

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No. 9916 of 2020**

An application under Articles 226 & 227 of Constitution of India.

**AFR**

**Niranjan Sethi**

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**Petitioner**

**-Versus-**

**State of Odisha & others**

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**Opp. Parties**

Advocate(s) appeared in this case:-

**For Petitioner** : M/s. Sameer Kumar Das, P.K. Behera,  
N. Jena, Advocates

**For Opp. Parties** : Mr. B. Mohanty, Standing Counsel  
for S & ME Department.

**CORAM:**

**JUSTICE SASHIKANTA MISHRA**

संयुक्त न्यायाधीश

**JUDGMENT**

**20<sup>th</sup> September, 2022**

**SASHIKANTA MISHRA, J.**

The petitioner was appointed as Sikshya Sahayak as per order issued on 28.11.2013 by the Chief Executive Officer, Zilla Parishad-cum-Collector, Balasore and joined as such on 30.11.2013 in Sarugaon U.P. School. Upon completion of three years of service as

Sikshya Sahayak he was appointed as Junior Teacher w.e.f. 30.11.2015 pursuant to Officer Order dated 24.07.2017. While discharging his duties as Junior Teacher, the petitioner was implicated in Khaira P.S. Case No.251 dated 28.10.2018 for the alleged commission of offence under Sections 341/323/325/307/34 of IPC. The petitioner was taken to custody on 30.10.2018 and was released on bail on 03.12.2018. The District Project Coordinator, SSA, Balasore (opposite party no.4) issued a show cause notice to the petitioner on 01.12.2018 asking him to explain as to why he will not be disengaged from service on the ground of unauthorized absence from duty and for remaining under judicial custody from 30.10.2018. The petitioner submitted his reply on 11.12.2018 denying the allegations but he was not allowed to work in the School. No further action was taken in the matter for which the opposite party no.4 by letter dated 28.12.2018 sought clarification from the State Government as to whether the petitioner can be allowed to join in duty or not. Since nothing was done in the matter, the petitioner approached

the erstwhile Odisha Administrative Tribunal, Bhubaneswar in O.A. No. 1140 of 2019, which was disposed of on 26.03.2019 directing the Principal Secretary to the Government in Department of School and Mass Education to dispose of the representation of the petitioner keeping in view the letter of the DPC dated 28.12.2018 within one month. In the meantime, the criminal case instituted against the petitioner was put to trial in S.T. Case No.120 of 2019 and as per judgment delivered on 29.06.2019, learned Trial Court acquitted the petitioner of the charges. Upon receipt of certified copy of the judgment, the petitioner moved the authorities to do the needful. The opposite party no.4 forwarded the representation of the petitioner along with the judgment of acquittal to the State Government by letter dated 06.07.2019 seeking instructions in the matter. The Director, Elementary Education (opposite party no.2) in his letter dated 26.09.2019 also requested the Government to take a decision in the matter. Since no action was taken, the petitioner submitted another representation before the

opposite party no.1 on 16.09.2019. It is the case of the petitioner that since there was no order of termination passed against him, he is deemed to be continuing in service and as such, became eligible for regularization as a regular teacher on completion of six years of service w.e.f. 30.11.2013. The opposite party no.4 in his letter dated 07.09.2019 requested the concerned Block Education Officer to verify the certificates of all the Junior Teachers eligible for regularization including that of the petitioner, whose name finds place at serial no. 54 of the said list. Despite all the aforementioned facts, the opposite party no.1 by order dated 29.02.2020 rejected the claim of the petitioner on the ground that a criminal proceeding was pending against him. The said order enclosed as Annexure-12 to the writ petition is impugned in the present writ application which has been filed by the petitioner seeking the following relief:

*“Under the above circumstances, it is humbly prayed that the Hon’ble Court be graciously pleased quashed the order dtd:29.02.2020 of the opposite party no.1 under Annexure-12 and direct the opposite parties to grant all consequential service benefits including regular salary as a*

*regular Teacher to the petitioner with all consequential service and financial benefits within a stipulated period as deem fit and proper;*

*And/or pass any other appropriate order/orders in the fitness of the case.*

*And for this act of kindness as in duty bound the petitioner shall ever pray.”*

2. A counter affidavit has been filed by the District Project Coordinator (opposite party no.4). The basic facts of the case relating to engagement of the petitioner as a Sikshya Sahayak and Junior Teacher and his involvement in the criminal case as also the fact of acquittal of the petitioner therein have been admitted but the rejection of his representation has been justified on the ground that a criminal case was pending against him.

3. Heard Mr. Sameer Kumar Das, learned counsel for the petitioner and Mr. B. Mohanty, learned Standing Counsel for School and Mass Education Department.

4. Mr. Das would argue that the impugned order is completely illegal and opposed to the fundamental principles of law. According to him, the condition that the engagement shall be cancelled if the candidate is criminally

proceeded against, was only applicable to the petitioner at the time of his engagement as Sikshya Sahayak. Admittedly, the criminal proceeding was initiated when the petitioner was no longer a Sikshya Sahayak but had become a Junior Teacher. Even though the work of Sikshya Sahayak and Junior Teacher are same, but their status is entirely different. That apart, the opposite party no.1 has not taken note of the fact that the petitioner was honourably acquitted in the criminal case.

5. Mr. B. Mohanty on the other hand has referred to the conditions of engagement of the Sikshya Sahayak, a copy of which has been enclosed as Annexure-1 to the writ petition. Clause-13 of the terms and conditions clearly provide that the engagement shall be cancelled if the person concerned is criminally proceeded against. Since there can be no distinction between Sikshya Sahayak and Junior Teacher, the same condition would apply notwithstanding the fact that the petitioner had become a Junior Teacher at the relevant time.

6. The facts of the case being undisputed, the only point that arises for consideration in the present case is, whether the condition referred to in the impugned order can be made applicable to the case of a Junior Teacher.

The said condition has been incorporated in the engagement order dated 28.11.2013 in respect of the petitioner at serial no. 13 and is as follows:

*“The engagement shall be cancelled, if any fraudulent testimonial is detected in future and if he/she is criminally proceeded against.”*

7. There is no dispute that the petitioner was engaged as Sikshya Sahayak on the strength of the said engagement order and became a Junior Teacher pursuant to office order dated 24.07.2017. The said office order provides for appointment as Junior Teacher after completion of three years of continuous satisfactory engagement subject to fulfillment of the following conditions.

*“(i) the Sikshya Sahayak (SS) must have rendered 3 years of continuous service satisfactorily from the date of engagement;*

*(ii) The Sikshya Sahayak (SS), must have ensured 90% (at least) attendance of children in respective schools in all classes;*

*(iii) The VEC/School Managing Committee must have given positive certificate about attendance and performance of the SS in the schools for the last 3 years.*

*(iv) The Sikshya Sahayak (SS) must not have any adverse reports during last 3 years of service in the School as SS. They must have ensured Minimum Level of Learning (MIL) for the students as prescribed by the competent authority; and*

*(v) The Sikshya Sahayak(SS) must have reduced the drop out of children of Primary and Upper Primary School to below 10% and they must have performed all other duties assigned to them successfully.”*

8. Thus, it is only upon fulfillment of the aforementioned conditions that a person engaged as Sikshya Sahayak becomes eligible to be appointed as Junior Teacher. In the same office order it is mentioned that the assignment of Junior Teacher is same as that of Sikshya Sahayak and also that the same renders other necessary works as would be entrusted upon them from time to time. Much emphasis has been laid on this aspect by the Standing Counsel for School and Mass Education Department. However, on a careful reading of the terms and conditions laid down for engagement of Sikshya Sahayak and that of Junior Teacher, this Court fails to see as to how both can be treated as equal. Firstly, a fresher

can be engaged as Sikshya Sahayak but not as Junior Teacher. Only a Sikshya Sahayak with three years satisfactory engagement and fulfilling the aforementioned terms and conditions is eligible to be engaged as Junior Teacher. Though the basic work assignment of both appear be same, yet in so far as Junior Teacher is concerned, it is clearly mentioned in the office order dated 24.07.2017 that they (Junior Teachers) can be entrusted with “other necessary works from time to time”. Therefore, it can be safely held that the position of a Junior Teacher is at a different if not higher level than that of Sikshya Sahayak. Of course, while considering the eligibility for regularization of service, the entire period of engagement as Sikshya Sahayak and Junior Teacher shall have to be taken into consideration but the same does not mean that they are absolutely equal. If such was the intention of the Government, there would have been no necessity for engagement of Junior Teacher in the first place and a person engaged only as Sikshya Sahayak continuously for six years would have been eligible to be regularized. This

Court therefore, does not accept the argument advanced on behalf of the State that the terms and conditions for engagement as Sikshya Sahayak would be applicable also to Junior Teacher. Therefore, this Court is of the view that the opposite party no.1 committed an illegality in applying the condition linked to the engagement of Sikshya Sahayak in the case of the petitioner as a ground for rejecting his representation.

9. Even otherwise, the petitioner stands on a different footing inasmuch as, the case in which he was implicated, has ended in his acquittal. Therefore, as on date, there is neither any criminal proceeding pending nor any stigma of conviction against him. After perusing the impugned order, this Court is constrained to hold that the opposite party no.1 has not considered these vital aspects in the proper perspective at all. As such, the impugned order cannot be sustained in the eye of law.

10. For the foregoing reasons therefore, this court has no hesitation in allowing the writ petition by quashing the impugned order and by directing the opposite party

authorities to treat the petitioner as being in service all through with all consequential service benefits. Necessary orders shall be passed by the opposite party Nos.1 and 2 in this regard within a period of two weeks from the date of communication of this order and the consequential financial benefits shall also be paid to the petitioner within a further period of four weeks thereafter.

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**Sashikanta Mishra,**  
**Judge**

**Orissa High Court, Cuttack,**  
**The 20<sup>th</sup> September, 2022/ A.K. Rana, P.A.**

