

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No.5751 of 2014

Gouranga Pradhan

.....

Petitioner

Mr. B.Dash, Adv.

Vs.

State of Odisha and others

.....

Opposite parties

Mr. S. Jena, Standing Counsel S&ME

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE S.K. MISHRA

ORDER

22.06.2022

Order No.

06.

This matter is taken up through hybrid mode.

2. Heard Mr. B. Dash, learned counsel for the petitioner and Mr. Mr. S. Jena, learned Standing Counsel for School and Mass Education Department.

3. The petitioner has filed this writ petition seeking to quash the order dated 10.10.2013 passed in O.A. No. 1262 of 2003, by which the Odisha Administrative Tribunal, Cuttack Bench, Cuttack has dismissed the original application filed by the petitioner claiming the benefit of retrospective promotion from the date of promotion of Mr. K.B. Das Mohapatra, i.e., 01.12.1966 to the SES cadre, taking into consideration the service rendered by him from 01.11.1955 to 31.12.1962.

4. Mr. B. Dash, learned counsel for the petitioner contended that though the petitioner joined in service on 01.11.1955 and discharged his duties till 31.12.1962, but the same was not taken into consideration for determination of his seniority and, as such, the person, who was appointed after the petitioner, namely, Mr. K.B. Das Mohapatra, was extended with the benefit of promotion debarring the claim of the petitioner as due and admissible to him.

5. Mr. S. Jena, learned Standing Counsel for School and Mass Education Department contended that since the petitioner was brought over to the LSES cadre w.e.f. 01.01.1963, he has been extended with all benefit as due and admissible to him. As such, no record is available for the period from 01.11.1955 to 31.12.1962 on the basis of which the petitioner claimed the benefit. In absence of any materials, the claim made by the petitioner cannot sustain in the eye of law.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that the petitioner had joined in Government service as a trained matric teacher on 01.11.1955 and was subsequently joined as a Hindi Teacher on 14.10.1958 on promotion and thereafter he was brought over to SES cadre on 01.01.1963. One K.B. Das Mohapatra had also joined Government service as Hindi Teacher on the same day and was also promoted to trained intermediate teacher with effect from 01.01.1963. The petitioner became a graduate in the year 1965. Mr. K.B. Das Mohapatra also became a graduate in the same year. Both of them acquired B.Ed. qualification in the year 1966. Mr. K.B. Das Mohapatra, though junior to the petitioner, was promoted as a trained graduate teacher on 01.12.1966 without considering the case of the petitioner. Therefore, the petitioner made representation on 05.08.1986 praying for fixation of his seniority above Mr. K.B. Das Mohapatra and for giving him promotion with retrospective effect from the date from which Mr. K.B. Das Mohapatra was promoted as trained graduate teacher. Since the same was rejected, the petitioner approached the tribunal by filing original application and the tribunal without taking into

consideration the service rendered by the petitioner from 01.11.1955 to 31.12.1962, dismissed the original application and denied the benefit of promotion from the date his junior, namely, Mr. K.B. Das Mohapatra got promotion.

7. On 22.03.2022, when the matter was listed, Mr. S. Jena, learned Standing Counsel for School and Mass Education Department sought time to examine as to what is the status of the petitioner at the time of entering into the service in the year 1955 and why the period from 01.11.1955 to 01.09.1963 was not taken into consideration; and as to why the petitioner was not extended with the benefit as claimed by him putting him senior to Mr. K.B. Das Mohapatra, who admittedly joined on 10.01.1963, after the petitioner was taken into the service as a trained teacher and more so which rule is applicable to the petitioner at the relevant point of time. The service book of the petitioner also indicates that the petitioner joined the service on 01.11.1955. The reason for non-consideration of his past service since is not available on record, learned Standing Counsel for School and Mass Education Department also sought time to obtain instructions. In compliance of the said order, an affidavit has been filed on 09.05.2022, paragraphs-3, 6 and 7 whereof read thus:-

“3. That, in pursuant to the notice issued by this Hon’ble Court, the predecessor of this deponent has already filed a detail counter on 22.4.2019 by denying the claim of the present petitioner and when the matter was listed on 22.3.2022, the Hon’ble Court after hearing the parties specifically directed the State Opp. Parties to obtain specific instruction as to why the service rendered by the petitioner from 1955 to 1962 has not been taken into consideration and pursuant to said direction passed by this Hon’ble Court, this deponent humbly beg to submit that the petitioner namely Gouranga Pradhan was first joined in his service as

Trained Intermediate Teacher under LSES cadre on 1.1.1963 and accordingly his service book was open in the year 1963 and subsequently the petitioner was given promotion to the SES cadre on 7.9.1970 by taking into his seniority in LSES cadre w.e.f 1.1.1963.

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xxx

6. *That, at the time of promotion of the petitioner to SES cadre on 7.9.1970, the petitioner without claiming his seniority in LSES cadre w.e.f 1.11.1955 and subsequently in the year 1986 i.e after lapse of 20 years from the date of promotion of his counterpart claimed seniority over Sri K.B.Das Mohapatra by opening new Service Book for the past service rendered by him in two different schools. It is also a fact that the petitioner has managed to open two separate volumes of Service Book for the period of his past service rendered by him i.e in Mohit Pur J.B. School for the period from 1.11.1955 to 13.10.1958 and in Jaleswar Government High School for the period from 14.10.1958 to 31.12.1962 in the year 1992 and 1989 respectively. It is submitted that since there was no service record of the petitioner is available in support of his past service from 1.11.1955, therefore his counterpart namely K.B. Das Mohapatra was found senior to him at the relevant point of time and accordingly he was promoted to SES cadre much prior to the petitioner.*

7. *That, in view of the above position and considering the fact that no record is available with regard to continuance of past service of the petitioner for the period from 1955 to 1962 and moreover, the petitioner without any protest has accepted his LSES cadre w.e.f 1.1.1963 and subsequently got promoted to the SES cadre from 7.9.1970, therefore, the claim of the petitioner to count the above period for the purpose of seniority over one K.B. Das Mohapatra is not legally justified and also barred by limitation, hence the prayer made in the writ petition is liable to be rejected.*

8. On perusal of above, it is made clear that the opposite parties have taken a stand that the petitioner had managed to open two separate volumes of service book for the period of past

service rendered by him i.e. in Mohit Put J.B. School for the period from 01.11.1955 to 13.10.1958 and in Jaleswar Government High School for the period from 14.10.1958 to 31.12.1962 in the year 1992 and 1989 respectively. It is also stated that no record is available with regard to continuance of past service of the petitioner for the period from 1955 to 1962.

9. Whereas paragraph-5 of the counter affidavit filed by opposite party no.3, reads thus:-

“5. That, it is humbly submitted that the brief fact of the case is that the petitioner was joined as a Trained Matric Teacher on 01.11.1955 and subsequently joined as a Hindi Teacher on 14.10.1958 on promotion and on 01.01.1963 the petitioner was promoted as a Trained Intermediate teacher. Further he became a graduate in the year 1965 and acquired B.Ed. qualification in the year 1966. One Sri Das Mohapatra , junior to him was promoted as a Trained Graduate teacher on 01.12.1966 without considering his case for which he is claiming to give him promotion to the post of Trained Graduate teacher retrospectively w.e.f the date from which his junior was promoted as Trained Graduate Teacher.”

10. On perusal of the above two affidavits filed by the very same authority, it is made clear that contradictory statements have been made at different point of time by the State Authority. Therefore, if it is admitted fact that the petitioner had joined as a trained matric teacher on 01.11.1955 and subsequently joined as Hindi teacher on 14.10.1958 and on 01.11.1963 he was promoted to the post of trained intermediate teacher and that he became a graduate and also acquired B.Ed. qualification in the year 1966. As such, Mr. K.B. Das Mohapatra, who was junior to him, was promoted to the SES cadre w.e.f. 01.12.1966 without considering his case. Therefore, the petitioner claimed the benefit of

promotion from the date of his junior was promoted.

11. Needless to say, the claim of the petitioner is well justified. Once the authority admits that the petitioner had joined in service on 01.11.1955 and his past service from 01.11.1955 to 31.12.1962 was not taken into consideration, now a different plea has been taken that no records are available with regard to continuance of the petitioner for the period from 1955 to 1962. Therefore, the subsequent affidavit filed on 09.05.2022 cannot be taken into consideration, when the counter affidavit filed earlier by the very same authority is clear to the extent indicated above.

12. In such view of the matter, the tribunal, having not taken into consideration the past service rendered by the petitioner from 01.11.1955 to 31.12.1962 and declaring the petitioner as junior to Mr. K.B. Das Mohapatra and extending the benefit to his junior, has committed gross error apparent on the face of the record. Therefore, the order dated 10.10.2013 passed by the tribunal in O.A. No. 1262 of 2003 cannot sustain in the eye of law and the same is liable to be quashed and is hereby quashed. The opposite parties are directed to extend the benefit of promotion to the petitioner from the date his junior was promoted, i.e., 01.12.1966 to SES cadre and differential pensionary benefits shall be re-fixed in accordance with law and granted to him as expeditiously as possible within a period of four months from the date of production of certified copy of this order.

13. Needless to say, the past service rendered by the petitioner from 01.11.1955 to 31.12.1962 should be taken into consideration notionally so as to determine his financial benefits in terms of the order passed by this Court in the case of *Benudhar Sahoo v. State*

of Orissa (W.P.(C) No. 14965 of 2014) disposed of on 28.03.2022, relying upon the judgment of the apex Court in the case of *Union of India v. B.M. Jha*, (2008) 2 SCC (L&S) 399.

14. The writ petition is accordingly allowed.

Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

Ashok

(S.K. MISHRA)
JUDGE

