

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 4215 of 2020

An application under Articles 226 & 227 of Constitution of India.

AFR

Rajanigandha Kumura

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Petitioner

-Versus-

State of Odisha & Others

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Opp. Parties

Advocate(s) appeared in this case:-

For Petitioner : M/s. S.K. Mandal, M. Mohapatra,
A.C. Sahoo, Advocates.

For Opp. Parties : Mr. P.K. Panda,
Standing Counsel for
School & Mass Education
Department.

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

23rd September, 2022

SASHIKANTA MISHRA, J.

The petitioner was appointed as Sikshya Sahayak on 07.12.2006. After completion of three years of service she was treated at Junior Teacher. While the petitioner was continuing as such in Bindupur P.U.P.

School under Naktideula Block, one Lambodar Behera was deployed as C.R.C.C., Jamujori Cluster on the basis of Office Order dated 08.08.2013 of the Collector, Sambalpur. In order to be relieved from the post of Headmaster in Bindupur P.U.P. School, the said Lambodar Behera handed over the charge to the petitioner as no other regular teacher was posted in the said School. Subsequently, one Basanta Kumar Kissan (opposite party No.4), who was also a Junior Teacher in the said Bindupur P.U.P. School, was regularized w.e.f. 03.01.2013. After his regularization, the opposite party No.4 was assigned the charge of Headmaster of Bindupur P.U.P. School on the basis of the order passed by the Block Education Officer on 25.07.2016. The petitioner was directed to handover the detailed charges to opposite party No.4 but she did not do so, whereupon she was called upon to submit explanation and her remuneration was also held up for the period from July, 2018 to December, 2018. The petitioner approached the Odisha Administrative Tribunal in O.A. No. 2966 of 2018

challenging the order directing her to hand over charges to opposite party No.4. The Tribunal disposed of the O.A. by order dated 11.12.2018 by directing the opposite party authorities to treat the paper book of the O.A. along with its annexures as representation and to consider and dispose of the same within a period of two weeks. Pursuant to order of the Tribunal, the Block Education Officer vide order dated 06.09.2019 rejected the claim of the petitioner. Being aggrieved, she approached this Court in W.P.(C) No. 19180 of 2019, which was disposed of by order dated 27.09.2019 directing the Director, Elementary Education to take a decision on the representation said to have been filed by the petitioner within a period of three weeks. Pursuant to such order, the Director of Elementary Education by order dated 10.12.2019 rejected the prayer of the petitioner for allowing her to continue as in-charge Headmaster of Bindupur P.U.P. School. Challenging such rejection of her representation, the petitioner has approached this Court with prayer to quash the same and to allow her to continue as Headmaster of Bindupur

P.U.P. School. It is contended by the petitioner that the said Basanta Kumar Kissan (opposite party No.4) being junior to her, could not have been appointed as the Headmaster and secondly, she should also have been regularized with effect from the date the opposite party No.4 was regularized.

2. Counter affidavit has been filed by opposite party No.3 reiterating the undisputed facts averred in the writ petition. It is further stated that after completion of three years as Junior Teacher, the petitioner was time and again called upon by the opposite party No.3 to produce relevant documents, such as, testimonials and original certificates for verification in order to regularize her service as Level -V Teacher, but she has failed to do so. On the other hand, the opposite party No.4 being admittedly senior to the petitioner, was rightly regularized w.e.f. 03.03.2013 and assigned with the duty of in-charge Headmaster of the school. There is no illegality in the impugned order.

3. The petitioner has filed rejoinder mainly contending that the opposite party No.4 is not senior to her as both of them were appointed as Sikshya Sahayak on 07.12.2006. Since the petitioner was originally assigned the work of in-charge Headmaster, she should have been allowed to continue as such. Moreover, the petitioner should have been regularized also on 03.01.2013 instead of 13.01.2022, when she was actually regularized.

4. Heard Mr. S.K. Mandal, learned counsel for the petitioner and Mr. P.K. Panda, learned Standing Counsel for School and Mass Education Department.

5. It is argued by Mr. Mandal that the petitioner and opposite party No.4 having been appointed as Sikshya Sahayak on the same date, i.e., 07.12.2006, the opposite party no.4 cannot be treated as senior to her. It is also contended that the authorities having regularized the services of opposite party No.4 w.e.f. 03.01.2013 cannot make him senior to the petitioner, inasmuch as she is eligible to be regularized from the said date. These aspects

have not been taken into consideration by the opposite party No.1 while passing the impugned order.

6. Mr. P.K. Panda, on the other hand, has submitted that notwithstanding the fact that the petitioner and opposite party No.4 may have joined on the same date, yet opposite party No.4 was regularized with effect from 03.01.2013, while the petitioner was regularized only on 13.01.2022. This makes the opposite party No.4 senior to the petitioner in the cadre and therefore, he was rightly asked to remain in-charge of the Headmaster of the school.

7. The main grievance of the petitioner appears to be the direction of the opposite party authorities to handover the charge of in-charge Headmaster to opposite party No.4. Firstly, the petitioner was occupying the said post purely as a stop-gap arrangement upon deployment of the previous incumbent, namely, Lambodar Behera as C.R.C.C., Jamujori Cluster. As such, she cannot claim any vested right over the said post. Secondly, the opposite party No.4 being a regular Teacher was thought fit by the

authorities concerned to discharge the duties of Headmaster. No illegality can be attributed to this decision.

8. After going through the impugned order carefully, this Court finds that taking into account the seniority of opposite party No.4 and the contractual nature of engagement of the petitioner at the relevant time as Junior Teacher, the decision to direct her to handover charge of Headmaster to opposite party No.4 was taken. This Court finds no infirmity much less any illegality in such decision so as to interfere.

9. As regards the claim for regularization w.e.f. 2013, this is a matter beyond the purview of the present writ application. Be it noted here that the petitioner has in the meantime been regularized w.e.f. 13.01.2022. She claims the benefit of regularization from 2013, obviously seeking parity with opposite party No.4, who is also said to have joined as Sikshya Sahayak with the petitioner on the same date. Now opposite party No.4 was regularized way back on 03.01.2013. The petitioner never came

forward to challenge non-consideration of her case for regularization. On the contrary, there are materials on record to show that despite being called upon time and again by the opposite party No.3, the petitioner did not furnish the required documents for verification and consideration of her case for regularization. Therefore, this Court finds no reason to allow the petitioner to agitate the stale issue at this distance of time.

10. For the foregoing reasons therefore, this Court finds no merit in the writ petition, which is therefore dismissed.

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संयुक्त न्याय
Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 23rd September, 2022/ A.K. Rana