

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.8447 of 2022

Makar Ketan Sahoo

.... *Petitioner*

Mr. Pitambar Panda, Adv

-versus-

State of Orissa and Ors.

.... *Opposite Parties*

Mr. D. R. Mohapatra, SC

(for S & ME Deptt)

CORAM:
DR. JUSTICE S.K. PANIGRAHI

Order
No.

ORDER
25.08.2022

I. Facts of the Case:

1. The petitioner, in this Writ Petition, has challenged the actions of O.P. No.2/the Director of Elementary Education, Odisha Bhubaneswar for not considering the regularization of the deployment of petitioner under “health disability” ground as well the point No. 3.II(vii) and (ix) of the Notification No.22167/SME dated 04.10.2018 issued by the Department of School and Mass Education.
2. The petitioner is serving as a Junior Teacher in Elementary Section of S.M. Alli Government Nodal High School, Nayapalli, Bhubaneswar under Block Education Officer, Bhubaneswar in the district of Khurda on deployment basis. Initially, the petitioner was posted in

Government Upper Primary School, Lathipada under BEO, Banapur in the district of Khurda vide letter No.612 dated 09.01.2015 and joined on 15.01.2015. The petitioner was first deployed to work at Ghangapatana U.G.U.P. School as per order of DEO, Khurda vide order No. 6570 dated 12.06.2015 and Office order No. 1666 dated 17.06.2015 of BEO, Bhubaneswar. Accordingly petitioner joined in the new school on 19.06.2015. Thereafter, on instruction of the DEO, Khurda, the BEO, Bhubaneswar vide order No.5254 dated 04.11.2019 deployed the petitioner in S.M.Alli Government High School, Nayapalli (Elementary Section) since the petitioner was having B.Sc., B.Ed qualification, considering as need based one for the interest of both the secondary and elementary section of the school.

3. The petitioner was regularized in Ghangapatana UGUP School vide letter No. 3153 dated 07.04.2017 based on the letter No.1604/SSE dated 24.03.2017. Later, the BEO, Bhubaneswar passed an order and kept the earlier order dated 07.04.2017 in abeyance and referred the same to the next DLTC for approval.
4. The petitioner faced a road accident on 28.10.2018 and sustained severe injury in right leg, right ribs, high lower lungs and right color bone and undergone surgery fixing

a steel rod in right leg resulting the petitioner as locomotors disability of sixty percent. Thereafter the petitioner after 5 months resumed his duty on production of medical certificates wherein the Doctor advised not to move long distance. Based on the advice of the doctor, the petitioner submitted a representation to the Collector-Cum- District Magistrate, Khurda to transfer him from Kujimahala UGUP School to Utkalamani Nodal UP School, Nuasahi, Nayapalli where the petitioner was residing.

5. During the tenure of the petitioner he was once again deployed to another School, namely Ghangapatana UGUP School as well as Mundasahi Project Primary School on temporary basis and thereafter on request again the BEO, Bhubaneswar deployed in S.M.Alli Govt. Nodal High School, (Elementary Section) vide order No. 5254 dated 04.11.2019.
6. The Director of Elementary Education vide letter No.13156 dated 11.08.2021 issued a circular to all DEOs and BEOs of the state to regularize need based deployment of teachers through online mode as per provision No.3 II (vii) and (ix) of Notification No. 22167/SME dated 04.10.2018. Accordingly, the petitioner submitted an application to the DEO-Cum-DPC, Khurda

sharing copies to the BEO, Bhubaneswar and BEO, Banapur for regularization of deployment on 16.08.2021. However, the case of the petitioner was not considered by the DLTC, Khurda. Hence, he is constrained to approach this Court by way of the present Writ petition.

II. Submissions advanced by the petitioner:

7. As per Para-3 II of the Notification dated. 04.10.2018, the strength of teachers has been fixed based on the enrolment of students in Primary and Upper Primary Schools. It is stated therein that 5 teachers are required in Primary section of S.M. Alli High School, Nayapalli since the students' strength is 168 from Class 1 to 5. In fact, the Head Master + 3 Graduate Teachers are required since the student strength from class 6 to 8 is 134 in the School. In total one HM and 8 No's of teachers are required in the present school of the petitioner and at present 8 No's of B-1791 teachers are serving in the school out of which petitioner is 12598 one of them, who is now under deployment. The DLTC, Khurda instead of considering the case of petitioner for regularization posted two more teachers in the school vide order No.15677 dated 10.12.2021 as in serial 205 and 206.
8. The petitioner filed an appeal before the Appellate Authority i.e. Director of Elementary

Education, Odisha Bhubaneswar against the inaction of DLTC, Khurda as per provision under **Para-5** of the Notification dated 04.10.2018. The DLTC violated the principles as envisaged in above stated Notification as well as circular dated 11.08.2021, while considering in case of many similar proposals for regularization of deployed teachers, which amounts to sheer discrimination.

9. The Appellate Authority without giving due consideration to the letter dated 11.08.2021, issued earlier from Directorate, disposed of the appeal petition and passed impugned order dated 16.03.2022 rejecting the Appeal of the petitioner being devoid of merit. The rejection on the ground of that petitioner is not a regular teacher is erroneous since the Notification vide Para-1, categorically suggests that the applicability wherein it is mentioned that "These guideline shall be applicable to teachers and headmasters of elementary cadre, Asst. Teachers (ex-Cadre) Contractual Teachers and Gana Sikhyakas working in Government Elementary Schools in the state". Therefore the decision in impugned order is arbitrary and not in consonance with law.
10. The petitioner is entitled to regularization of deployment since many similar cases have been considered by the

opposite parties with blatant disregard to case of the present petitioner.

III. Submissions by the Department of School and Mass Education:

11. The petitioner was initially engaged as Sikshya Sahayak vide Engagement Order No. 612/SSE dated 09.01.2015 in Lathipada Project Upper Primary School under Banpur Block. While working as such basing upon the grievance of the petitioner, the District Education Officer, Khurda vide office order No.6570 dated 12.06.2015 allowed to work in any of the school of Bhubaneswar Block and accordingly the Block Education Officer, Bhubaneswar vide office order No.1666 dated 17.06.2015 allowed the petitioner to work in Ghangapatana Up-graded Upper Primary School on temporary basis. During his tenure to work on temporary basis under the Block Education Officer, Bhubaneswar he worked in different schools and now working on temporary basis in S.M Alli Government High School, Nayapalli under Block Education Officer, Bhubaneswar as Junior Teacher.
12. The Director, Elementary Education, Odisha, vide Letter No. 13156 dated 11.08.2022/Annexure 4 of the writ petition, issued instruction to all District Education Officers and Block Education Officers for extension of

date line for transfer on administrative ground (Intra District) and regularization of need based deployment/deputations keeping in view the Notification No. 22167/SME dated 04.10.2018.

13. All Elementary Headmasters and Teachers belong to the district cadre and hence they cannot be transferred to another district. The Department of School and Mass Education, Odisha, considering several representations received regularly from different level and types of teachers working in elementary schools for inter-district transfer on various grounds, vide Notification No.22167/SME dated 04.10.2018 formulated certain guidelines for Inter-District and Intra-District transfer of teachers of Elementary Cadre. In the said principle at Point No.3 it is described as follows:

"3. Intra-District Transfer;

I. Personal & Administrative (other than rationalisation) Transfers.

a) Grounds of Transfer & Teachers Transferrable under different grounds.

The teachers of different category may be transferred within the district on the grounds mentioned against each.

xxxxxxx

b) Principles.

- i) *Transfers shall be mainly on two grounds such as Administrative*

requirement and personal representation. Personal representation shall be on health grounds or other personal grounds. Administrative Transfer shall include transfer on rationalisation. Similarly transfer on personal ground shall include mutual transfers.

ii) Junior Teacher Contractual, Junior Teacher and GanaSikhyak shall not normally be considered for transfer except on mutual ground and on ground of suffering from Terminal Diseases.xxxxxx

iii) xxxxx

iv) xxxxx

v) While considering the transfer proposal, priority will be given to representations received from teachers suffering from terminal diseases and the same will also be considered only after clarification by the State Medical Board situated at Cuttack, Berhampur and Sambalpur.

vi) Transfer on personal representation shall not be normally considered if the regular teacher has not completed 6 years of service in a school except for administrative, mutual and terminal illness cases.

vii) xxx

viii) xxx

ix) xxx

x) xxxx

II. Transfer on Rationalisation

a) Principles

ix) Regular teachers who are working in New Project Primary Schools/ New Project Upper Primary Schools under deployment basis may be allowed to continue, otherwise the practice of deployment shall be stopped. Xxxx."

In view of the above, the petitioner's case deserves to have been considered but not considered hence he is constrained to approach to this Court.

14. Pursuant to the Notification dated 04.10.2018, the petitioner applied for regularization of deployment. As per the guidelines for Inter-district transfer and mutual transfer/ Intra-District transfer/ Rationalisation of Headmasters/ Asst. Teachers/ Asst. Teachers (Ex-cadre) Jr. Teachers/ Junior Teachers (Contractual) and Gana Sikhyaks of Government Elementary Schools in the State vide Notification No.22167/S&ME dated 04.10.2018 at *para-3 (b) (ii) prescribes that Junior Teacher Contractual, Junior Teacher and Gana Sikhyak shall not normally be considered.* Thereby, the case of the petitioner insofar as intra-district transfer is concerned cannot be considered as per the transfer policy of Government dated

04.10.2018, for which his case cannot come to zone of consideration by the transfer Committee constituted thereon. In the instant case the petitioner is in the status of Junior Teacher applied for his transfer/ regularization of deployment, for which his application for transfer/ regularization of need based deployment of teachers could not be taken into consideration by the District Level Transfer Committee as per Para-3 (b) (ii) of the guideline under

15. Being aggrieved by the decision of the District Level Transfer Committee the petitioner filed an appeal on 20.12.2021 before the Director, Elementary Education, Odisha, Bhubaneswar which is the Appellate Authority. The Director, Elementary Education, Odisha upon considering the appeal of the petitioner and report of the District Education Officer and Block Education Officer, Banpur and Bhubaneswar and after hearing all the parties, disposes the appeal vide office order No. 4011 dated 16.03.2022 rejecting the claim of the petitioner with the following findings:

“i) The petitioner is working in different schools under BMC area from 17.06.2015 till date, except 29.10.2018 to 31.03.2019 from Banapur Block, which is Educationally Backward Block in

comparison to BMC area of Bhubaneswar Block and which is more than 6(six) years. Pursuant to Point no-3 II (a) (ix) of the Notification No. 22167/SME dated 04.10.2018 the practice of deployment shall be stopped. The appellant has already availed the deployment period beyond the limit of Three years and which is against the provisions laid down in Government in School and Mass Education Department Letter No. 12268/SME dated 06.07.2017.

ii) The petitioner is not a regular teacher and his prayer for regularization of deployment as Junior Teacher in S.M. Alli High School is against the prevailing rules for which it is rejected being devoid of merit.

iii) The District Education Officer, Khordha is requested to cancel the deployment order of the petitioner to S.M. Alli High School immediately in the interest of pupil, public education of Banapur Block."

- 16.** Further, the Letter No.12268/SME dated 06.07.2017 prescribes the limitation of deployment period of Elementary teachers transferred on deployment basis. In the said letter the School and Mass Education Department decided to limit the period of deployment in the case of the teachers of Elementary cadre for three years or up to such period as desired by Government, so that the deployed teacher may not continue for eternity

at the place where he/ she has been posted on deployment and in the process the Government in School and Mass Education Department directed the Opp. Party No.2 for taking immediate steps to back the deployed teachers to their original place of posting from where they have been transferred on deployment previously.

17. In fact, taking into account the grievance of the petitioner, he was allowed to work under Block Education Officer, Bhubaneswar temporarily, which he cannot claim as his right for regularization of the same, permanently. It is pertinent to mention here that in obedience to the interim order dated 13.04.2022 passed in I.A. No. 4408 of 2022 by this Hon'ble Court, the petitioner is continuing in S.M. Alli High School under Block Education Officer, Bhubaneswar.
18. In catena of decisions, the Hon'ble Apex Court has held that there is no indefeasible right of an employee to remain at one place. The employee needs to be prepared to face the administrative exigencies. He further mentions that the Fundamental Rule-11 speaks that the whole time of a Government servant is at the disposal of the Government which pays him and he may be employed in any manner required by proper authority.

19. The guidelines for Inter-district transfer and mutual transfer/ Intra-District transfer/ Rationalisation of Headmasters/ Asst. Teachers/ Asst. Teachers (Ex cadre)/ Jr. Teachers/ Junior Teachers (Contractual) and Gana Sikhyaks of Government Elementary Schools in the State vide Notification No. 22167/S&ME dated 04.10.2018 is a policy decision of the Government and the School and Mass Education Department upon careful consideration felt it just and proper to formulate a certain norms and guidelines for the purpose of consideration of transfer of teachers for smooth administration and for all betterment of the teachers at large. Keeping in mind the policy decision of the Government vide Notification No. 22167/S&ME dated 04.10.2018, No. 13156 dated 11.08.2021 of the Director, Elementary Education, Odisha and 12268/SME dated 06.07.2017, the Director, Elementary Education, Odisha, vide office order No. 4011 dated 16.03.2022 considered the grievance of the petitioner.
20. In the instant case the petitioner has miserably failed to establish that the policy decision suffers from any illegalities or arbitrariness in order to affect him and he felt prejudiced.

V. Court's Reasoning and Analysis:

21. The claim of the petitioner about his transfer/regularization of deployment proposal does not convince this Court in the light of the consistent view of this Court that transfer is an exigencies of service. If a person joins a Government job he is liable to be transferred on administrative grounds since Government is the employer. On perusal of the office order No.4011 dated 16.03.2022 issued by the Director, Elementary Education, Odisha is a well-reasoned order and does not warrant any kind of interference by this Court.
22. There is no indefeasible right of an employee to remain at one place and he cannot be transferred. The employee needs to be prepared to face the administrative order of transfer which is the prerogative of the department. Even Fundamental Rule-11 prescribes that the whole time of a Government servant is at the disposal of the Government which pays him and he may be employed in any manner required by proper authority.
23. The realm of policy making while determining the conditions of service of its employees is entrusted to the State and the Court shall not venture into this area unless there is gross violation of statutes governing the field.

The Supreme Court has reiterated time and again that an employee has no fundamental right or a vested right to claim a transfer or posting of his/her choice. But in case the employee is physically challenged the principle of reasonable accommodation for the disabled members of society is an obligation of the employer which flows from the special statutes and this obligation has been elaborated upon in several decisions by the Apex Court including *Vikash Kumar v. Union Public Service Commission and Others*¹, *Avni Prakash v. National Testing Agency and Others*² and *Ravinder Kumar Dhariwal and Another v. Union of India and Others*³. In *Vikash Kumar*(supra), the Apex Court has elaborately discussed about the need of accommodation of the disabled person and observes that:

“63. In the specific context of disability, the principle of reasonable accommodation postulates that the conditions which exclude the disabled from full and effective participation as equal members of society have to give way to an accommodative society which accepts difference, respects their needs and facilitates the creation of an environment in which the societal barriers to disability are progressively answered. Accommodation implies a positive obligation to create conditions conducive to the growth and

¹ (2021) 5 SCC 370

² 2021 SCC OnLine SC 1112

³ 2021 SCC Online SC 1293

fulfilment of the disabled in every aspect of their existence — whether as students, members of the workplace, participants in governance or, on a personal plane, in realising the fulfilling privacies of family life. The accommodation which the law mandates is “reasonable” because it has to be tailored to the requirements of each condition of disability. The expectations which every disabled person has are unique to the nature of the disability and the character of the impediments which are encountered as its consequence.”

Hence the formulation of policy by the opposite parties must take into account the aspects of disability of the employees. The State while formulating a policy for its own employees has to give due consideration to the importance of protecting family life as an element of the dignity of the person. How a particular policy should be modulated to take into account the necessities of maintaining family life may be left at the threshold to be determined by the State as has been rightly echoed in *SK Nausad Rahaman & Ors vs. Union of India & Ors*⁴.

24. In a recent judgment of the Apex Court in *Lt. Col. Nitisha and Others v. Union of India*⁵, the Court emphasized that discrimination both direct and indirect is contrary to the vision of substantive equality under Articles 14, 15 and 16 of the Constitution. Elaborating on

⁴Civil Appeal No. 1243 of 2022 (SC)

⁵2021 SCCOnline SC 261

the doctrine of substantive equality and its engagement with discrimination both in its direct and indirect form, the judgment of the Court takes due account of ground realities founded on the socio-economic structure of our society. It becomes necessary for the Government to adopt policies through which it produces substantive equality of opportunity for the employees including the differently abled and the women.

25. In view of the above, the District Education Officer, Khurda shall inquire about the extent of disability of the petitioner and shall take a pragmatic view considering the health condition of the petitioner and post him at a suitable place in order to enable him to discharge his duties at ease. This case may not be cited as a precedent in any other case.
26. Accordingly, this Writ Petition is disposed of.

(Dr. S.K. Panigrahi)
Judge

B.Jhankar