

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No.9382 of 2012

Ranjit Barik

.....

Petitioner
Mr.N.Lenka, Adv.

Vs.

State of Odisha and others

.....

Opposite Parties
Mr. S.Jena, Standing Counsel,
School & Mass Education Deptt.

CORAM:

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

ORDER
13.04.2022

Order No.

17.

This matter is taken up through hybrid mode.

2. Heard Mr.N.Lenaka, learned counsel for the petitioner and Mr. S.Jena, learned Standing Counsel for School and Mass Education Department.

3. This writ petition has been filed by the petitioner challenging the order dated 09.04.2012 passed by the Orissa Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.2996 (C) of 2002, wherein the tribunal rejected the claim of the petitioner by observing that in view of the decision rendered in the case of *State of Orissa and others v. Nabin Kumar Beura* reported in **2011 (I) OLR 149**, no direction can be issued to the concerned authority to approve the appointment of the petitioner with effect from the date of his initial appointment, i.e., 1.7.1986 when the school was in grant-in-aid system nor with effect from 1.4.1991 when the school was taken over by the Government, so also since the petitioner had filed the O.A. in November 2002, i.e., 16 years after his initial appointment in 1986 and 11 years after the school was taken over, the tribunal did not inclined to entertain the same.

4. Learned counsel for the petitioner contended that the petitioner was working as a teacher (3rd post) in Ganjei Kuanar M.E. School,

Saria in the district of Mayurbhanj under the administrative control of the D.I. of Schools, Baripada and he sought approval of his post, but the same having been denied, the petitioner approached the tribunal by filing the aforesaid Original Application with a prayer to approve his appointment as third teacher, as the school in question was taken over by the Government.

5. Mr. S.Jena, learned Standing Counsel for School and Mass Education Department contended that the principle of approval of post has been decided by this Court in the case of **Nabin Kumar Beura** (supra) and as such relying on such decision, the tribunal came to hold that no direction can be given for approval of appointment of the petitioner with effect from the date of his initial appointment. Thereby, the claim as made by the petitioner cannot sustain in the eye of law.

6. Having heard learned counsel for the parties and after going through the records, it appears that the petitioner was working as a 3rd teacher in Ganjei Kuanar M.E. School, Saria in the district of Mayurbhanj under the administrative control of the D.I. of Schools, Baripada and he sought approval of the post on the plea that he was engaged as Headmaster in Ganjei Kuanar M.E. School, Saria vide order dated 30.07.1985 issued by the Secretary of the said school as per the decision of the erstwhile managing committee dated 30.7.1985 and accordingly the petitioner joined the post on 01.08.1985. While he was discharging his duties as Headmaster, the regular Headmaster of the School who had gone on study leave came and joined as Headmaster. Since there was necessity of a 3rd teacher, the petitioner was appointed as an Assistant Teacher vide order dated 30.6.1986. In pursuant to the said order dated 30.6.1986, the petitioner joined the post on 1.7.1986. The Government in School and Mass Education Department vide order dated 27.1.1990 granted permanent recognition in favour of the school in question with effect 1989-90 relaxing certain mandatory requirement

including training qualification of teachers with the condition that the untrained teachers shall acquire the qualification within three years. The petitioner who was a matriculate at the time of joining in service, passed C.T. training on 30.12.1992 and the government of Odisha in School and Mass Education Department vide order dated 14.6.1990 granted minimum grant-in-aid and sanctioned 3rd post of Assistant Teacher in favour of the school in question. In pursuance of the order of the Director of Elementary Education, Orissa (opp. party No.2), the Managing Committee through its Secretary and the petitioner himself submitted their respective affidavits dated 2.5.1989 to the extent that the petitioner was continuing as 3rd Assistant Teacher since 1.7.1986 in the school in question. The Secretary of the School vide letter dated 21.7.1990 requested the D.I. of Schools, Betnoti to approve the post of 3rd teacher and to disburse the minimum grant-in-aid in favour of the said post. Even though several representations had been filed for approval of the appointment of the petitioner as a third teacher, but no action was taken on his representations. Therefore, the petitioner filed O.A. No.2996 (C) of 2002 before the tribunal for appropriate relief.

7. Needless to say that in the meantime the school in question has already been taken over by the government and though the petitioner was continuing in the post of 3rd teacher, his post was not approved by the government. The tribunal relying upon the decision in the case of Nabin Kumar Beura (*supra*) and also in the judgment of the apex Court in the case of *State of Orissa and another v. Mamata Mohanty* reported in (2011) 2 SCC (L & S) 83: (2011) 3 SCC 436 had given a definite conclusion that no direction can be issued to the concerned authority to approve the appointment of the petitioner with effect from the date of his initial appointment, i.e. with effect from 1.7.1986 when the school was in Grant-in-Aid system nor with effect from 1.4.1991 when the school was taken over by the government and more so since

the petitioner had filed the O.A. in November, 2002, i.e., 16 years after his initial appointment in 1986 and 11 years after the school was taken over, the tribunal was not inclined to entertain the relief as sought for in the O.A. and dismissed the same both on merit as well as on the ground of limitation.

8. In view of the above, this Court does not find any error apparent on the face of the order of the tribunal, so as to warrant interference by this Court.

9. Accordingly, the writ petition is dismissed.

(DR. B.R. SARANGI)
JUDGE

Arun/Bichi



(SAVITRI RATHO)
JUDGE