

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 21860 of 2015

State of Odisha & Others

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Petitioners

Mr. S. Jena, Standing Counsel S&ME

Vs.

Girish Chandra Behera & Others

.....

Opposite parties

*Dr. J.K. Lenka, Advocate
(O.P.1)*

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

05.05.2022

Order No.

08.

This matter is taken up through hybrid mode.

2. Heard Mr. S. Jena, learned Standing Counsel for School and Mass Education Department for the State-petitioners and Dr. J.K. Lenka, learned counsel appearing for opposite party no.1.

3. The State-petitioners have filed this writ petition seeking to quash the order dated 25.06.2014 passed in O.A. No.434 of 2014/O.A. No.1638(C) of 1999, by which the Orissa Administrative Tribunal, Bhubaneswar, while allowing the O.A. has directed the petitioners to promote opposite party no.1 to the rank of Headmaster in an UGME School, w.e.f. 09.01.1992 i.e. the date when his juniors were promoted to the said rank with all consequential financial and service benefits.

4. Mr. S. Jena, learned Standing Counsel for School and Mass Education Department appearing for the petitioners contended that the tribunal has committed gross error apparent on the face of records by granting opposite party no.1 the benefit of promotion to the post of Headmaster in UGME School w.e.f. 09.01.1992, when

he had not acquired the qualification of B.Ed. As such, opposite party no.1 acquired B.Ed. qualification on 28.03.1992 and therefore, he should be granted benefit not prior to 28.03.1992. It is further contended that this question has already been considered by this Court in W.P.(C) No. 14965 of 2014, **Benudhar Sahoo Vs. State of Orissa & Others** disposed of on 28.03.2022, and the case of opposite party no.1 is fully covered by the said judgment. Therefore, the order of the tribunal may be modified to the extent that opposite party no.1 is entitled to get benefit of promotion from the date of acquisition of B.Ed. qualification.

5. Dr. J.K. Lenka, learned counsel for opposite party no.1 contended that the order passed by the tribunal is justified and opposite party no.1 is entitled to get such benefit as due and admissible in terms of the order passed by the tribunal.

6. Having heard learned counsel for the parties and after going through the records, it appears that the claim of opposite party no.1 is squarely covered by the ratio decided by this Court in **Benudhar Sahoo Vs. State of Orissa & Others** (W.P.(C) No. 14965 of 2014 disposed of on 28.03.2022). Therefore, this Court disposes of this writ petition in terms of the said judgment and, as such, modifies the order of the tribunal impugned herein to the extent that the benefit shall be extended to opposite party no.1 from the date of acquisition of B.Ed. qualification, i.e. 28.03.1992, instead of 09.01.1992. Therefore, this Court directs that notional promotion w.e.f. 28.03.1992 of opposite party no.1 shall be counted towards his seniority and such notional period of service shall be counted towards his increments and enhanced pension. But so far as the arrear pay of Headmaster's scale of pay is

concerned, the same is not admissible, in view of the judgment of the apex Court in **Union of India Vs. B.M. Jha**, (2008) 2 SCC (L&S) 399. The benefit shall be extended to opposite party no.1, as expeditiously as possible, preferably within a period of three months from the date of production of certified copy of this Court.

7. With the above observation and direction, this writ petition stands disposed of.

(DR. B.R. SARANGI)
JUDGE

Alok/Sukanta

(SAVITRI RATHO)
JUDGE

