

IN THE HIGH COURT OF ORISSA AT CUTTACK

O.J.C. No.3123 of 1999

Smt. Alokamanjari Mishra

....

Petitioner

Mr. J.K. Mishra, Advocate

-versus-

***Registrar, Central Administrative
Tribunal, Cuttack Bench, Cuttack
and others***

....

Opposite Parties

None

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIAK**

**ORDER
17.02.2022**

Order No.

06. 1. The challenge in the present petition is to an order dated 2nd March 1999 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack (CAT) in Original Application No.636 of 1992.
2. The background facts are that the Petitioner, a Trained Graduate, was offered a post of Assistant Teacher at the South Eastern Railway Mixed Primary School, Bandamunda on 5th January, 1990. She was promoted to officiate as Trained Graduate Teacher (TGT) (History) in Oriya Medium and was transferred and posted at Mixed Higher Secondary School, Khurda Road by an order dated 31st July, 1992. She was accordingly relieved from her post at Bandamunda on 8th August, 1992. When she was not allowed to join, she made a representation, and by an order dated 17th August 1992, she was

“transferred on promotion on ad hoc basis” to the above post of TGT (History) where she joined on 19th August, 1992.

3. On 3rd November 1992, the Petitioner was reverted to a substantive post of Primary School Teacher (PST) (Oriya Medium) and transferred and posted at the Mixed Primary School, Bandamunda against an existing vacancy. One Smt. Sulekha Mitra (Opposite Party No.5) was promoted to officiate as TGT (History) in Mixed Higher Secondary School, Khurda Road on ad hoc basis. Challenging the said order, the Petitioner filed O.A. No.636 of 1992 in the CAT. On the date of admission of that petition on 21st December 1992, the order dated 3rd November 1992 was stayed which continued till the CAT took up for final hearing the said case in March, 1999.

4. The stand of the Opposite Parties was that the Petitioner was promoted to officiate as the TGT (History) only on ad hoc basis and it did not confer on her any claim to continue as such or seek promotion in future in preference to her seniors. Since she was much junior, she was reverted to the substantial post of PST (Oriya Medium) in the original place of posting. On the other hand, Opposite Party No.5 was much senior to the Petitioner having joined as PST on 18th November 1974 whereas the Petitioner joined only on 5th January, 1990.

5. The CAT noted that the order dated 17th August 1992 of the Chief Personnel Officer as well as order dated 19th August 1992 by the Senior Divisional Personnel Officer, Khurda Road

mentioned that the appointment of the Petitioner to officiate on the post of TGT (History) was purely on ad hoc basis. Further, it was clear from the document produced by Opposite Party No.5, she was much senior to the Petitioner. Therefore, her challenge to the appointment of Opposite Party No.5 to officiate as TGT (History) in Mixed Higher Secondary School, Khurda Road was held to be not legally tenable.

6. The Opposite Parties also placed a written note of submissions before the CAT stating that during the pendency of the application, the Chief Personnel Officer, South Eastern Railway, Garden Reach had conducted a regular selection for the post of TGT. By an order dated 10th June 1993, 37 candidates had been empanelled for the post of TGT. The Petitioner did not come within the zone of consideration. The empanelled candidates had been posted by an order dated 15th June, 1993. However, since the Petitioner was continuing as a result of the stay order, one of the empanelled candidates could not be accommodated. The CAT agreed that this was one more reason why the Petitioner could not continue in the post of TGT (History).

7. When the present petition was heard on 15th March 1999, this Court directed that status quo as on that date in respect of the post held by the Petitioner would continue to be maintained. For nearly 23 years now, the said interim order has continued.

8. It is indeed strange that no counter affidavit till date has been filed in the present petition. In fact, on the strength of the stay

order, the Petitioner has continued undisturbed for all these years. Even today, none is appearing for the Opposite Parties.

9. Learned counsel appearing for the Petitioner is candid in stating that if the Court has not listed this case in its own turn, he may not have mentioned it for listing. It is understandable because the Petitioner, who now is 56 years old, has virtually on the strength of the interim order first passed by the CAT and then this Court continued on ad hoc basis for over 30 years.

10. The submission of the learned counsel for the Petitioner is simply this. Since there was no challenge to the Petitioner's continuance as TGT, that de facto position should be given a de jure status by setting aside the impugned order of the CAT.

11. The difficulty with the above submissions is that even that were to happen, it is only the Petitioner's ad hoc status that will get legalised and not that she can be appointed on a regular basis. The Petitioner did not make the cut for empanelment on merits pursuant to a regular selection which was completed way back in 1999 and 37 candidates were empanelled for the post of TGT. The Court is therefore not inclined to accept the prayer.

12. In fact the Court finds no legal error in the impugned order of the CAT. With the promotion of the Petitioner as TGT being purely on ad hoc basis, she could not have claimed any right to continue as such. As far as Opposite Party No.5 is concerned, as factually found by the CAT she was not junior to the Petitioner and therefore, the Opposite Parties preferring her to the Petitioner

for being appointed on ad hoc basis to officiate as TGT could not be found fault with.

13. Consequently, the Court finds no ground to interfere with the impugned order of the CAT. However, the Court notes the fact that the Petitioner has by virtue of stay orders continued for more than 30 years as TGT even though on ad hoc basis. Therefore, the Court permits the Petitioner to make a representation to the authority for regularizing her service in accordance with the extant Rules/ Policy. If such representation is made not later than 21st March 2022, it will be considered by the authorities and a decision thereon shall be communicated to the Petitioner not later than 2nd May, 2022. Till then status quo as of today shall continue. It is made clear that after the above date, subject to the Petitioner's request for regularization being accepted, the status quo will not continue.

14. The petition is disposed of in the above terms. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Guin