

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.30502 of 2011

Shri Rama Chandra Giri

Petitioner
....
Mr.D.N. Rath, Advocate

-versus-

State of Odisha and others

Opp. Parties
....
Mr. D.R. Mohapatra, Standing Counsel
School and Mass Education Department

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

**ORDER
28.03.2022**

Order No.

07. 1. This petition seeks quashing of an order dated 15th September, 2011 of the State Education Tribunal (SET) in Appeal Case No.22 of 2009. It involves a short question viz., whether the Petitioner is entitled to arrears of salary from 21st March, 2009 till the date of his re-instatement in his post of Junior Assistant Teacher of the Harischandrapur Aided High School, Mayurbhanj.
2. At the relevant time, Banasthali Bidya Pitha at Badjod where the Petitioner was working was an aided educational institution within the meaning of Section 3(b) of the Orissa Education Act (OE Act). The Petitioner was appointed as Headmaster in the said school on 5th April, 1990. A criminal case was instituted against the Petitioner for the offence under Section 376 IPC read with Section 3 (xii) of the SC & ST (POA) Act. The Petitioner was taken into custody.

3. The Petitioner faced Criminal Trial in Trial Case No.17 of 2008. The Sessions Judge, Mayurbhanj, Baripada by an order dated 27th December, 2008 honourably acquitted the Petitioner. In other words, he was not found guilty of the offences for which he was charged.

4. Therefore, the Petitioner reported to the Managing Committee of the school in question to allow him to resume duties in the same post, the governing body of the School asked the Petitioner to approach the Inspector of Schools (IoS).

5. On 13th January, 2009, IoS intimated the President of the Managing Committee of the said school to pass immediate orders to reinstate of the Petitioner in service and to pay him the salary during the entire period of suspension by treating the period of suspension the Petitioner spent on duty. Despite the above order, the Petitioner's joining report was not accepted by the School. The Petitioner had to again approach the IoS.

6. The IoS for the second time sent a letter dated 21st December, 2009 asking the President of the Governing Body of the School to allow the Petitioner to be reinstated in service.

7. With these attempts failing, the Petitioner approached the SET under Section 10-A of the OE Act stating that preventing the Petitioner from resuming duty amounted to illegal termination of his service. By the impugned order dated 15th September, 2011 the SET has held that the Petitioner was not

shown to have been appointed as a regular Headmaster. He was reinstated as Assistant Teacher in the Harischandra High School and arrears of his salary with effect from 1st October, 2007 had been paid to him. With these observations, the application was dismissed by the SET on the ground that the case of the Petitioner had become infructuous and that since his claim stood satisfied 'he has got no case.'

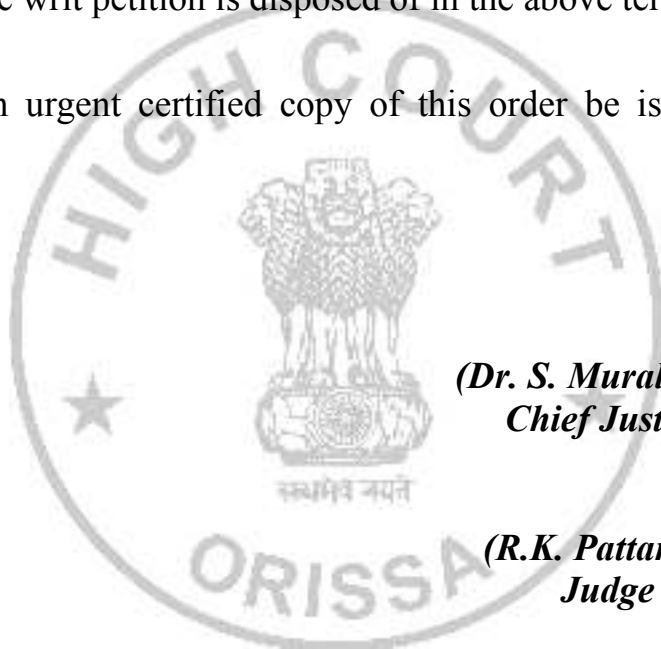
8. This Court heard the submission of Mr. D.N. Rath, learned counsel for the Petitioner and Mr. D.R. Mohapatra, learned Standing Counsel for the School and Mass Education (S&ME) Department.

9. In the impugned order, the SET appears to have missed the point sought to be made by the Petitioner viz. that he was prevented from joining the post by the School and for the period when he was prevented from so joining he could not be deprived of the arrears of the salary. What was paid to the Petitioner as noted by the SET is the salary for the period from 1st October, 2007 till 20th March, 2009. The admitted position is that the Petitioner was finally reinstated only on 5th July, 2011. Therefore there was a still gap during for which the arrears of salary of the Petitioner was required to be paid. There was no reasonable explanation offered by the S&ME Department except by saying that it was the School in question that had to make payment. However, admittedly the School in question has since been taken over by the Government and therefore the liability would be that of the Government.

10. For the aforementioned reasons, the impugned order of the SET is set aside and a direction is issued to the S&ME Department to pay the Petitioner the arrears of salary for the period between 21st March, 2009 and 5th June, 2011. The amount be paid within a period of eight weeks from today failing which the Department will be liable to pay the Petitioner simple interest @ 6% per annum on the said amount till the date of payment.

11. The writ petition is disposed of in the above terms.

12. An urgent certified copy of this order be issued as per rules.



(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge