

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No.12870, 10558, 10559 and 10560 of 2014

W.P.(C) No.12870 of 2014

<i>Madhusmita Dash</i>		<i>Petitioner</i> <i>Mr.Asish Mishra, Advocate</i> <i>on behalf of Mr.Sidhartha Das, Adv.</i>
	Vs.	
<i>State of Odisha and others</i>		<i>Opposite Parties</i> <i>S.Jena, SC,</i> <i>School & Mass Education Deptt.</i>

W.P.(C) No.10558 of 2014

<i>Prasanta Kumar Dash</i>		<i>Petitioner</i> <i>Mr. J.K.Rath, Sr. Adv. along with</i> <i>Mr. D. N. Rath, Advocate</i>
	Vs.	
<i>State of Odisha and others</i>		<i>Opposite Parties</i> <i>S.Jena, SC,</i> <i>School & Mass Education Deptt.</i>

W.P.(C) No.10559 of 2014

<i>Dr. Ajay Kumar Swain</i>		<i>Petitioner</i> <i>Mr. J.K.Rath, Sr. Adv. along with</i> <i>Mr. D. N. Rath, Advocate</i>
	Vs.	
<i>State of Odisha and others</i>		<i>Opposite Parties</i> <i>S.Jena, SC,</i> <i>School & Mass Education Deptt.</i>

W.P.(C) No.10560 of 2014

<i>Satrughna Chhotaray</i>		<i>Petitioner</i> <i>Mr. J.K.Rath, Sr. Adv. along with</i> <i>Mr. D. N. Rath, Advocate</i>
	Vs.	
<i>State of Odisha and others</i>		<i>Opposite Parties</i> <i>S.Jena, SC,</i> <i>School & Mass Education Deptt.</i>

CORAM:

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

**ORDER
07.04.2022**

**Order No.
06.**

These matters are taken up through hybrid mode.

2. Heard Mr. Asis Kumar Mishra, learned counsel appearing on behalf of Mr. Sidhartha Das, learned counsel for the petitioner in W.P.(C) No.12870 of 2014; Mr. J.K.Rath, learned Senior Advocate appearing along with Mr. D.N. Rath, learned counsel for the petitioners in W.P.(C) No.10558 of 2014 and rest of the connected matters; and Mr. S.Jena, learned Standing Counsel for School and Mass Education Department, appearing for State opposite parties.

3. The petitioners, who are in-service candidates, have filed these writ petitions challenging the common judgment dated 03.06.2014 passed by the Odisha Administrative Tribunal in O.A. No. 1042 of 2012 along with other 27 number of Original Applications, wherein the tribunal came to observe that, so far as the procedure adopted for selection of in-service teachers in the posts of Teacher Educator is concerned, final select list of candidates was not prepared and only the list of in-service candidates applied for engagement as Teacher Educators indicating the total percentage of marks and average percentage of each applicant was prepared, and by so observing, the tribunal held that since the process of selection has not reached its finality, the relief sought by the petitioners is premature and hence cannot be entertained.

4. Since common order dated 03.06.2014 passed by the tribunal in O.A. No. 1042 of 2012 and 27 others is under challenge in the above four writ petitions, they are heard together and disposed of by this common judgment.

5. Mr. Asish Mishra, learned counsel for the petitioner in W.P.(C)

No.12870 of 2014 and Mr. J.K. Rath, learned Senior Counsel appearing for the petitioners in W.P. (C) No. 10558 of 2014 and batch of cases emphatically submitted before this Court that the Government of Odisha in Education and Youth Services Department issued a resolution dated 30.11.1990 on the subject 'Personnel Policy' for the D.I.E.T.s". Para 4 (i) of the said resolution deals with Teacher Educator, which speaks that the Teacher Educators shall be appointed both by direct recruitment and by selection from among the in-service teachers of the school wing who are otherwise eligible for such post and possess the requisite qualifications. The proportion of the direct recruitment and selection will be 50:50. In case of direct recruitment, weightage shall be given for experience. It is contended that since the petitioners are in-service teachers, their cases were to be considered on the basis of 50% quota made available for them pursuant to said clause. As such, they have got requisite qualifications and also have got experience as in-service candidates and otherwise also eligible for the post of Teacher Educators. But the authorities, while considering the case of the petitioners for giving such benefit, abruptly stopped the advertisement of the year 2007 and again in the year 2011 issued fresh advertisement. Since the petitioners' case was not considered, they approached the tribunal by filing Original Applications referred to above. But the tribunal without application of mind passed the impugned order dated 03.06.2014, for which they have approached this Court in the present writ petition.

6. Mr. S. Jena, learned Standing Counsel for School and Mass Education Department, appearing for the opposite parties contended that admittedly the petitioners are in-service candidates and they are entitled to be selected, pursuant to resolution under Annexure-1 dated 13.11.1990, for appointment as Teacher Educator against 50% quota, but the process for the same though was initiated in the year 2007, no

final list was published at that point of time. The opposite parties have cancelled such selection process and in the year 2011 fresh advertisement was issued. As such, the petitioners have never been selected for getting appointment either in 2007 or 2011 pursuant to fresh notice. Thereby, no right has been accrued in their favour to get any appointment, as claimed by them. Consequentially, it is contended that the tribunal was well justified by passing the impugned order, which does not warrant any interference by this Court.

7. Having heard learned counsel for the parties and after going through the records, this Court finds that the facts, which are placed on record, are not being disputed. The Govt. of Odisha in Education and Youth Services Department issued a resolution on 30.11.1990 on the subject 'Personnel Policy' for the D.I.E.Ts. The said personnel policy for the D.I.E.Ts had been formed in the context of Universalisation of Elementary Education, revitalizing Elementary Teacher Education Programme. In that resolution, it was categorically mentioned that the Govt. of India had issued guidelines for some of the existing Secondary Training Schools as District Institutes of Education & Training (DIET), one in each district to cater to the needs of training of teachers working at the elementary level of both formal and non-formal streams.

8. Clause 4 (i) of the said resolution deals with Teacher Educator. It envisages that the Teacher Educators shall be appointed both by direct recruitment and by selection from among the in-service teachers of the school wing who are otherwise eligible for such posts and possess the requisite qualifications. The proportion of the direct recruitment and selection will be 50:50. Para-4 (vi) of the said policy prescribes qualification and experiences for Teacher Educator as shown in Appendix-I and further provides that the Government may relax qualification and experience in suitable cases. In Appendix-I, it has been categorically mentioned that a candidate must have acquired B.Ed

with M.A./M.Sc in a school subject with three years teaching experience in elementary schools/ ETTI. Vide letter dated 19.3.2007, the Government wrote a letter to the Director, Elementary Education, Odisha and Director TE & SCERT for sponsoring the names of eligible elementary teacher for the post of Teacher Educator in the DIETs. In the said letter, it had been categorically mentioned to sponsor the names of elementary teachers eligible for the post of Teacher Educators as per 'Personnel Policy'. In obedience to the said letter, the D.I. of Schools sponsored the name of the petitioners to opp. party No.3 along with their bio-data for consideration of their names for the post of Teacher Educator in DIETs. After a lapse of more than two years, i.e., on 1.7.2009, the opp. party No.1 wrote to the opp. parties No. 3 and 2 for furnishing of five years CCRs of the petitioners, who had applied for the post of Teacher Educator, for consideration of their cases. In obedience to the said letter, the opp. party no.3 wrote a letter on 16.7.2009 to the concerned D.I. of schools to furnish the five years CCRs in respect of the teachers of their Education district, as per the list enclosed, by 30.7.2009 positively for onward transmission to Government. After receipt of the necessary documents from all quarters, a meeting was held on 30.3.2010 under the Chairmanship of the Principal Secretary, S & ME Department in the residential office of the Minister S & ME. In that meeting, opp. party No.2 stated that as per the DIET (personnel policy 1990), 50% of the posts of Teacher Educator for DIETs are to be filled up from among the teachers of the schools having Teacher Institute (ETTI) through advertisement, on the basis of merit. Accordingly, the department had invited such applications from the D.I. of schools and the concerned D.I. of schools have furnished 1122 numbers of applications and CCRs of only 135 candidates. At that point of time, opp. party No.2 issued an advertisement on 8.5.2011 in Odiya Daily Dharitri inviting

applications once more for filling of 116 numbers of posts of Teacher Educators in different DIETs/DRCs of the State on or before 17.6.2011. The said advertisement indicates that the teachers who have applied earlier/serving in DIETs on adhoc/deployment/deputation basis need to apply again.

9. In the year 2007, there were about 14 numbers of vacancies as per quota prescribed for such category when government initiated proposal to fill up the vacancies by directing the concerned D.Is to sponsor the name. Subsequently, more vacancies were accumulated till 2009 (approximately 40 to 45 numbers of vacancies were there) when the CCRs of the candidates, including the petitioners were sent to appropriate quarter for consideration of their cases in the post of Teacher Educator. Since the authority, i.e., opp. party No.2 issued an advertisement clubbing the vacancies of different years without cancelling the previous selection process or by declaring that selection process to be bad in law, such advertisement reflecting the vacancy of 2007-2009 is illegal and not permissible in the eye of law. If the vacancies of different years will be clubbed together, many candidates, who would have been eligible for a specific year due to lack of experience or qualifications, might have been eligible in the subsequent years. Accordingly, it was contended that selection process should have been confined to one year vacancy. It had also been brought to the notice of the tribunal that all the posts of Teacher Educators should have been filled up by in-service teachers, but not by direct recruitment on contractual basis.

10. Be that as it may, on the basis of materials available on record, the tribunal came to a finding that the applicants though had submitted their applications, as per the advertisement published and though process of selection was continuing, but admittedly they had not been selected nor their names found place in the select list. Therefore, they

approached the tribunal claiming their appointment. But facts remains, since their names were not there in the select list, no right could be accrued in their favour as per the law laid down by the apex Court. In that view of the matter, so far as right of the petitioners to be considered for selection is subject to their selection pursuant to list published by the authority. As such list has not been published, the petitioners cannot claim that they should be given appointment. The tribunal, while dealing with the matter, took note of the fact that pursuant to advertisement issued on 8.5.2011, applications were invited from the eligible teachers with a stipulation that those teachers who had applied earlier/serving in DIETs on ad hoc/deployment/deputation basis, need to apply again, and accordingly observed that there was no irregularity in the advertisement itself. Otherwise also, the petitioners having not been selected, no right is accrued in their favour and, as such, they cannot pursue the matter either before the tribunal or before this Court.

11. Accordingly, this Court does not find any illegality or irregularity in the order of the tribunal, so as to warrant interference by this Court. Therefore, the writ petitions merit no consideration and the same are accordingly dismissed.

(DR. B.R. SARANGI)
JUDGE

Arun/Bichi

(SAVITRI RATHO)
JUDGE