

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 14961 of 2012

<i>State of Orissa & Ors.</i>		<i>Petitioners</i>
		<i>Mr. S. Jena, S.C., S&ME</i>
		<i>Deptt.</i>
	Vs.	
<i>Santanu Kumar Dash</i>		<i>Opposite party</i>
		<i>Mr. S. Mallick, Advocate</i>

CORAM:

**DR. JUSTICE B.R. SARANGI
MISS JUSTICE SAVITRI RATHO**

ORDER

22.03.2022

Order No.

05

This matter is taken up through hybrid mode.

2. Heard Mr. S. Jena, learned Standing Counsel for School and Mass Education Department for the petitioners.
3. None appears for the opposite party at the time of call.
4. Since the writ petition is an old case of the year 2012, this Court is not inclined to adjourn the matter. Therefore, this Court proceeded to decide the matter on the basis of the materials available on record.
5. The State-petitioners have filed this writ petition challenging the order dated 31.01.2011 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.2340(C) of 2000, by which the claim of the opposite party, for his absorption as a primary school teacher since 07.03.1981, has been allowed and direction has been issued to the State-petitioners to grant all benefits, including re-fixation of pay under ORSP, 1989 and 1998 and benefit of disbursement of unpaid salary for the period from July to

November, 1995 to the opp. party.

6. Mr. S. Jena, learned Standing Counsel for School and Mass Education Department appearing for the State-petitioners contended that the opposite party was appointed as Primary School Teacher under a scheme, namely, Integrated Education for the Disable Children Scheme (I.E.D.C.S) and after the scheme was over in 1993, he was out of employment. However, taking into consideration his past experience, he was brought under the regular establishment. Therefore, the period, during which he had served under the scheme, should not have been counted for the purpose of seniority. But the tribunal, without considering the same, vide order dated 31.01.2011, extended such benefit to the opp. party, for which the State has filed this writ petition.

7. Having heard learned Standing Counsel for School and Mass Education Deptt. for the State-petitioners and after going through the records, this Court finds that the opposite party, having C.T. qualification, was selected by the District Selection Committee for appointment as primary school teacher in the matric C.T. scale and posted to Naripur U.P. School for physically handicapped children, which was running under the Integrated Education for the Disable Children Scheme (IEDCS) funded by the Govt. of India. After joining in the said post on 07.03.1981, he continued till 1993, when the IEDC scheme was closed. Thereafter, when he was not paid salary, he represented to the Director, Elementary Education for transfer and absorption in any Primary School. On 16.09.1995, it was decided to absorb the

opposite party and other similarly situated persons in regular primary schools as primary school teachers. The Director, Elementary Education, vide order dated 06.11.1995, directed for absorption of the opposite party as Primary School Teacher, pursuant to which he joined in Kuntala Primary School on 01.12.1995. Claiming his service continuity as a Primary School Teacher from his initial date of appointment, i.e. 07.03.1981 and granting the benefit of pay revision under ORSP, 1989 and 1998 and payment of arrear salary from July 1993 to November, 1995 and for all consequential benefits, the opp. party filed O.A. No.2340 (C) of 2000.

8. As a matter of fact, the opposite party was never appointed as regular primary school teacher on 07.03.1981, even though he was matric CT by the time he was given employment under the aforesaid scheme. When the scheme was closed in 1993, he was disengaged from service and taking his experience into consideration, he was re-employed on 01.12.1995. Now, the opposite party claims to treat him as a primary school teacher from his initial appointment, i.e. 07.03.1981. As such, the schematic period cannot be considered for regularization unless any provision of law permits to do so. Nothing has been placed on record to that extent. As such, there is breakage of service for the period from March, 1993 to 01.12.1995. Thereby, the tribunal has committed gross error apparent on the face of the record by holding in the order impugned that there were two spells of service period of the opposite party. In the first spell, he continued from 07.03.1981 to March, 1993, which is the schematic period and the second spell started from

01.12.1995 till superannuation of service with regular primary teacher. Therefore, the order dated 31.01.2011 passed by the tribunal in O.A. No.2340(C) of 2000 cannot sustain in the eye of law and the same is hereby quashed.

9. Accordingly, the writ petition is allowed.

Alok/Sukant

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

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(**SAVITRI RATHO**)
JUDGE

