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02. 30.03.2021

Heard Sri Subrat Satpathy, learned counsel for the petitioner and Sri S.P. Panda, learned Additional Government Advocate for the State.

The writ petition involves the following prayer:

"It is therefore prayed that this Hon'ble Court be graciously pleased to allow this petition by giving direction to the Opp. Parties for absorption of the petitioner against the regular vacant post of peon in the office of CDPO, Kakatpur in view of the Finance Department circular with all service and financial benefits for the interest of justice.

And/or pass such order/direction as deem fit and proper.

And for such act of kindness, the petitioner as in duty bound shall remain ever pray."

Short background involving the case is for the disclosure through Annexure-9, petitioner was engaged on 10.09.2001, whereas person at Serial No.3 Dilip Kumar Das was engaged on 2.7.2001 all these engagements were as Night Watcher-cum-Peon. On the pleading of continuous employment of the petitioner since 1990, the development taking place through document at page-29 of the brief a communication by the C.D.P.O., Puri Sadar, Puri, brought to the notice of the Court that in the meantime pursuant to a subsequent resolution even though person at Serial No.3, namely, Dilip Kumar Das junior to the petitioner had joined subsequent to the petitioner has been regularized w.e.f. 17.9.2013, as per page-21 of the disclosure, petitioner's case is being ignored. It is for long continuance of the petitioner for more than 30

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years on temporary basis, a claim is made by Sri Satpathy for giving a direction for regularization of the petitioner. Sri Satpathy also brought to the notice of the decision of this Court in similar matter in W.P.(C) No.29719 of 2020, order wherein appears to have been confirmed in the Writ Appeal and also in the Hon'ble apex Court in the meanwhile, Sri Satpathy claimed that petitioner's case is squarely covered by the direction in the above case.

Sri Panda, learned Additional Government Advocate did not dispute the proposition of law involving on regularization of the persons serving for more than 3 decades. There is also no dispute with regard to the proposition of law settled by this Court itself in W.P.(C) No.26860 of 2013 being affirmed by a Division Bench in Writ Appeal No.407 of 2015 and further being confirmed by the Hon'ble apex Court for disposal of SLP on 13.5.2016.

It is considering the rival contentions of the parties, this Court observes in the event the petitioner is an appointee since 10.09.2001 and working as Night Watcher-cum-Peon as of now, for long continuance and dependant on the decision of this Court in ***Secretary State of Karnataka and Others Vrs. Umadevi (3) and Others***: (2006) 4 SCC 1, in ***State of Karnataka & others Vrs. M.L. Kesari & others***, involving SLP(C) No.15774 of 2006, also following direction of this Court in W.P.(C) No.29719 of 2020, this Court here observes the matter of taking out service from the petitioner for

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long 20 years on temporary basis in the presence of clear vacancy in the post of Peon amounts to exploitation of employee. It is here taking into consideration that there has been one vacant post in the position of Peon in the particular establishment, this Court directs the Child Development Project Officer, Kakatpur, O.P.4 to take a decision to regularize the petitioner in the vacant post of Peon by completing the entire exercise within a period of six weeks from the date of communication of the order. This Court further also directs for the petitioner already completing more than 20 years long as an ad hoc employee, the entire service period involving the petitioner shall also be taken into consideration for the purpose of appropriate pension at least.

With the above observation and direction, the writ petition stands disposed of.

Copy of the order be served on Sri S.P.Panda, learned AGA for necessary communication.

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Biswanath Rath, J.

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