

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.265 of 2022

Birendra Kumar Majhi

.... ***Petitioner***
Mr. K.K. Swain, *Advocate*

-versus-

State of Odisha and others

.... ***Opp. Parties***
Mr. S. Jena,
Standing Counsel S & ME.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

06.01.2022

Order No.

01. 1. This matter is taken up through Hybrid Arrangement (Video Conferencing/Physical Mode).
2. Heard Mr. K.K. Swain, learned counsel for the Petitioners and Mr. S. Jena, learned Standing Counsel appearing for the School and Mass Education Department.
3. The present writ petition has been filed by the Petitioner on the apprehension that his service might be terminated by the authority on the ground that the Petitioner and similarly situated many other persons certificates have been found to be fake by the authority.
4. The learned counsel for the Petitioner draws the attention of the Court to one such letter dated 21.12.2021 under Annexure-4, whereby an F.I.R. has been lodged against the present Petitioner, who was Level-V Assistant Teacher (Ex-Cadre), Government, P.S. Nuamunda under Tumudibandha Block for production of fake OTET certificate. It is further submitted that the matter is under

investigation.

5. Mr. S. Jena, learned counsel appearing for the School and Mass Education Department submits that the writ petition is premature and based on Petitioner's apprehension only. No coercive action as of now has been taken against the Petitioner by the departmental authority. He further submits that the issue of fake certificate operation of the Court in PIL bearing W.P.(C) No. 18752 of 2018 and therein this Court has expressed seriously displeasure because of inaction by the departmental authority. Pursuant to such order, the departmental authorities have been taking prompt action to find out the cases where fake certificates have been produced before the authorities.

6. Learned counsel for the Petitioner advanced his argument relying upon a notification of the Government of Odisha on 22nd December, 2016, submits that Gana Sikshyak is required to pass OTET within 31st March, 2019, if he has not passed OTET earlier. If he/she does not pass the OTET by such date, he/she will not be eligible to get any further increment after 31st March, 2019. This Court considered the view that such notification has no relevance to the present case and circumstances.

7. Further, learned counsel for the Petitioner produced interim orders passed by this Court in some similar matter. On perusal of those orders reveal that those are interim orders passed on the fact those cases. Learned counsel for the Petitioner further relies upon the judgment of this Court in the case of **Biswanath Sethi vrs. State of Odisha and others** : reported 2021 (I) OLR 555.

8. On perusal of such judgment that the dispute has only directed to follow the procedure of law as provided i.e. Rule-15 of OCS (CCA) Rules, 1962 before taking in punitive action against any delinquent employee.

9. Coming back to the fact of the present case, it is seen from the record that the allegation of submission of fake OTET certificate issued by the Board of Secondary Education, Odisha in favour of the action against the Petitioner has been taken as of now. On verification the authority found that the certificate produced by the Petitioner is a fake one. Accordingly, only an F.I.R. has been lodged against the Petitioner before the O.I.C. Tumudibandha Police Station in the district of Kandhamal.

10. Learned counsel for the Petitioner is not sure as to whether any proceeding has been initiated against the Petitioner.

11. In view of the facts and circumstances of the case narrated above, this Court finds that the writ petition filed by the Petitioner is premature at this stage. Moreover, it is made clear that the Opposite Parties or any other department authorities before taking any punitive action against the Petitioner or any similarly situated persons have to follow the procedure of law, particularly Rule-15 of the O.C.S. (CCA) Rules, 1962. By now it is settled principle of law that no punitive action can be taken against the delinquent employee without following principle of natural justice that is without providing any opportunity of show cause to the Petitioner to present his case before coming to a conclusion with regard to the genuineness of the certificate produced by the Petitioner.

12. In such view of the matter, this Court is of the opinion that no direction is required to be given to the Opposite Parties as the Opposite Parties are under a legal obligation to follow the procedure of law before taking any action against any of the delinquent employees.

13. With the aforesaid observation, the writ petition is disposed of.

14. Urgent certified copy of this order be granted on proper application.

Jagabandhu

