

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 20101 of 2013

Namita Chhotray

.....

Petitioner

Mr. S.D. Routray, Adv.

Vs.

State of Odisha and others

.....

Opposite Parties

Mr. S. Jena, Standing Counsel

S&ME

Mr. P.C. Sethi, Adv. [O.P.No.3]

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE V. NARASINGH

ORDER

11.07.2022

Order No.

08.

This matter is taken up through hybrid mode.

2. Heard Mr. S.D. Routray, learned counsel for the petitioner; Mr. S. Jena, learned Standing Counsel for School and Mass Education Department appearing for opposite parties no.1 and 2; and Mr. P.C. Sethi, learned counsel appearing for opposite party no.3.

3. The petitioner, who was working as a Jr. Assistant and subsequently allowed to work as Coordinator, which is an ex-cadre post, has filed this writ petition seeking to quash the order dated 08.08.2013 passed by the State Administrative Tribunal, Bhubaneswar Bench, Bhubaneswar in O.A. No.1179 of 2005 and O.A. No. 710 of 2011 under Annexure-10, and to issue direction to the opposite parties no.1 and 2 to allow the petitioner to continue in the post of Coordinator by regularizing her appointment in the said post.

4. Mr. S.D. Routray, learned counsel for the petitioner contended that the petitioner, who was continuing as Jr. Assistant, was subsequently allowed to discharge the duties of Coordinator and, as such, the same was challenged by opposite party no.3

before the tribunal by filing O.A. No. 1179 of 2005. On consideration of the same, the tribunal held that erroneously promotion was given to the petitioner and, therefore, he was rightly reverted back by the impugned order dated 08.08.2013. Therefore, the petitioner has approached this Court by filing the present writ petition. To substantiate his contention, he has relied upon the judgment of this Court in the case of ***R. Ramachandra Rao v. State of Odisha***, 2022 (I) OLR 1059.

4. Mr. S. Jena, learned Standing Counsel for School and Mass Education Department appearing for opposite parties no.1 and 2 contended that since promotion has been given to the petitioner erroneously and when subsequently it was found that promotion was given by mistake, the order of withdrawal of promotion was passed by the authority. Challenging the same, the petitioner had approached the tribunal by filing O.A. No. 710 of 2011, but the tribunal refused to interfere with the same, vide order dated 08.08.2013. Therefore, no illegality or irregularity has been committed by the tribunal in passing the order impugned so as to call for interference by this Court. To substantiate his contention, he has relied upon the judgment of this Court in the case of ***Kaberi Behera v. State of Orissa***, 2021 (II) ILR CUT 379.

5. Mr. P.C. Sethi, learned counsel for opposite party no.3 contended that the petitioner is not entitled to get promotion and, as such, challenging such order of promotion opposite party no.3 had approached the tribunal by filing O.A. No. 1179 of 2005, which was heard analogously with the Original Application filed by the petitioner, i.e., O.A. No. 710 of 2011. The tribunal found that while considering the grievance of the opposite party no.3, it was noticed by the authority that the benefit of promotion was given to the petitioner erroneously and it was a mistake on their

part, therefore, the same was withdrawn. Having so found, the tribunal held that no error was committed by passing such order of withdrawal, which was the subject matter of challenge before the tribunal in O.A. No. 710 of 2011 and by so holding the tribunal denied to interfere with the same. As such, the order passed by the tribunal does not warrant any interference of this Court. It is further contended that during pendency of the writ petition, opposite party no.3 retired from service on attaining the age of superannuation.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that opposite party no.3, who is a Trained Graduate (B.A. B.Ed.) Teacher having Diploma in Mentally Retarded (DMR) qualification, was initially posted against the post of Trained Matric under opposite party no.2 in the Women Training Institute (WTI) unit (non-plan) since 19.11.1992 as an Asst. Teacher. Prior to his appointment, he was working as “Sikhya Karmi” and resource teacher for more than three years and, as such, he gathered 16 years of teaching experience. He being an Asst. Teacher in WTI Unit, he was assigned with various works. Before merger of WTI Unit in T.E. and SCERT, the said WTI Unit was under the administrative control of the Director, Secondary Education and therefore, the post of Headmaster/Headmistress is being filled up by the Directorate of Secondary Education, Orissa, Bhubaneswar, whereas the petitioner, who was opposite party no.3 in O.A. No. 1179 of 2005, had started her service under the Ministerial category as Jr. Assistant and while working as such, she was deputed to National Council of Teacher Education (NCTE) on foreign service terms and conditions and after return from NCTE, she was adjusted in the vacant post of Jr. Assistant of WTI unit under opposite party

no.2. As such, she is junior in the cadre of Ministerial employees. Department of Extension Services and School Management and many other departments have been created, which are part and parcel of the Directorate and the post of Coordinator was usually filled up by the Directorate of Secondary Education, Orissa even up to 10th October 2005, when one Kalika Biswal, Ex-Headmistress, Janla High School, Khurda was continuing as such. But opposite party no.2 intentionally and willfully adjusted her in the post of Headmistress of WTI and thereafter the post of Coordinator was lying vacant since then. Opposite party no.3 filed a representation on 18.10.2005 before opposite party no.2 for appointment in the post of Coordinator as he had requisite qualification and experience for the said post. In the meantime, Govt. of Orissa in Finance Department issued a notification to abolish 75% of vacant post by the end of 31.10.2005. Opposite party no.3, being apprehensive of not getting the post of Coordinator, filed O.A. No. 978 of 2005 before the tribunal and the tribunal vide order dated 02.11.2005, directed that in the interest of justice should be met, if the representation of the opposite party no.3 is considered in line with the vacancy position as well as the rules governing the promotion and giving appropriate reply to the opposite party no.3 after disposing of the representation within a time frame. It was further directed that opposite party no.2 may consider the representation of the opposite party no.3 and give a reply to her within a period of six weeks from the date of receipt of the copy of the order. When the matter stood thus, opposite party no.2 passed office order dated 31.10.2005 in promoting the petitioner to the post of Coordinator ignoring the case of the opposite party no.3 and lastly vide order dated 29.11.2005, opposite party no.2 rejected the claim of the

opposite party no.3 for promotion. Therefore, opposite party no.3 approached the tribunal by filing O.A No. 1179 of 2005, in which opposite party no.2 filed counter affidavit specifically stating therein that opposite party no.3 was working as Resource Teacher in IED Scheme run by TE & SCERT. The post of Coordinator exists in the extension service Department of TE & SCERT, which is an ex-cadre post. The executive instructions contained in erstwhile political services Department memo no.8403 dated 10.07.1961 prescribes the procedure for filling up the ex-cadre post. The petitioner joined as Jr. Assistant on 07.04.1989 and his promotional post is Senior Assistant. Neither the opposite party no.3 nor the petitioner can claim promotion to the post of Coordinator as the post is an ex-cadre one. The post of Coordinator, being an ex-cadre post, can be filled up either by direct recruitment or by promotion, but not according to seniority as the appointing authority decides taking into account the duties involved and the ability of the candidate for such work as per memo dated 8403 dated 10.07.1961 of Political Services Department. Therefore, the tribunal, after due adjudication, has come to a definite finding that neither the petitioner nor opposite party no.3 was eligible to hold the post of Coordinator and, as such, held that the promotion given to the petitioner is a mistake on the part of the authority and, therefore, the order of reversion was rightly passed.

7. In ***West Bengal Electricity Board v. Patel Engineering Co. Ltd.***, AIR 2001 SC 682, the apex Court held that a mistake may be unilateral or mutual but it is always unintentional. If it is intentional it ceases to be a mistake.

8. In ***Deva Metal Powders (P) Ltd. v. Commr. Trade Tax, U.P.***, (2008) 2 SCC 439, the apex Court held that the word

mistake means to take or understand wrongly or inaccurately; to make an error in interpreting; it is an error, a fault, a misunderstanding, a misconception.

9. Thereby, considering the meaning attached to the word “mistake”, this Court is of the considered view that it is a misconception or error which is unilateral or mutual but it is always unintentional. As such, when the mistake brought to the notice, the authorities if so likes can rectify their own mistake. For the same, no error can be said to have been committed by the authorities. As such, the authorities, in the present case, have acted in accordance with law by passing the order reverting the petitioner from the post held by her by mistake.

10. Mr. S.D. Routray, learned counsel for the petitioner has relied upon the judgment of this Court in the case of *R. Ramachandra Rao* (supra), where this Court placed reliance on the ratio by the apex Court in the case of *K.I. Shephard v. Union of India*, (1988) 1 LLJ 162, that grant of a post-decisional hearing does not serve any effective purpose, and that once a decision is taken, it is the common experience that there is tendency to uphold it and representation does not yield any fruitful purpose. But the ratio decided by the apex Court, which has been relied upon by learned counsel for the petitioner, has no application to the present case, in view of the fact that a mistake had occurred and, as such, the same has been rectified by passing the order withdrawing the promotion given to the petitioner. Further, the tribunal in paragraph-15 of the judgment has elaborately discussed the matter with regard to mistake committed by the authority and consequentially withdrawing the benefit of promotion granted to the petitioner.

11. In view of the above position, this Court does not find any

illegality or irregularity committed by the tribunal in passing the order impugned dated 08.08.2013 in O.A. No. 710 of 2011. Needless to say, in the meantime, opposite party no.3 has already retired from service. Therefore, no relief can be granted to him at this stage.

12. Accordingly, the writ petition merits no consideration and the same is hereby dismissed.

(DR. B.R. SARANGI)
JUDGE

Ashok/Balaram

(V. NARASINGH)
JUDGE

