

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 4626 of 2012

Anand Chandra Mallick

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Petitioner

Mr. M.K. Mohanty, Advocate

Vs.

State of Orissa & Ors.

.....

Opposite Parties

Mr. S. Jena, SC(S&ME)

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

15.03.2022

Order No.

03

This matter is taken up through hybrid mode.

2. Heard Mr. M.K. Mohanty, learned counsel for the petitioner and Mr. S. Jena, learned Standing Counsel for School & Mass Education Department.

3. This case has a chequered career. One Nityananda Panigrahi, who was working as a Headmaster of Sindol Fakir Mohan M.E. School in the district of Bhadrak was dismissed from service on 06.04.1980. Pursuant to resolution passed by the Managing Committee, request was made to the employment exchange, which sponsored the name of the petitioner, along with others. Consequentially, by following due process of selection, the petitioner, who appeared at the interview on 23.05.1980, was appointed as Headmaster of the School and, as such, the petitioner continued without any interruption till 1986. But, challenging his dismissal, Nityananda Panigrahi approached this Court by filing OJC No. 1189 of 1983, which was disposed of vide judgment dated 06.05.1986 by setting aside his dismissal. As a consequence thereof, he was reinstated in service on 18.06.1986. The normal course of law should be, when Nityananda Panigrahi

was reinstated in service, the petitioner, who was continued against his post, should have been discontinued from service. But, without doing so, he was allowed to continue as an Assistant Teacher of the School and as consequence thereof, he was ultimately found to be a surplus teacher of the School in question and, as such, the petitioner was discharging his duty and responsibilities as an Assistant Teacher of the said School as and when required by the authority. But subsequently, when the benefit was not extended to the petitioner, he had approached this Court by filing O.J.C. No. 94 of 1989, wherein specific stand of the petitioner was that he had not been paid his dues for the period from 18.06.1986 onwards from the date Nityananda Panigrahi joined in the post, even though he was continuing in the School. While entertaining the said writ petition, this Court, after hearing the parties, directed that if there be a post of Assistant Teacher within the staffing pattern available to the school against which the petitioner's salary can be drawn, the D.I. of the Schools shall pay the salary of the petitioner for the aforesaid period at the rate admissible to an Assistant Teacher. It is also directed that if the post of Assistant Teacher is lying vacant, the petitioner be appointed to that post and necessary steps for payment be taken within a period of six months from the date of receipt of the order. Even though such order was passed by this Court, the same has not been complied with, so far as payment part is concerned. But the D.I. of the Schools, Bhadrak-II, vide letter dated 25.01.1993, recommended the case of the petitioner for approval of Assistant Teacher for the period from 18.06.1986 to 14.11.1991 against the said vacant post of Assistant Teacher as per the Directives of the High Court and further it had been stated in the said letter that he may be permitted to be adjusted as an Assistant Teacher against the other vacant post under his disposal with effect from 15.11.1991. Further, the arrear salary due to be paid to the

petitioner for the period from 23.05.1980 to 14.11.1991, being calculated, was submitted before the Directorate as early as possible for allotment of additional funds.

4. Mr. M.K. Mohanty, learned counsel for the petitioner contended that though the petitioner has been paid salary up to 17.06.1986, but after 18.06.1986 till 14.11.1991, he has not been paid his remuneration. Therefore, the petitioner approached the Tribunal by filing original application. It is contended that the petitioner, vide order dated 27.07.1993, was absorbed as Assistant Teacher in the existing retirement vacancy at Gopinath Sahayog M.E. School, Maharampur in the prescribed trained matric scale of pay with effect from the date of joining in the School. Thereby, though the petitioner joined in the said School on 27.07.1993 and was getting regular salary, but only dispute lies for the period from 18.06.1986 till 14.11.1991, he has not been paid his salary. But the Tribunal, vide order dated 02.02.2012 passed in O.A. No. 2755 (C) of 2007 under Annexure-8, came to a conclusion that as no other evidence is available about his engagement after 18.06.1986 till 27.07.1996, when he was absorbed vide order dated 27.07.1993, he cannot be entitled to the remuneration for the said period. As such, the Tribunal has not taken into consideration the recommendation made by D.I. of Schools vide Annexure-4, inasmuch as the recommendation clearly indicates that the D.I. of Schools sought for approval of the post of Assistant Teacher for the period from 18.06.1986 till 14.11.1991 in the said vacant post of Assistant Teacher as per the direction of this Court.

5. Having heard learned counsel for the parties and after going through the records, this Court finds that there is no dispute with regard to the continuation of the petitioner in service during the aforesaid period and, thereby, the benefit admissible to the petitioner cannot be denied. As such, the tribunal has committed

error apparent on the face of the record by denying the financial benefits admissible to the petitioner for the period from 18.06.1986 till 14.11.1991. Thereby, this Court modifies the order dated 02.02.2012 passed by the Orissa Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 2755 (C) of 2007, so far as the grant of relief with regard to financial benefit for period from 18.06.1986 till 14.11.1991 is concerned, to the extent that the opposite parties shall pay the dues as admissible to the petitioner as expeditiously as possible, preferably within a period of four months from the date of production of certified copy of this order.

6. With the aforesaid modification of the judgment/order of the tribunal, the writ petition is disposed of.

Issue urgent certified copy as per rules.

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(**DR. B.R. SARANGI**)
JUDGE

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(**SAVITRI RATHO**)
JUDGE

Ashok/ Puspa

