IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.2943 of 2022

Amulya Panigrahi .... ***Petitioner***
Mr. Laxmikanta Mohanty, Advocate

-versus-

State of Odisha and others .... ***Opposite Parties***
Mr. S.Jena,
Standing Counsel S. & M.E.

CORAM:
JUSTICE A.K. MOHAPATRA

ORDER
07.02.2022

Order No.

01. 1. This matter is taken up through Hybrid arrangement (virtual/physical mode).

2. Heard Mr. L. Mohanty, learned counsel for the Petitioner and Mr. B. Mohanty, learned Standing Counsel appearing for the School and Mass Education Department.

3. The present writ petition has been filed by the Petitioner seeking for a direction to the Opposite Parties to grant retrospective promotion to the Petitioner to Jr. SES Cadre with notional benefit as directed by this Court in similar matter in CONTC (CPC) No.214 of 2017, arising out of O.A. No.3885(c) of 2012.

4. The recruitment to the post of teachers in the Government High School is being regulated by the State Government under the Orissa Subordinate Education Service (General Branch) Rules, 1972. As per Sub-rule 3 of 1972 Recruitment Rules, all Subordinate offices under the control of Director shall form one unit.

In the said Rules, there exists three Cadres (i) Lower Subordinate Education Service (LSES), (ii) Junior Subordinate Education Service (Jr. SES) and (iii) Senior Subordinate Education Service (Sr.SES).

5. As per Rule 10-A of Orissa Subordinate Education Service Rules, 1972, LSES cadre teachers on completion of three years of service with B.Ed qualification are eligible for promotion to Jr. SES cadre. As per Rule 10(B)(ii) of the said Rule the selection committee shall meet once a year ordinarily during the 1st week of April and prepare a list of persons eligible for appointment by way of selection under Rule 10-A of said rule.

6. Two teachers, namely, Nabin Kumar Khamari & Rabinarayan Panda approached learned OAT, Cuttack in O.A. No.1673(C) of 1993 and O.A. No.1804 of 1998 with a prayer to grant promotion to Jr. SES Cadre against the year wise vacancy of 1984 as they were appointed in LSES cadre in the year 1981. During pendency of the case, they were promoted to Jr. SES Cadre in the year 1994. The matter was heard by learned OAT, Cuttack and ultimately learned Tribunal relying upon a decision of ***Binod Kumar Singhal vs. Union of India***, reported in ***1994(2) SLR 695*** decided that departmental promotion committee is required under the instruction to meet every year for selecting persons for promotion on regular basis. Vacancy occurring during the relevant year cannot be clubbed together and zone of consideration cannot be enlarged. Ultimately, learned Tribunal directed to grant retrospective promotion to the Petitioners against the year wise vacancy pertaining to the year 1984 by convening special D.P.C. in their order dated 28.11.2007.

7. The Association of All Odisha Government School Teachers submitted a representation to Opposite Party No.1 dated 25.09.2010 to consider the cases of similarly placed persons for retrospective promotion to Jr. SES cadre against the year wise vacancy. On receipt of the representation, the Opposite Party No.1 directed the Opposite Party No.2 to consider the grievance of the teachers of Old Govt. High School, who were eligible for promotion to Jr. SES cadre on completion of three years of services.

8. The Opposite Party No.2 intimated the Opposite Party No.1 that due to non-functioning of the State Selection Board as well as non-holding of DPC in every year, the deserving teachers of Government High School were not granted promotion, even though they are eligible for promotion to Jr. SES cadre for promotion on completion of three years of service in LSES cadre.

9. It is further pleaded that one Nabin Kumar Khamari similarly placed teacher had approached the learned Tribunal in O.A. No.1804 of 1998 for grant of retrospective promotion against the year wise vacancy of the year 1986, as he was appointed in the year 1983, he was promoted to Jr. SES Cadre in the year 1998.

It is submitted that the said Nabin Kumar Khamari was promoted to Jr. SES cadre in the year 1998. Learned Tribunal vide order dated 07.09.2011 allowed the case with a direction to the Opposite Parties to grant retrospective promotion to said Nabin Kumar Khamari to Jr. SES cadre against the year wise vacancy of the year 1986 with notional benefits.

10. Pursuant to order of the learned Tribunal as well as order passed by the Opposite Party No.2, Director Secondary Education, Odisha, Bhubaneswar vide letter dated 26.02.2013, retrospective promotion was given to said Nabin Kumar Khamari from 10.08.1986. He was allowed to draw arrear salary from 13.08.1997 i.e. from the date of his joining in Jr. SES cadre.

11. After verification of records the Opposite Party No.2 prepared a list of 1138 similarly placed old Government School teachers and submitted a report to Opposite Party No.1 vide letter dated 07.02.2014 with a recommendation to grant retrospective promotion against the year wise vacancies as has been granted in favour of Nabin Kumar Khamari and Rabinarayan Panda as per orders of the learned Tribunal passed in O.A. No.1804 of 1998 and O.A. No.1673(C) of 1993. In the said recommendation, it has been clearly mentioned as follows:-

> "It is a fact that the LSES teachers in old Government Schools were deprived of getting promotion to Jr. SES cadre due to non-holding of DPC every year, though they have requisite qualification i.e. continuous service for a period of three years in LSES cadre having B.Ed qualification."

12. Law is well settled that once a decision is rendered by any court of law and it is implemented by the authorities, such benefits are to be extended to similarly placed persons. The Hon'ble Supreme Court of India in the matter of ***K. Shephard and others vrs. Union of India,*** reported in **AIR 1988 S.C. 686** have decided that once a decision is taken by court of law and it is implemented by the authorities, the said benefit is to be extended to similarly placed employees even though they have not approached the court of law.

Similar view was taken by the Hon'ble Supreme Court of India in the matter of ***Maharaj Bhatta and another vrs. State of J.K. and others,*** reported in **(2008) 9 SCC 24**. Their Lordships decided that once a decision is taken by a court of law and State authorities have implemented the order, the said benefit should have been extended to all similarly placed persons.

13. In a recent decision Hon'ble Supreme Court of India in the matter of ***State of U.P. vrs. Arvind Kumar Srivastav,*** reported in **(2015) 1 SCC 347** that if a judgment has been delivered "in Rem with intention to give benefits to all similarly placed persons, the same benefit is to be given to all similarly placed persons, irrespective of the fact whether they have approached the court or not. With the aforesaid pronouncement of law, a legal obligation is cast upon the authorities to extend the benefits accruing under any order/judgment to all similarly situated persons.

14. The Opposite Party No.2 vide order dated 29.09.2021 granted retrospective promotion to the petitioner in **O.A. No.3885(C) of 2012**, namely, ***Pratush Kumar Das*** by antedating his order of promotion to Jr. SES cadre w.e.f. 26.02.1988 (after completion of three regular service in LSES cadre with notional benefits.)

It is claimed by the learned counsel for the Petitioner that the Petitioner being similarly placed with that of the applicant in O.A. No.3885(C) of 2012 and a batch of similar cases, is entitled for retrospective promotion to Jr. SES cadre w.e.f. 01.09.1989 (on completion of three years of service in LSES Cadre) with notional benefits. However, till date the said benefits have not been extended to him.

15. It is submitted that similar benefit has also been given by the Government vide order issued by the ***Government of Odisha School and Mass Education Department Letter No.25057 dated 23rd December, 2021.*** It is further submitted by learned counsel for the Petitioner that the Petitioner has submitted a representation to the Secretary, School and Mass Education Department, Odisha and seeks for a direction to the Opposite Party No.1 to consider such representation in the light of the position of law analyzed hereinabove.

16. Learned counsel appearing for the School and Mass Education Department submits that he has no objection, if a direction is given to the Opposite Party No.1 to consider the representation of the Petitioner in the light of the analysis made hereinabove.

17. Having heard learned counsel for both the sides and after perusal of the records, this Court disposes of the present writ petition with a direction to the Opposite Party No.1 to consider the representation of the Petitioner dated 29.10.2021 stated to be pending before the Opposite Party No.1 within a period of twelve weeks from the date of production of a authenticated copy of this order. It is needless to mention here that the Opposite Party No.1 shall do well to consider the case of the Petitioner taking into account all the materials placed before him as well as the judgment of the Hon'ble Supreme Court (supra) and further keeping in view that the similar benefit has also been given to the similarly situated persons. The representation shall be disposed of by a speaking and a reasoned order and the decision thereon shall be communicated to the Petitioner within a period of ten days from the date of such decision.

18. With the aforesaid observation and direction, the writ petition is disposed of.

19. Issue urgent certified copy.

(A.K. Mohapatra)
Judge

RKS

HIGH COURT
ORISSA