

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No. 2798 of 2021

Kishore Chandra Mohapatra ***Petitioner***
Mr. S.K. Das, Adv.

-versus-

State of Odisha & Ors. ***Opposite Parties***
Mr. D. Mund, AGA

CORAM:
DR. JUSTICE S.K. PANIGRAHI

Order
No.

ORDER
22.09.2022

1. This matter is taken up through hybrid arrangement.
2. Heard.
3. The petitioners challenge the legitimacy of the Government order dated 31.08.2020 and beseech for invalidating the same on the ground that no inter se seniority can be fixed on the basis of date of birth of the employees instead of their valid date of joining or entry into the service.
4. Shorn of unnecessary details, the substratum of matter presented before this court remain that the appointment of the petitioner was approved against the 2nd post of Lecturer in Botany from her initial date of joining i.e. 01.11.1994. In the same order of approval order dated 13.05.2010, the Opposite Party No. 4- Dr. Prasant Kumar Pradhan was also approved as against the 3rd post of Lecturer in Botany from his initial date of joining i.e. 05.09.1995. The petitioner is senior to the

Opposite Party No.4 on the basis of the date of joining and therefore she was allowed and approved as against the 2nd post, whereas the Opposite Party No.4 was approved against the 3rd post of Lecturer in Botany.

5. The date of birth as per the service record and as well as the HSC certificate of the Petitioner and the Opposite Party No.4 as it evident from the approval order dated 13.05.2010 are 19.04.1973 and 24.02.1965 respectively. Since, the petitioner is senior to the Opposite Party No.4 on the basis of date of entry into the service she was adjudged senior and the Governing Body being the competent authority fixed inter-se seniority of its staffs and rightly placed the Petitioner above Opposite Party No.4 in all college records including the College calendar, which is issued year to year basis.

6. While the matter stood, the State Government vide letter no. 27964 dated 31.08.2020 issued a new guideline towards fixation of seniority of teachers on the basis of date of birth for the purpose of appointment of Principal and Head of the Department.

7. It is submitted by Learned Counsel for the Petitioner that the date of birth cannot be a ground to determine the seniority when there is a seniority list available. But, by virtue of the letter dated 31.08.2020, the Opposite Party No.4 is claiming for the Head of the Department post, only on the basis of his seniority in age to the Petitioner.

8. Per Contra, it is submitted by Learned Counsel for the Opposite Parties that being misconceived with the relevant guidelines of the Government on fixation of inter-se-seniority among teaching staffs of non-Govt. aided Colleges, the Petitioner has moved to this Court with wrong and malafide submissions.

9. On perusal of the abovementioned pleadings, this court is of the view that in the matter of adjudging seniority of the teachers, the principle of initial date of appointment/continuous officiation or date the entry into service is the valid principle for adjudging inter se seniority of the teachers. This principle was iterated in the case of *Sudhir Kumar Atrey v. Union of India* . The Supreme Court observed:

“We are also of the view that in the matter of adjudging seniority of the candidates selected in one and the same selection, placement in the order of merit can be adopted as a principle for determination of seniority but where the selections are held separately by different recruiting authorities, the principle of initial date of appointment/continuous officiation may be the valid principle to be considered for adjudging inter se seniority of the officers in the absence of any rule or guidelines in determining seniority to the contrary.”

10. In the case of *Ram Janam Singh v. State of U.P.* , the Supreme Court observed that:

“From time to time controversy regarding inter se seniority is raised between persons recruited from different sources to the same service. In past, notional seniority used to be given to one group of officers, purporting to mitigate their hardship or to rectify any alleged wrong done to them in the process of recruitment or promotion. Ultimately it was realized that if liberty is given to fix seniority of an officer or group of officers belonging to a particular category with reference to a notional date, that will lead to great uncertainty in public service. The date of entry into a particular service was considered to be the most safe rule to follow while determining the inter se seniority between one officer or the other or between one group of officers and the other recruited from the different sources. After referring to different judgments of this Court, a Constitution Bench in the case of *Direct Recruit Class II Engineering Officers' Assn. v. State of Maharashtra* came to the same conclusion. The same has been reiterated in the case of *State of W.B. v. Aghore Nath Dey* . It is now almost settled that seniority of an officer in service is determined with reference to the date of his entry in the service which will be consistent with the requirement of Articles 14 and 16 of the Constitution.”

11. Similarly, in another instance, the Supreme Court in the case of *Prem Kumar Verma v. Union of India*, held that “the principal mandate of the rule is that seniority is determined on the basis of date of appointment. Proviso (2) lists out two rules. The first is that those selected and appointed through a prior selection would rank senior to those selected and appointed through a later selection process.....The second limb of the second proviso clarifies that when merit based, or seniority based promotions are resorted to, the applicable norm would be seniority in the feeder cadre, to forestall any debate about the rule of merit (in the selection) being the guiding principle”. Further, the court observed that “the advertisements were issued one after the other, and more importantly, that this was the first selection and recruitment to a newly created cadre, the delay which occurred on account of administrative exigencies (and also the completion of procedure, such as verification of antecedents) the seniority of the promotees given on the basis of their dates of appointment, is justified by Rule 27 in this case”, and hence, dismissed the appeals.”

12. In regards to the issue of “date of birth”, the State has contended that in the category of teachers receiving block grant and working in category-III colleges, the date of appointment varies from the date of admissibility of the post in many cases. It will be highly difficult on part of the

department to assess the eligibility date by scrutinizing each and every individual post of such colleges. Hence, they have adopted a common apparatus to fix the date of birth of the employees concerned of the college for determination of inter-se seniority. However, this approach of the State seems to be extremely fallacious and poor legal sustainability index. Difficulty in following a certain rigorous procedure does not allow the State department to deviate from the principal logic established by the Supreme Court. Moreover, the date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from the different sources.

13. From the above, the legal position with regard to determination of seniority in service, it can be summarized as follows:

- i. The effective date of selection has to be understood in the context of the service rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be.
- ii. Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment

is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from the different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

14. In the light of above discussions, and guided by the precedents narrated hereinabove and in accordance to decision of this court in *Kamala Kanta Das v. State of Odisha & Ors* , this Court hereby quashes Guidelines dated 31.08.2020 issued by the Department of Higher Education, Government of Odisha containing the mechanism for fixing the seniority of teachers of non-Government Colleges for the purpose of appointment of Principal and HODs and directive issued by the State Government whereby the inter se seniority was to be adjudged according to the date of birth.

15. It is further clarified that all the appointments of HODs made by following the Guidelines dated 31.08.2020 issued by the Department of Higher Education, Government of Odisha be made afresh by taking into consideration of date of entry into service as the basis for seniority. The Opposite Party No.1 is directed to come out with fresh guidelines accommodating the principle of seniority as enunciated by

the Supreme Court of India which is an integral part of our service jurisprudence.

16. The Writ Petition is accordingly allowed. No order as to cost.

(Dr. S.K. Panigrahi)
Judge

SD

