

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 3208 of 2017

Krupasindhu Sahoo

.....

Petitioner

Dr. J.K. Lenka, Advocate

Vs.

State of Odisha and others

.....

Opposite parties

*Mr. D.R. Mohapatra, Standing Counsel
for S & ME Department.*

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

10.03.2022

Order No.

05.

This matter is taken up through hybrid mode.

2. Heard Dr. J.K. Lenka, learned counsel for the petitioner and Mr. D.R. Mohapatra, learned Standing Counsel for School & Mass Education Department.

3. The petitioner files this writ petition assailing the order dated 17.03.2016 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 1557 (C) of 2012 under Annexure-10, by which the Tribunal has quashed the order dated 14.03.2012 with regard to cancellation of ACP is concerned and directed the opposite parties to regularize the service of the petitioner for the period from 05.05.1990 to 05.06.1995, but observed that the petitioner is not entitled to get any financial benefits for the said period in terms of the decision of the Apex Court in the case of ***B.M. Jha v. Union of India***, 2008 (II) SCC (L&S) 399.

4. The factual matrix of the case in brief is that, the petitioner was

appointed as an Assistant Teacher by the Managing Committee on 28.12.1986. While continuing as such, on his request, he was allowed to undergo B.Ed training vide letter dated 26.07.1989. After completion of training when the petitioner submitted his joining report in the institution on 05.05.1990 Forenoon, his joining report was not accepted. As a consequence thereof, the petitioner was terminated from service. Challenging such termination, the petitioner preferred an appeal before appellate forum. The Director, Secondary Education vide order dated 31.10.1992 quashed the termination of the petitioner and directed the Managing Committee to allow the petitioner to continue in his post and pay the salary as due and admissible to him along with all service benefits. During the period when the petitioner was not in service, another person, namely Niladri Bihari Joshi was allowed to join and discharge the duty in the said post. After the order passed by the appellate authority, the same having not been given effect to, the petitioner filed writ petition bearing OJC No. 8823 of 1993. Another writ petition had also been preferred by the Managing Committee bearing OJC No. 9796 of 1992 challenging the order passed by the Director, Secondary Education. Both the writ petitions were heard together and ultimately the writ petition filed by the petitioner was allowed. As a consequence thereof, the petitioner was directed to join in the post and his joining was also duly approved against Trained Graduate Arts Post with effect from 26.04.1991 vide letter dated 21.04.1993. Thereafter, on completion of 15 years of qualifying service, vide Annexure-8 dated 11.03.2011 ACP was granted to him. But all of a sudden vide letter dated 14.03.2012, the ACP granted in favour of the

petitioner was withdrawn. Challenging such withdrawal of ACP, the petitioner approached the Odisha Administrative Tribunal by filing O.A. No. 1557 (C) of 2012. After due adjudication, the Tribunal in paragraph-8 of the order dated 17.03.2016 observed as follows:-

“8. In view of the above, we find no reason as to why the applicant should be debarred from getting his legitimate service benefit. Accordingly, the order dated 14.03.2012 at Annexure-5 cancelling the ACP is quashed. Respondents are directed to regularize the service of the applicant for the period from 5.5.1990 to 6.5.1995 as per rules, but as he has not performed any duty during that period, he shall not be entitled to get any financial benefit in terms of decision of the Hon'ble Apex Court in the case of B.M. Jha –Vrs- Union of India, reported in 2008 (II) SCC (L&S) 399. However, the aforesaid period shall be treated for the purpose of his seniority and other service benefits. He will also be entitled to ACP treating his date of joining as 26.04.1991.”

5. Dr. Lenka, learned counsel for the petitioner contended that since the Tribunal has quashed the withdrawal order of ACP dated 14.03.2012 passed by the authority, that itself indicates that the petitioner is deemed to be continuing in service and therefore, such benefits ought to have been granted in favour of the petitioner, by the Tribunal. But so far as release of the salary for the period from 5.5.1990 to 06.05.1995 is concerned, the Tribunal observed that since the petitioner has not discharged the duty for the said period, he is not entitled to get the financial benefits in terms of the decision of **B.M. Jha** (supra). Therefore, the petitioner has approached this Court.

6. Mr. D.R.Mohapatra, learned Standing Counsel for School & Mass Education Department contended that since the order of withdrawal of ACP has been quashed by the Tribunal, the petitioner

was allowed to continue in service and his continuance in service has also been treated for the purpose of his seniority and other service benefits. As such, for the period from 05.05.1990 to 05.06.1995, as the petitioner has not rendered the service, financial benefit as claimed by the petitioner has not been extended to him.

7. Having heard learned counsel for the parties and after going through the record, it appears that, only dispute revolves around is with regard to release of financial benefits for the period from 05.05.1990 to 05.06.1995 in favour of the petitioner. But fact remains during that period, the petitioner was not allowed to discharge his duty and against that post, one Niladri Bihari Joshi was allowed to discharge the duty. When the petitioner was succeeded in the appeal before the Director, Secondary Education and thereafter the order of the Director having not been given effect to, he filed writ petition and in compliance to the direction given by this Court, he was allowed to continue in service and his service was also approved. As a consequence thereof, ACP was also released. But the same was withdrawn as he had not discharged the duty for the period from 05.05.1990 to 05.06.1995. However, the Tribunal after due adjudication, passed the order by quashing the withdrawal order of ACP. However, the question of release of financial benefits for the period from 05.05.1990 to 05.06.1995, cannot be admissible to the petitioner in view of the fact for that period, he has not discharged the duty as one Niladri Bihari Joshi was discharging the duty and has received the salary for the said period. More so, said Niladri Bihari Joshi has not been made a party in the present proceeding to ascertain the position whether he has received the salary for that period or not.

In absence of that and since the petitioner has not discharged his duty, in terms of the judgment of the apex Court in ***B.M. Jha*** (supra), the benefit is not admissible to the petitioner. More so, against one post, payment cannot be made in favour of two persons and as such the Tribunal has justified in rejecting the claim of the petitioner in the impugned order, which does not warrant any interference by this Court.

8. In view of the above, the writ petition stands dismissed.

(DR. B.R. SARANGI)
JUDGE

Arun

(SAVITRI RATHO)
JUDGE

