

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 14345 of 2005

*Deputy Director, redesignated
as Deputy Commissioner,
Navodaya Vidyalaya Samiti,
Bhopal & Ors.*

.....

Petitioners

Mr. D.R. Mohapatra, CGC

Vs.

Uma Prasanna Pani & Ors.

.....

Opposite parties

*Mr. S. Tibrewal, Advocate
(O.P.1)*

CORAM:

**DR. JUSTICE B.R. SARANGI
MISS JUSTICE SAVITRI RATHO**

ORDER

06.05.2022

Order No.

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This matter is taken up through hybrid mode.

2. Heard Mr. D.R. Mohapatra, learned Central Government Counsel appearing for the petitioners and Mr. S. Tibrewal, learned counsel appearing for opposite party no.1.

3. The petitioners have filed this writ petition assailing the order dated 11.08.2005 passed in T.A. No.2 of 2002, by which the Central Administrative Tribunal, Cuttack Bench, Cuttack, while allowing the O.A., has held that there was no reasonable nexus or valid reason in ignoring the deputation period of opposite party no.1 for the purpose of seniority and that non-counting of the period of his service on deputation towards his seniority, without giving him an opportunity of hearing, is violative of the principles of natural justice and is not in consistence with the rules of law and, therefore, the same is liable to be struck down and accordingly directed the petitioners to count his seniority as T.G.T. (Biology) with effect from 01.09.1988, i.e. the date on which he joined the

Samiti on deputation basis and grant him all consequential service benefits.

4. Mr. D.R. Mohapatra, learned Central Government Counsel appearing for the petitioners vehemently contended that opposite party no.1 was working as T.G.T. in the Panchayat High School at Bantala in the district of Cuttack, which was an aided educational institution. Therefore, his services rendered in the said aided institution will not be taken into consideration for grant of benefit, as was granted by the tribunal vide order dated 11.08.2005 in O.A. No.2 of 2002 and, therefore, seeks for quashing of the same.

5. Mr. S. Tebrewal, learned counsel appearing for opposite party no.1 contended that similar benefit has already been extended to various teachers working in Jawahar Navodaya Vidyalayas and one of such orders has been incorporated in Annexure-D/1 to the counter affidavit filed in O.A., wherein one Pahad Singh Rajput, who was working as PGT (Maths), has been extended the benefit. Therefore, opposite party no.1, having stood on similar footing, should be granted the benefit.

6. Having heard learned counsel for the parties and after going through the records, it appears that there is no dispute that pursuant to advertisement dated 30.01.1988 issued by the Jawahar Navodaya Samiti (in short 'the Samiti'), opposite party no.1 was selected and appointed, on deputation basis, to the post of T.G.T. (Biology) vide order dated 16.08.1988. Accordingly, he joined in the said post with effect from 01.09.1988 and was absorbed permanently under the Samiti with effect from 01.05.1991. The Samiti published a seniority list of TGTs vide orders dated 01.03.1993 and 31.12.1993. In those seniority lists, the name

of opposite party no.1 was placed below opposite parties no.2 to 6, who joined as TGT (as direct recruits under the Samiti) subsequent to the joining of opposite party no.1. Being aggrieved by such wrong fixation of his seniority, opposite party no.1 made several representations for correct fixation of his seniority with effect from 01.09.1988, i.e. the date of his initial joining as TGT (Biology) under the Samiti. The petitioners having not responded to those representations, opposite party no.1 approached this Court by filing OJC No.3379 of 1996, which was transferred to the Central Administrative Tribunal under Section 29 of the Administrative Tribunals Act, 1985 and registered as T.T. No.1 of 2002.

7. Pursuant to notice issued by the tribunal, the petitioners herein filed their counter affidavit contending that (1) the seniority of opposite party no.1 vis-à-vis opposite parties no.2 to 6 has been fixed as per the guidelines prescribed by the Samiti; (ii) the period of deputation cannot be counted for seniority, unless somebody comes on deputation in the analogous/equivalent grade; (iii) as opposite party no.1 had not come on deputation in analogous/equivalent post to the Samiti, he cannot be allowed to count his seniority with effect from the date when he joined Samiti on deputation basis; and (iv) as the school from which opposite party no.1 came on deputation is not a Government Aided School.

8. The tribunal, vide order dated 11.08.2005, after considering the matter in proper perspective came to conclusion in paragraphs-15 and 16, which read as follows:

“15. Having regard to the facts and circumstances of the case, as discussed above, we are of the opinion that there was no reasonable nexus or valid reason in ignoring the deputation period of the applicant for the purpose of seniority. That apart, we hold that non counting of the period of his service on deputation towards his seniority, without giving him an opportunity to have his say in the matter, is violative of the principles of natural justice and is not in consistence with the rules of law and, therefore, the same is liable to be struck down.

16. In view of our foregoing discussions, this Original Application is allowed. The Respondents are hereby directed to count the seniority of the applicant as T.G.T. (Biology) with effect from 01.09.1988, i.e. the date on which the applicant joined the Samiti on deputation basis and to grant him all consequential service benefits. Parties to bear their own costs.”

9. Being aggrieved by the said order, the petitioners have approached this Court by filing this writ petition. But fact remains, while considering the grievance of opposite party no.1, the tribunal, taking note of factual matrix in proper perspective came to a definite finding that as the petitioner joined on 01.09.1988 as T.G.T. (Biology) and continued till 01.05.1991, the date he was permanently absorbed can be allowed for determination of seniority under the Samiti. To arrive at such conclusion, he relied upon ***S.I. Rooplal v. Lt. Governor through Chief Secretary, Delhi***, AIR 2000 SC 594. Thereby, the tribunal has come to a finding that the equivalency of two posts does not confine only to the scale of pay which is one of the factors for treating posts in different organizations as equivalent or analogous posts. The other three factors are (i) the nature and duties of post (2) the responsibilities and powers exercised by the incumbent holding the post and (3) the minimum qualifications prescribed for recruitment to the post. If those facts are taken into consideration and opposite party no.1 satisfies the same

and as a consequence thereof, the benefit has been granted to opposite party no.1 vide impugned order passed by the tribunal.

10. Therefore, this Court does not find any error in the order dated 11.08.2005 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in T.A. No.2 of 2002. Accordingly, the writ petition merits no consideration and the same is dismissed.

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(DR. B.R. SARANGI)
JUDGE

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(SAVITRI RATHO)
JUDGE

Alok/Puspa

