

IN THE HIGH COURT OF ORISSA AT CUTTACK
WP(C) No.4847 of 2022

Bijaya Kumar Malik

Petitioner

Mr.Pitambar Panda,Adv.

-versus-

State of Odisha & others

Opp. Parties

Mr.S.Mishra, SC
(Adv. For S & M.E Deptt.)

CORAM:

MR. JUSTICE S.K. PANIGRAHI

ORDER

05.04.2022

Order No.

02

- 1.This matter is taken up by hybrid mode.
2. Heard.
3. The petitioner has filed this writ petition challenging the actions of opposite parties, more particularly O.P.2/Director of Elementary Education, Odisha, Bhubaneswar, in not considering his online application for transfer on the ground of mutual transfer in spite of fulfilling the required provisions under 3(A) of Rule 2018.
4. The grievance of the petitioner, who is working as an Assistant Teacher, Level-V(A) having CT(+2 Science) in G.P. Nodal High School, Panchutikiri under Block Education Officer, Chandbali in the district of Bhadrak

But, due to rejection of his application, he filed an appeal before the Appellate Authority i.e. Director of Elementary Education, Odisha, Bhubaneswar, against the order passed by the SLTC as per provision under Para-5 of the Notification dated 04.10.2018 on 15th of November, 2021. But without giving an opportunity of hearing to the appellant/petitioner, disposed of the appeal petition and passed impugned order dated 24.12.2023 which is extracted hereinbelow:

“...as per teacher transfer application and qualification of the appellant in the teacher profile is non-graduate and +2 Science C.T. respectively. But as per teacher transfer application and qualification of the counter part of the appellant Smt. Kaberibala Mallick in the teacher profile is Science Graduate and +3 Science C.T. respectively and the qualification of both teachers are not identical and mismatch with each other i.e. +2 Science C.T. with + Science C.T. which violates the point no.2(h) of the Notification dated 04.10.2018.

The employee has no vested right to get a posting at a particular place and it being within the exclusive domain of the employer to determine as to at what place and how long the services of a particular employee are required.”

5. The Hon'ble apex Court has also reiterated time and again that the employee can be used by the employer as per the requirement and it is incidental to the service conditions. So, considering the above facts and circumstances, this Court does not want to interfere with the transfer application.

6. However, learned counsel for the petitioner brought to the notice of this Court vide order 20.11.2021 one such transfer order has been issued on mutual basis with two candidates though they did not have the same qualification. But, the petitioner's case has been overlooked.

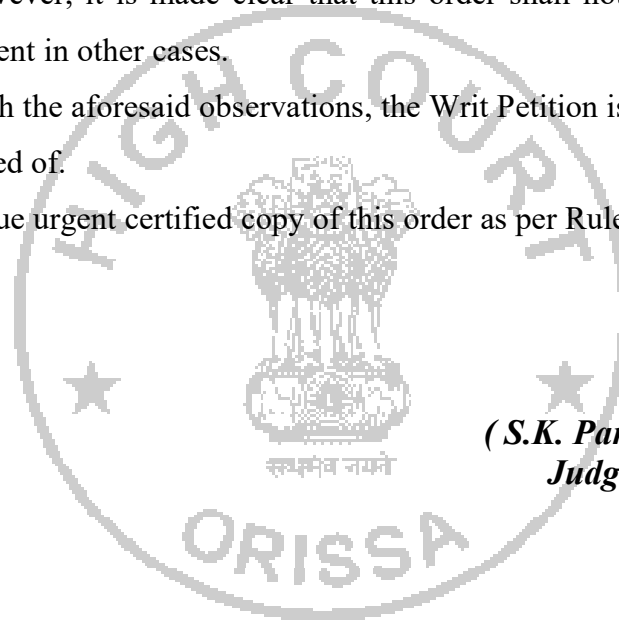
7. Learned counsel for the State submits that the said order might have been a mistake which cannot be allowed to perpetuate in other cases. Accordingly, the order passed in appeal should not be interfered with.

8. It is further submitted that though this Court does not interfere with the transfer order of the employees but due to peculiar facts and circumstances of this Case, the order passed by the Director of Elementary Education, Odisha, Bhubaneswar on 24.12.2021 is set-aside and the mutual transfer was allowed.

9. However, it is made clear that this order shall not be treated as precedent in other cases.

10. With the aforesaid observations, the Writ Petition is, accordingly, disposed of.

11. Issue urgent certified copy of this order as per Rules.



(S.K. Panigrahi)
Judge

LB