

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 6602 of 2012

Hrusiksha Parida & Others

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Petitioners

Mr. U.K. Samal, Adv.

Vs.

State of Orissa and Others

.....

Opposite parties

Mr. S. Jena, S.C.,

S & ME Deptt.

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

08.04.2022

Order No.

03.

This matter is taken up through hybrid mode.

2. Heard Mr. U.K. Samal, learned counsel for the petitioners and Mr. S. Jena, learned Standing Counsel for School and Mass Education Department.

3. The petitioners have filed this writ petition assailing the order dated 20.01.2012 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in T.A. No.11(C) of 2011 arising out of O.J.C. No. 9223 of 1999 denying their claim for appointment as Addl. Section Teachers.

4. Mr. U.K. Samal, learned counsel for the petitioners contended that the petitioners were working as Addl. Section Teachers and were appointed between 1988 and 1990 and they are continuing as such till date without any break in service. At the time of appointment, the respective schools, in which the petitioners were appointed, were fully aided M.E. Schools having Class VI and VII only. After appointment of the petitioners, the secretaries in the respective schools had submitted all the required

documents to the D.I. of Schools for approval of the services of the petitioners. While the same was pending either before the D.I. of Schools or before the Director, the schools in question were taken over by the Government with effect from 01.04.1991. as a consequence thereof, all the approved staff of the schools were taken over as Govt. employees, whereas the petitioners were debarred from the said benefit on the ground that their services were not approved. Therefore, the petitioners made several representations to the Director, Elementary Education, Orissa and also to the Government to treat them as government employees. The Director placed the matter of the petitioners before the Government for their adjustment in the existing vacancies. As per the order of the Director, the Deputy Director, Elementary Education, vide his letter dated 20.11.1996, requested Deputy Secretary to Govt. in the Department of School and Mass Education for creation of posts of Addl. Section teachers in taken over U.P.M.E. schools. It is submitted that even if the Government have passed orders in different G.Os. to absorb the untrained Addl. Section Teachers in the taken over M.E. Schools, the representations of the petitioners to both the Director, Elementary Education and the Secretary School and Mass Education Department evoked no response. It is further contended that since the petitioners have discharged their duty as Addl. Section Teacher and similarly situated petitioners have already given the benefit, the petitioners should not be discriminated. As such, the tribunal has committed a gross error apparent on the face of record indicating that the petitioners had approached the Court at a belated stage and did not feel inclined to entertain the relief/prayer

made by the petitioners. Therefore, the petitioners seek quashing of the order passed by the tribunal.

5. Mr. S. Jena, learned Standing Counsel for School and Mass Education Department contended that since the petitioners were not appointed against any sanctioned and created posts, the claim made by them cannot sustain in the eye of law. Therefore, the tribunal, taking note of that fact and taking into consideration the judgment of this Court in ***State of Orissa and others Vrs. Nabin Kumar Beura***, 2011 (1) OLR 149, came to a conclusion that the petitioners were said to have been appointed as Assistant Teacher/Additional Section Teachers by the Secretary of the respective schools as against a non-sanctioned post/unapproved post. There were no substantive/sanctioned posts available for engagement of the petitioners as Assistant Teachers/Additional Section Teachers in the said schools and no permission was granted by the competent authority for such creation of additional section teacher posts for engagement of the petitioners prior to the date of their appointment, nor proper procedure was followed by the concerned authority for selection and appointment of the petitioners and, as such, the appointment of the petitioners against the post of Addl. Section Teachers was bad from the date of inception and also their services were not taken over by the Government, when the schools in which the petitioners were said to be working were taken over in 1991 as per taken over terms and conditions.

6. In view of such position, if the petitioners were appointed against unapproved or unsanctioned posts, the benefit cannot be admissible to them. More so, the petitioners had approached the

tribunal beyond the period of limitation of one year, i.e. after 9 to 11 years and consequentially, on the ground of limitation, the tribunal rejected the O.A.

7. Therefore, this Court is not inclined to interfere with the order dated 20.01.2012 passed by the State Administrative Tribunal, Cuttack Bench, Cuttack in T.A. No.11(C) of 2011 (arising out of OJC No.9223 of 1999). Accordingly, the writ petition merits no consideration and the same is hereby dismissed.

(DR. B.R. SARANGI)
JUDGE

Alok/Sukanta

(SAVITRI RATHO)
JUDGE

