

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.6692 of 2022

Nirmala Nanda *Petitioner*
Mr. P.C. Chhinchani, Adv.
-versus-
State of Odisha and Ors. *Opposite Parties*
Mr. D.R. Mohapatra, SC
(for S & ME Deptt.)
Mr. Soumya Mishra, Adv.
(for O.P.4)

CORAM:
DR. JUSTICE S.K. PANIGRAHI

Order
No.

ORDER
11.07.2022

06.

1. This matter is taken up through hybrid mode.
2. Heard Learned Counsel for the Petitioner and learned Counsel for the Opposite Parties.
3. The petitioner has filed this application challenging the validity of the order dated 21.12.2020 as well as order dated 29.01.2021 with regard to the approval of appointment of the petitioner as TGT (Arts) by modifying the earlier order of approval and making it prospective w.e.f. 28.10.2019 instead of her date of joining i.e. 01.08.2008.

4. Shorn of unnecessary details, the substratum of the matter presented before this court remains that the petitioner was appointed as Trained Graduate Teacher (Arts) by the Managing Committee vide appointment order dt.23.07.2008 against the sanctioned and substantive post which was lying vacant in Navajeevan Vidyapitha, Balangir since 31.08.2003 consequent upon retirement of Sri J. Srichouhan. Pursuant to her appointment, the petitioner joined w.e.f 01.08.2008 and continued to discharge her duties as such without any interruption. Thereafter, the Secretary of the Managing Committee (O.P. No.4) vide his letter No.124 dated 19.11.2008 invited the attention of the District Education Officer, Balangir (O.P.No.3) to the fact that the standard of teaching of the institution has been deteriorating due to long standing vacancy in the institution. Hence, the O.P. No.3 was specifically requested to take early action for extending approval to the appointment of the petitioner and other staff as mentioned in the aforesaid letter dt.19.11.2008.
5. Despite clear instructions given under Government letter No.15696/SME dated 10.9.2004, Letter No.326/SME dated 6.01.2011, letter No.2802/SME dated 9.02.2011 and letter No.18872/SME dated 08.08.2013 on

the subject of filling-up of vacant posts and restoration of abolished posts of Navajeevan Vidyapitha, the matter with regard to the approval of appointment of the petitioner was negligently pending before the Opp. Parties no.1 to 3. Being aggrieved, the petitioner was constrained to submit a representation dated 31.03.2014 to the D.E.O., Balangir (O.P.No.3) to accord approval at an early date to the appointment made to her by the Managing Committee against the vacant teaching post. But, no action was taken on her representation dated 31.03.2014. The petitioner had approached this Court in W.P.(C) No.25363/2014 which was disposed of on 24.12.2014 directing the D.E.O. Balangir (O.P.No.3) to consider the said representation dated 31.03.2014 and pass appropriate order in accordance with law within a period of two months from the date of receipt of the certified copy of the order. After receipt of the said order, the O.P. No.3 instead of passing appropriate order on the said representation, intimated the petitioner vide Memo No.3285 dt.11.03.2015 stating that on receipt of necessary clarification/instruction from the Director, he will take necessary steps for approval of the TGT Arts post in favour of the petitioner.

6. In compliance with the subsequent order of the High Court dated 03.08.2016, the Director of Secondary Education, Odisha filed an affidavit enclosing his letter of clarification dated 06.08.2016 instructing the D.E.O. Balangir to approve the appointment of Asst. Teacher of Arts based on seniority in Navajeevan Vidyapitha, Balangir against the post who has been appointed by following due procedure as per Rule. Thereafter, the DEO, Balangir passed an order barely within three days thereof i.e. on 09.08.2016 declining to approve the appointment of the petitioner as TGT (Arts) in Navajeevan Vidyapitha, Balangir.
7. Thereafter, consolidated writ petition in W.P.(C) No.12429/2015 was filed and the same was taken up for final hearing. After hearing both the parties, this Court vide its judgment dated 10.04.2019 in W.P.(C) No.12429/2015 quashed the impugned order dated 09.08.2016 and remitted the matter back to the D.E.O. Balangir to consider the case of the petitioner afresh by following the principles of natural justice and by passing a reasoned and speaking order as expeditiously as possible preferably within a period of four months from the date of production/communication of the said judgment.

8. Thereafter, the D.E.O, Balangir (O.P.No.3) vide his letter No.788 dated 29.01.2020, having stated inter-alia in point No.(1) that the appointment of the petitioner has been approved w.e.f. 08.08.2013 vide Office Order No.11309 dt.28.10.2019, who was duly appointed by the Managing Committee against the existing TGT (Arts) vacant post vide appointment order No.08(2) NJVP dated 23.07.2008 with due procedure and joined on 01.08.2008, virtually requested for issuance of necessary clarification and instruction with effect from the said date of joining of the petitioner at an early date. However, pursuant to the order dated 21.12.2020 issued from the office of the Directorate of Secondary Education, Odisha, the D.E.O, Bolangir, modified his earlier order dated 28.10.2019 (Annexure-8) and approved the appointment of the petitioner prospectively w.e.f. 28.10.2019 instead of 08.08.2013 vide his modified order dated 29.01.2021. Being aggrieved, the petitioner has filed this writ petition.
9. Learned Counsel for the petitioner submits that the said orders approving the appointment of the petitioner as Trained Graduate Teacher (Arts) from a prospective date is ex-facie illegal, arbitrary, unfair and unconstitutional apart from being violative of the

principles of natural justice. He further submits that the impugned orders dated 21.12.2020 and 29.01.2021 are patently harsh and unreasonable inasmuch as it is not supported by any valid reasons stating as to why the approval of the appointment of the petitioner is modified and made from a prospective date i.e. 28.10.2019 instead of from the date of her joining in the vacant and sanctioned post w.e.f. 01.08.2008 at Navajeevan Vidyapitha, Balangir.

10. He further submits that the petitioner was appointed by the Managing Committee of Navajeevan Vidyapitha, Balangir in the existing post of TGT (Arts) Asst. Teacher by following proper procedure and joined in the School on 01.08.2008 and continuing in the said post till date, there is absolutely no reason as to why her appointment should not have been approved from the date of her joining w.e.f. 01.08.2008 instead of 28.10.2019.

11. Moreover, the petitioner having been duly appointed and joined in the vacant and sanctioned post of TGT (Arts) w.e.f. 01.08.2008 in Navajeevan Vidyapitha, Balangir, which is admittedly a fully-aided institution and having served the institution over the years from the date of joining uninterruptedly, she has an accrued

right to the post which cannot be snatched away by passing such an arbitrary, unreasonable and whimsical orders. It is further pointed out that this order is violative of Articles 14, 16 and 21 of Constitution of India.

12. He further lamented that because of their own wrong, laches, negligence and inordinate delay on the part of the Opp. parties No.1 to 3 in according approval in due time, the petitioner cannot be deprived from her legitimate entitlements flowing from the date of her joining in the vacant post when her appointment has been found to be valid in Navajeevan Vidyapitha, Balangir which is a fully aided educational institution covered under the Direct Payment Scheme of the State Government with effect from 01.03.1974. Hence, the impugned orders are liable to be set aside.

13. In the case of *Secretary Ministry of School Education and Others v. G. Suganthy and Another*¹, the Madras High Court was presented with a case where the appellant was deprived of her salary for a period of two years on the ground of non-approval of appointment even though she had rendered her

¹W.A.No.3533 of 2019

services continuously for the aforesaid period. The court observes that:

“The aforesaid remarks of the Corporate Manager, as stated by the second respondent in the impugned order, would clearly establish that the petitioner was issued with an appointment order as B.T. Assistant (Tamil) from 27.07.2000. According to the second respondent, the proposal seeking approval of appointment of the petitioner dated 27.07.2000 was received by the Department only on 10.02.2003 and therefore, approval of appointment could not be granted as the same was belated. It appears that the second respondent has failed to consider the fact that the Management has sent the proposal belatedly and the petitioner has no role in sending the proposal for approving the appointment. Further, the petitioner cannot be expected to know whether the post is excessive or not even before joining the service and hence, the petitioner cannot be blamed and also cannot be deprived of her salary and also regularisation for the period which she had worked.”

14. Further, in para-17 & 18 of the judgement, the Madras High Court, in very strong terms observes that:

“17. Since there was a delay on the part of the fourth respondent in sending the proposal to the respondent authorities, subsequently, they had

issued a revised modification order stating that the petitioner was posted as B.T. Assistant (Tamil) in Duthie Girls Higher Secondary School, Nagercoil with effect from 05.06.2002, the same cannot be accepted for the reason that the fourth respondent themselves admitted that the petitioner was appointed on 27.07.2000, which is evident from their appointment order dated 27.07.2000. The main grievance of the petitioner is that she should be regularised from 27.07.2000 and not from 05.06.2002. Admittedly, the petitioner had worked in the school in question for a period of nearly 22 months without salary.

18. No contra records have been produced before this Court to show that the petitioner had not worked from 27.07.2000. Though in the impugned order it has been stated that the Management of the school had committed a mistake in appointing the petitioner in the surplus post with effect from 27.07.2000, nothing has been produced by the respondent authorities to show that her appointment was illegal. In fact, in the remarks submitted to the second respondent, the fourth respondent has clearly stated that the petitioner has got the appointment from 27.07.2000. There was also no record to show that the petitioner was appointed in a non-sanctioned post. Therefore, when the petitioner was duly appointed with effect from 27.07.2000 and pursuant to the appointment

order, she had rendered service from 27.07.2000, the petitioner is entitled to get her regularisation of her service with effect from 27.07.2000 and also arrears of salary for the period from 27.07.2000 to 04.06.2002."

15. In the case of *Usha Rani Goswami and Ors. v. State of Assam and Anr*², the question before the Assam High Court was whether the petitioners (Assistant Teachers) were disentitled to arrears of salary for services rendered prior to regularization. The Court observed that

"As per the Circular dated 5.3.2001 (Annexure F), there is no dispute that their regular salaries with effect from the date of regularization, i.e., 1st August, 2000 must be paid. The question is whether the appointees are disentitled to salaries, prior to the effective date of regularization. Since the State is resisting the claim for arrear salary payment on the ground that an undertaking was obtained from each of the persons that they will not claim arrear salaries, the legal implication of such undertaking is required to be addressed at this stage.

11. When the Government secured such undertaking the teachers were desperate and were serving without salaries which was stopped

²WP(C) No. 5286 of 2004

w.e.f. May, 1995. They were also anxious to have their services regularized. In such backdrop, when the State offered to regularize the services of the teachers with a pre-condition that they will not claim their arrear salaries, the teachers were hardly in a position to bargain and resist giving the undertaking to the State, as they were on the back foot and were not on equal bargaining position.

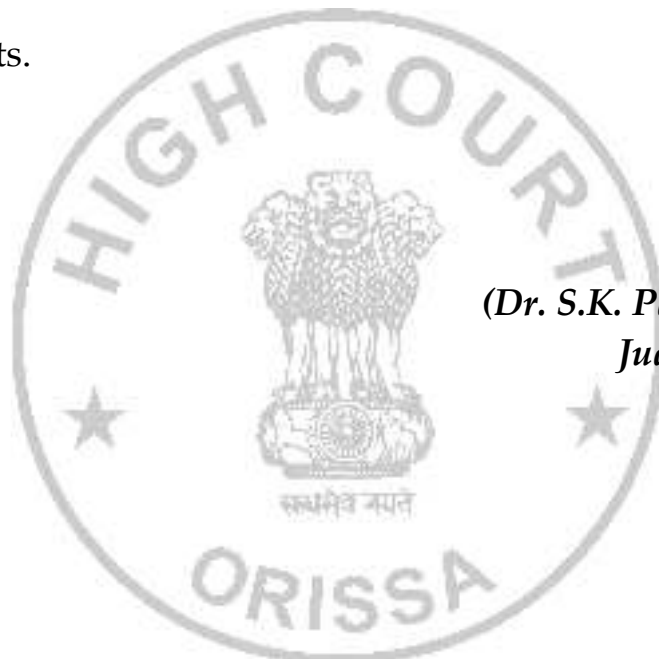
*12. But in this context of the unequal bargaining power of the State vis-a-vis the teachers who were desperate for salaries and regularization, the Clause incorporated by the State through unequal bargaining power is nothing but an unconscionable covenant, forced by the State on a group who hardly had any strength to resist the might of the State. In fact, the petitioners had practically no choice in the matter and had to relinquish their claim for arrear salaries, despite rendering service for long years. This type of covenant can't be said to be right or reasonable and amounts to unconscionable contract, as has been held by the Apex Court in **Central Inland Water Transport Corporation Ltd v. Brojo Nath Ganguly**³."*

16. Having considered the matter in aforesaid perspective and guided by the precedents cited hereinabove, this Court sets aside the order dtd. 21.12.2020 as well as

³ (1986) 3 SCC 156

order dtd. 29.01.2021 with regard to the approval of appointment of the petitioner as TGT (Arts). The Opposite party is hereby directed to modify the order of approval of the appointment of the petitioner and accord her legitimate dues from her date of joining i.e. 01.08.2008.

17.The Writ Petition is, accordingly, disposed of in terms of the above directions. There shall be no order as to costs.



(Dr. S.K. Panigrahi)
Judge

BJ