

IN THE HIGH COURT OF ORISSA, CUTTACK.

W.P.(C) NO.13403 OF 2015

Bipin Bihari Pradhan Petitioner.
 - Versus -
 State of Orissa & Others. Opposite Parties.

COUNTER REPLY ON BEHALF OF OPPOSITE PARTY NO. 2

I, Sri Gadadhar Nandi, aged about 57 years, son of Late Udayanath Nandi at present working as Additional Secretary to Government, Finance Department, Government of Odisha, Bhubaneswar, Dist. Khordha, do hereby solemnly affirm and state as follows:-

2. That, I am duly authorized by the O.P.No. 2 to swear this affidavit on his behalf and I am otherwise acquainted with the facts of the case.
3. That, I have carefully gone through the Writ Petition filed by the petitioner and understood the meaning and purport thereof.
4. That, the petitioner in the Writ Petition has prayed for implementation of the National Leprosy Eradication Program by implementing the Resolution passed in the NLEP meeting dated 07.01.2014 so also the Note Sheet of the Hon'ble Minister, Health & F.W. Department, dated 20.01.2014 by the Committee headed by the Hon'ble Minister, Health &

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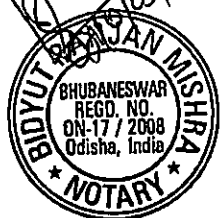


F.W. Department and to appoint a high level committee of experts to enquire and submit a report.

5. That, in reply to the Petition, it is humbly submitted that after careful consideration, the proposal of the Health & F.W. Department for filling up of the vacant posts of MPW (Leprosy) was regretted and the Health & F.W. Department were advised to manage the work by appropriate reallocation of the existing MPW (Leprosy) and utilising the services of MPHWS and ASHA workers and Paramedics available in DHSs, SDHs, CHCs, PHCs and Sub-Centers etc. The decision was taken due to the fact that Finance Department had agreed for creation of posts of different categories of Paramedics in DHSs, SDHs, CHCs, PHCs and Sub-Centers etc. as per the norms of IPHS- 2012. On filling up of these posts, there will be sufficient paramedics in all the tiers of general healthcare system in the State. It may also be indicated that after vertical integration of NLEP with general healthcare system, the MPHWS and other paramedics are supposed to handle leprosy cases. Now, the leprosy cases are being detected and referred to by ASHA workers and MPHWS from village level and the treatment made at the DHSs, SDHs, CHCs, PHCs, etc. by trained doctors. ASHA workers are also getting incentive for each case they refer to and monitor for treatment. In this scenario MPW (Leprosy) has the least role for the same.

6. That, though it was resolved in a meeting dated 03.04.2014 that all the 603 MPW(M) working under NVBDCP out of World Bank supported project will be adjusted as contractual MPHWS(M) under state budget against 326 vacant posts of MPHWS(M) under Leprosy, but no decision has been

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taken in this regard at the Government level, since, it is contrary to the stipulations of GA Department notification dated 12.11.2013 annexed as Annexure-A/2.

7. That, it is pertinent to submit here that this respondent is not the executant department and the matter relates to Health & F.W. Department. Finance Department being the referral department have examined the proposal and communicated the views to the Administrative Department, i.e. Health & F.W. Department and no proposal in this regard is pending in Finance Department.

8. That, the facts stated above are true to my knowledge, based on official records.

Identified by :
Bhubaneswar
Dated. 10.05.2019.

[Signature]
10/05/2019
B.R. MISHRA
ADVOCATE & NOTARY
BHUBANESWAR

[Signature]
Gadadhare Nandali
10.5.2019
Deponent.

CERTIFICATE

Certified that Cartridge papers are not available.

Cuttack,
Dated. 10.05.2019

[Signature]
Addl. Govt. Advocate

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10 MAY 2019

[Signature]
10/05/2019
NOTARISED



The deponent from and signed being identified by me.

[Signature]
BIDYUT RANJAN MISHRA
NOTARY BHUBANESWAR
ODISHA . INDIA

ANNEXURE A/2

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The Odisha Gazette

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No. 2240, CUTTACK MONDAY NOVEMBER 18, 2013/ KARTIKA 27, 1935

GENERAL ADMINISTRATION DEPARTMENT

NOTIFICATION

The 12th November, 2013

No.32010-GAD-SC-RULES-0009-2013/Gen.—In exercise of the powers conferred by proviso to Article 309 of the Constitution of India, and in supersession of the respective recruitment rules, orders and instructions so far as the matter relates to mode of employment of the selected candidates to certain initial appointment to Group “C” and Group “D” posts of the State, the Governor of Odisha is pleased to make the following rules regulating recruitment and conditions of Service of persons appointed on contractual basis to the Group “C” and Group “D” posts, namely:—

PART-I

GENERAL

1. **Short title and Commencement :** (1) These rules may be called the Odisha Group “C” and Group “D” posts (contractual appointment) Rules, 2013.

(2) They shall come into force on the date of their publication in the *Odisha Gazette*.

(3) From the date of commencement of these rules, there shall *not* be any *ad hoc* appointment in Group ‘C’ and Group ‘D’ posts under the State Government.

2. **Definitions:** (1) In these rules unless the context otherwise requires-

(a) “Government” means the Government of Odisha;

(b) “Recruitment Rules” means the rules framed under the proviso to Article 309 of the Constitution of India regulating recruitment to different State Civil Services and Posts;

(c) “State” means the State of Odisha; and

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(d) "Scheduled Castes and Scheduled Tribes", shall have reference to the Scheduled Castes specified in the Constitution (Scheduled Castes) Order, 1950 and Scheduled Tribes specified in the Constitution (Scheduled Tribes) Order, 1950 made under Articles 341 and 342, respectively of the Constitution of India and as amended from time to time;

(e) "SEBC" means Socially and Educationally Backward Classes as referred to in clause (e) of Section 2 of the Odisha Reservation of Posts and Services (for Socially and Educationally Backward Classes) Act, 2008 (Odisha Act 8 of 2009);

(f) "Persons with Disability" means person who has been granted disability certificate by the competent authority as per the provisions under rule 4 of the Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Odisha Rules, 2003;

(g) "Year" means the Calendar Year.

(2) All other words and expressions used in these rules but not specifically defined shall, unless the context otherwise requires, have the same meaning as respectively assigned to them in the Odisha Service Code.


3. **Applicability:** (1) These rules shall apply to the Group 'C' and Group 'D' posts, which are filled up by way of direct recruitment:

Provided that the State Government may by notification exclude any post from the purview of these rules.

(2) They shall also apply to the categories of contractual appointments made under rule 4 from the date of contractual appointment, if any, made under rule 5.

(3) These rules shall not apply to the Group 'C' and Group 'D' posts for services and functions like Watch & Ward, Sweeping and Cleaning, Gardening etc. Manpower required for such services/functions shall be managed by outsourcing basis.

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(4) These rules shall also not apply to contractual appointments made under

(a) Temporary Plan Schemes (including those under Centrally Sponsored Plan Scheme, Externally Aided Projects);

(b) Temporary Establishments; and

(c) Tenure Based Posts.

Provided that persons appointed on contractual basis under these schemes prior to the commencement of these rules, who are below 45 years shall be allowed to participate in the recruitment process under rule 5 for any Group C or Group D posts, if they satisfy all other eligibility criteria for the such post as laid down in the relevant recruitment rules and shall be allowed relaxation of upper age limit for entry into Government service.

NOTE: Persons appointed under of sub-rule (2) and proviso to sub-rule (4) shall get the benefit of these rules only after they were recruited and appointed to any post under rule 5.

4. **Categorisation of existing Contractual Employees:** For the purpose of these rules all contractual appointments made prior to the commencement of these rules shall be classified into two categories; namely:—

(a) **Category I:** Contractual appointments/ engagements made against contractual posts created with the concurrence of Finance Department without following the recruitment procedure including the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 and the rules made thereunder and rules regulating recruitment for the regular posts.

(b) **Category II:** Contractual Engagements made through manpower service provider agencies with concurrence of Finance Department.

PART II

NEW RECRUITMENT POLICY

5. **Recruitment Procedure:** (1) Recruitment to the posts shall be made on the basis of the provisions of the relevant *recruitment rules or executive instructions, as the case may be in force.*

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(2) Notwithstanding anything contained in the relevant *recruitment rules or executive instructions, as the case may be in force* all appointments made pursuant to sub-rule (1) shall, from the date of commencement of these rules, be on contract basis.

6. **Status of Vacant posts:** For the purpose of contractual appointments made under sub-rule (2) of rule 5, all vacancies existing on the date of commencement of these rules as well as the future vacancies shall be deemed to have been converted to contractual posts from the date of commencement of these rules:

Provided that, consequent upon regular appointment under sub-rule (1) of rule 10 the contractual posts shall get re-converted to regular sanctioned posts.

7. **Reservations:** Notwithstanding anything contained in these rules, reservation of vacancies for—

(a) Scheduled Castes and Scheduled Tribes shall be made in accordance with the provisions of the Odisha Reservation of Vacancies in Posts and Services, (for Scheduled Castes and Scheduled Tribes) Act, 1975 and the rules made thereunder; and

(b) SEBC, Women, Sports persons and Persons with Disabilities shall be made in accordance with the provisions made under such Act, Rules, or Orders and Instructions issued in this behalf by the Government from time to time.

8. **Special Provision for different Categories of existing Contractual Employees:**

(a) The contractual employees belonging to Category-I and the persons provided by the manpower service provider agencies under Category-II, who shall be less than 45 years of age and shall have completed at least one year of continuous service, in case they apply for Recruitment under sub-rule (1) of rule 5 for any Group C and Group D posts, shall be allowed relaxation of upper age limit for entry into Government service; provided they satisfy all other eligibility criteria for the post as laid down in the relevant recruitment rules.

(b) They shall be allowed one per cent extra marks on the total marks of the examination for each completed year of continuous service subject to a maximum of fifteen per cent, which shall be added to the marks secured by them for deciding the merit position.

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PART III

CONDITIONS OF SERVICE

9. Conditions of Service of Contractual Employees appointed under sub-rule (2) of rule 5:

(1) Tenure of Contractual appointment: Persons appointed under sub-rule (2) of rule 5 against the contractual posts shall continue on contractual basis for a period of six years. The period of six years shall be counted from the date of their contractual appointment under rule 5.

(2) Remuneration: During the period of contractual appointment they shall draw consolidated monthly remuneration equal to the initial of the corresponding pay plus grade pay.

(3) Annual Increase of Remuneration: Subject to satisfactory performance, the consolidated remuneration shall be enhanced by ten per cent on completion of each year of service.

(4) Allowances: They shall not be entitled to D.A., HRA, RCM and other allowances during the period of contractual appointment.

(5) Leave: They shall be entitled to leave under the provisions of the Odisha Leave Rules, 1966 at par with regular employees of Government of Odisha.

(6) Conduct and discipline- They shall abide by the Odisha Civil Services Conduct Rules, 1959 and subject to the Odisha Civil Services (Classification, Control and Appeal) Rules, 1962.

(7) Pension: They shall be enrolled under the new pension scheme contained in the Odisha Civil Services (Pension) Rules, 1992 from the date of contractual appointment under sub-rule (1) of rule 9.

10. Conditions of Service on Regular appointment:

(1) Regular Appointments: On the date of satisfactory completion of six years of contractual service under sub-rule (1) of rule 9, 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.

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(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 sub-rule (2) and clause (a) of this sub-rule shall be the same as are or as may from time to time be prescribed by the State Government.

PART IV

MISCELLANEOUS

11. Relaxation: When it is considered by the Government that it is necessary or expedient so to do in the public interest, it may, by order, for reasons to be recorded in writing, relax any provision of these rules in respect of any class or category of the employees.

12. Interpretation: If any question arises relating to the interpretation of these rules; it shall be referred to the State Government whose decision thereon shall be final.


By Order of the Governor

NITEN CHANDRA

Special Secretary to Government

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