

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 2156 of 2014

State of Orissa and others

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Petitioners

*Mr. D.R. Mohapatra, Standing
Counsel for S&ME Department.*

Vs.

Duryodhan Jena

.....

Opposite party

CORAM:

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

ORDER

17.03.2022

Order No.

03

This matter is taken up through hybrid mode.

2. Heard Mr. D.R. Mohapatra, learned Standing Counsel for S & M.E. Department.

3. The State-petitioners have filed this writ application assailing the order dated 31.10.2011 passed by the Orissa Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 851 of 2009 and O.A. No. 3932 (C) of 2010, whereby a direction was given to the State-petitioners to extend trained scale of pay in favour of the opposite party with effect from 07.10.1995, i.e. the date on which he attained 48 years and accordingly to fix up the pay with increments taking into account the revised scale of pay, as applicable to him from time to time.

4. Mr. D.P. Mohapatra, learned Standing Counsel for S & M.E. Department contended that the opposite party is not entitled the benefit as directed by the Tribunal and at best he is entitled to get the benefit with effect from 12.08.1997 instead of with effect from 07.10.1995, when the opposite party attained the age of 48 years. Therefore, he sought modification of the order passed by the Tribunal extending the trained graduate scale of pay in favour of the opposite party with effect from 12.08.1997 instead of, with effect from 07.10.1995.

5. Perused the record and heard learned Standing Counsel for School & Mass Education Department. The factual matrix of the case is that, the opposite party is a retired Asst. teacher of Sashi Bhusan Nodal U.P. (ME) School, Ghatipiri in the district of Dhenkanal. He approached the Orissa Administrative Tribunal in O.A.851(C) of 2009 with a prayer to direct the present petitioners to grant trained scale of pay in his favour with effect from 07.10.1995, on attaining the age of 48 years in terms of principles decided by this Tribunal in the case of *Ashok Kumar Kudeka & others Vs. State of Orissa and others* reported in (1999) 2 ATT (OAT) 227 and accordingly to fix his pension and grant the same by quashing the order dated 30.08.2008 under Annexure-4 passed by the Director, Elementary Education, Orissa, in rejecting the his claim for grant of trained scale of pay on attaining the age of 48 years. It further appears that since the retiral dues of the opposite party was not disbursed in his favour, he had filed O.A 3932(C) of 2010 with a prayer to direct the respondents to sanction/disburse all retirement dues and final pension in his favour, fixing trained scale of pay with effect from 7.10.1995 i.e. the date of attaining the age of 48 years and revise his pay and pension accordingly as per ORSP Rules. It also appears that the opposite party having Matric qualification was appointed as an Assistant Teacher in Sashibhusana M.E.School in the district Dhenkanal by the Secretary of the said school and accordingly he joined the said post on 1.8.1970. The said school was taken over by the Government with effect from 1.4.1991 and the opposite party become a Government servant from that date. While continuing as Assistant Teacher with untrained scale of pay, vide order dated 27.8.1992, the opposite party was allowed the financial benefit of a trained teacher with effect from 7.10.1995, as his date of birth was 7.10.1947 in view of his attaining the age of 48 years in terms of the Explanation VI after rule 15 of the Orissa Elementary Education Method of Recruitment and Condition of Services of

Teacher and Officers Rules, 1997. Subsequently vide order dated 6.8.2004, the said benefit of trained scale was allowed in favour of the opposite party with effect from 12.08.1997, in modification of the earlier order dated 27.08.2022. Thereby, the opposite party approached the Tribunal in O.A. 337 of 06 claiming trained scale of pay on attaining the age of 48 years i.e. with effect from 7.10.1995. The said O.A. was disposed of by the Tribunal vide order dated 30.3.2006, with a direction to the present petitioners to consider the representation of the opposite party and dispose of the same. Pursuant to the said order, petitioner no.2, Director of Elementary Education, Orissa considered the representation of the opposite party and disposed of the same vide order dated 30.8.2008 rejecting the claim of the opposite party for trained scale of pay with effect from 7.10.1995, which was subject matter of dispute in O.A. No. 851 (C) of 2009.

6. There is no dispute that the Orissa Elementary Education Method of Recruitment and Condition of Services of Teacher and Officers Rules, 1997 has come into force with effect from 12.08.1997, where the provisions has been prescribed to extend the benefit of Trained Graduate Scale of pay on attaining the 48 years. There is also no dispute that the opposite party attained 48 years only on 07.10.1995. Therefore, the relief which the opposite party claims to get from the date he attained the age of 48 years is not automatic one. The claim of the opposite party to extend the benefit with effect from the date of attaining the age of 48 years is dependent upon the rules framed by the authority. As such, it is admitted by the Standing Counsel for School & Mass Education Department that from the date of commencement of 1997 Rules, the opposite party is entitled to get the benefit of attaining the age of 48 years, i.e. with effect from 12.08.1997. The only question is to be considered whether the opposite party is entitled to get the benefit of Trained Graduate Scale of Pay on attaining the age of 48 years with

effect from 07.10.1995 or from the date the 1997 Rule came into force, i.e. with effect from 12.08.1997. But fact remains, before 1997 Rule came into force, the Orissa Subordinate Education (Method of Recruitment and Conditions of Service) Rules, 1993 was governing the field. Rule-30 of the said Rule prescribes as follows:-

“An untrained teacher belonging to the Junior grade of the service shall on attaining the age of 48 years be excepted (exempted) from undergoing training and shall be entitled to financial benefits of a trained teacher.

Provided that the name of such untrained teacher shall not be placed in the gradation list of persons holding the degree of Bachelor of Education.”

7. Thereby, even if Rule 1997 has not come into force on the date, the opposite party attained the age of 48 years, then also, the opposite party's service can be regulated under 1993 Rules because by that time, the opposite party has already become a State Government Employee, with effect from 1991. In that view of the matter, applying Rule-30 of 1993 Rules, the opposite party is entitled to Trained Graduate Scale of pay on attaining the age of 48 years. Thereby, the Tribunal has not made any error in the impugned order, so as to warrant interference by this Court.

8. Thus, this Court is not inclined to entertain the writ petition, which is accordingly dismissed.

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(DR. B.R. SARANGI)
JUDGE

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(SAVITRI RATHO)
JUDGE