby repealed.

4. *Special Provisions.*—

(1) ***The initial appointee appointed under the Contractual Rules now in positions shall be deemed to have been appointed against the***



post on regular basis as on the date of commencement of these Rules.

- (2) *On such regular appointment under sub-rule (1), the pay of such employee shall be fixed by way of granting notional increments considering the date of his contractual appointment.*
- (3) *The employee who has been regularly appointed in the service after completion of 6 years of service under the respective Contractual Rules shall be allowed for fixation of their pay as on the date of commencement of these Rules by way of granting notional increments considering the date of his contractual appointment.*
- (4) *The employee whose services have been so regularised shall be allowed service benefits like promotion etc. in the cadre on notional basis to which they would have been entitled as per Rules, had they been recruited on regular basis.*
- (5) *On commencement of these Rules, the employee shall be assigned seniority in the cadre to which they would have been entitled as per Rules, had they been recruited on regular basis.”*

9.1. The legal fiction created in the provision contained in Rule 4(1) of the said Rules, 2022 does require consideration appropriately.

9.2. In *Bhuwalka Steel Industries Ltd. Vrs. Union of India*, (2017) 5 SCC 598 reference of *St. Aubyn Vrs. Attorney General*, 1952 AC 15 = (1951 2 All ER 473 (HL) was made



and the relevant portion is quoted hereunder from said Judgment:

“The word ‘deemed’ is used a great deal in modern legislation. Sometimes it is used to impose for the purposes of a statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible.”

9.3. The word ‘Deemed’ as per Worcester Dictionary, is:

“The word ‘deemed’ is used in various senses. Sometimes it means ‘generally regarded’. At other time it signifies ‘taken conclusively to be’. Its various meanings are to been to be hold in belief, estimation, or opinion; to judge; adjudge; decide; consider to be; to have or to be of an opinion; to esteem; to suppose; to think, decide or believe on consideration; to account; to regard; to adjudge or decide; to conclude upon consideration.”

9.4. In Words & Phrases, Permanent Edition, Vol. 11A, page 181, the word ‘deemed’ has been described to mean ‘regarded as being’; it is equivalent to ‘shall be taken to be’.

9.5. In *Rishabh Agro Industries Ltd Vrs. P.N.B. Capital Services Ltd*, (2000) 5 SCC 515, in the context of Section



441 of the Companies Act, 1956, the following meaning has been culled out:

“The word ‘deemed’ as used in Section 441 of the Act means ‘supposed’, ‘considered’, ‘construed’, ‘thought’, ‘taken to be’ or ‘presumed’.”

9.6. In *Ram Prakash Khanna Vrs. S.A.F. Abbas*, AIR 1972 SC 2350 = (1972) 1 SCC 784, the Supreme Court of India, while dealing with Rule 3(3)(b) of the Indian Administrative Service (Regulation of Seniority) Rules, 1954, held as follows:

“The use of word ‘deemed’ in the rule indicates that the Government has the power to make a retrospective declaration because, it is only after promotion that there is any occasion to consider whether the period of officiation prior to promotion will be counted for purpose of seniority.”

9.7. In *State of Karnataka Vrs. Shri Ranganatha Reddy*, AIR 1978 SC 215, it has been observed as follows:

“The use of word ‘deemed’ does not invariably and necessarily imply an introduction of a legal fixation but it has to be read and understood in the context of the whole statute.”

9.8. In *Consolidated Coffee Ltd Vrs. Coffee Board*, AIR 1980 SC 1468, the observation of the Supreme Court runs as follows:



“A deemed provision might be made to include what is obvious or what is uncertain or to impose for the purpose of a statute an artificial construction of a word or phrase that would not otherwise prevail.”

9.9. When a deeming provision is in operation, the Court is to keep in mind the principle of interpretation of a deeming clause. Whenever a deeming clause occurs in a statute and the Court is called upon to interpret the same, the Court has to first ascertain the purpose for which such deeming clause has been incorporated. Normally a deeming clause is created by way of a legal fiction. Therefore, the Court is to first ascertain the purpose behind the legal fiction. After ascertaining the purpose, the Court must assume those consequences, which are incidental and inevitable corollaries for giving effect to such legal fiction. See, *Penguin Trading & Agencies Ltd. Vrs. State of Orissa, 2007 (Supp.-I) OLR 738*.

9.10. In *Ashok Leyland Ltd. Vrs. State of TN, (2004) 134 STC 473 (SC)* it is propounded that when a legal fiction is created it must be given its full effect. Reference may also be had to *East End Dwelling Co. Ltd. Vrs. Finsbury Borough Council, (1951) 2 All ER 587*; *State of Bombay Vrs. Pandurang Vinayak, AIR 1953 SC 244*; *Commissioner of Income Tax Vrs. S. Teja Singh, AIR 1959 SC 352*; *M. Venugopal Vrs. Divisional Manager, Life*



Insurance Corporation of India, Machilipatnam, A.P., (1994) 2 SCC 323; Indian Oil Corporation Limited Vrs. Chief Inspector of Factories, (1998) 5 SCC 738, Voltas Limited, Bombay Vrs. Union of India, (1995) Supp. 2 SCC 498, Harish Tandon Vrs. Additional District Magistrate, Allahabad, U.P., (1995) 1 SCC 537; G. Viswanathan Vrs. Hon'ble Speaker, Tamil Nadu Legislative Assembly, Madras, (1996) 2 SCC 353; Bhavnagar University Vrs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111 = (2002) 4 Suppl. SCR 517.

9.11. Conspectus of decisions referred to would suggest that if one is bidden to treat an imaginary state of affairs as real, one must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. The statute says that one must imagine a certain state of affairs; it does not say that, having done so, one must cause or permit one's imagination to boggle when it comes to the inevitable corollaries of that state of affairs.

9.12. With the aforesaid interpretation of deeming fiction, provisions of Rule 4 of the Odisha Group-‘B’, ‘C’ and Group-‘D’ Posts (Repeal and Special Provisions) Rules, 2022 do not admit of any doubt to be entertained.



9.13. This Court may also take note of the service jurisprudence as noticed by the Hon'ble Supreme Court of India in the case of *Rudra Kumar Sain Vrs. Union of India*, (2000) 8 SCC 25 wherein it has been observed that:

“In the service jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such an appointment cannot be held to be ‘stopgap or fortuitous or purely ad hoc’.”

9.14. It needs to be emphasised that at the time of issue of the Order File No.28589— HFW-FW-CASE-0072-2020/H&FW, dated 09.12.2020 by the Additional Chief Secretary, Health and Family Welfare Department (Annexuure-13), there was no occasion to consider the effect and impact of the provisions of Rule 4 of the Odisha Group-‘B’, ‘C’ and Group-‘D’ Posts (Repeal and Special Provisions) Rules, 2022. Therefore, this Court feels it apt to remit the matter to the opposite party No.1 for appropriate consideration of the claim of the petitioner.

Conclusion:

10. Having analysed the material available on record and noted down the contentions, submissions and



arguments with discussions made in the foregoing paragraphs, this Court finds none of the grounds for the conclusion arrived at by the Additional Chief Secretary, Health and Family Welfare Department is sustainable in the eye of law.

10.1. The reasons ascribed in the impugned Order dated 09.12.2020 for rejection of the claim for regularisation in service of the petitioner are neither in conformity with the terms of General Administration and Public Grievance Department Resolution No. 26108/Gen., dated 17.09.2013 read with Resolution No. 1066/Gen dated 16.01.2014 nor the criteria specified in Letter dated 30.01.2014 issued by the Health & Family Welfare Department.

10.2. In light of the arguments presented and the evidence adduced, this Court finds that the petitioner has established a case warranting intervention under Article 226/227 of the Constitution of India. The facts reveal that the actions taken by the opposite parties are not only perverse but also the reasons cannot be countenanced in law. The petitioner has demonstrated that his case was not considered in its right earnest. The Order dated 09.12.2020 issued by the Additional Chief Secretary to Government of Odisha, Health & Family Welfare Department, therefore, deserves interference in



exercise of power under Article 226 of the Constitution of India.

11. That apart, numerous judgments by Courts have reinforced the notion that contractual employees who have served for a significant period should not be arbitrarily denied regularization, if they meet certain criteria, as laid down in *Secretary, State of Karnataka Vrs. Uma Devi (3), (2006) 4 SCC 1* wherein it has been emphasized that long term contractual employees should be considered for regular employment status.

12. In the wake of the above discussions and for the reasons enumerated herein *supra*, the impugned Order dated 09.12.2020 of the Additional Chief Secretary to Government, Health and Family Welfare Department is liable to be set aside and, this Court does so.

12.1. Having thus set aside the Order dated 09.12.2020, it is apposite to direct the opposite party No.1 to consider the grievance of the petitioner for regularisation in service in the post of MPHWM in terms of the observations made above and take a decision afresh within a period of eight weeks from today.

12.2. Needless to say that the opposite party No.1 shall, while deciding the matter afresh as directed above, keep in



view the legal position set forth in the decisions referred to *supra*.

12.3. With the aforesaid observations and directions, the writ petition stands disposed with no order as to costs.

(MURAHARI SRI RAMAN)
JUDGE

High Court of Orissa, Cuttack
The 21st October, 2024//Aswini/MRS/Laxmikant