

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 1158 of 2013

Bhagaban Parida

.....

Petitioner

Mr. K. Swain, Adv.

Vs.

State of Orissa and others

.....

Opposite Parties

Mr. S. Jena, Standing Counsel S&ME

Mr. A. Acharya, Adv.[O.P. No.5]

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE S.K. MISHRA

ORDER

13.07.2022

Order No.

07.

This matter is taken up through hybrid mode.

2. Heard Mr. K. Swain, learned Counsel appearing on behalf of Mr. K.K. Swain, learned counsel for the Petitioner; Mr. S. Jena, learned Standing Counsel for the S & M.E .Department; and Mr. Akash Acharya, learned Counsel appearing on behalf of Mr. M.K. Mohapatra, learned Counsel for Opposite Party No.5.

3. The Petitioner has filed this Writ Petition to quash the Order dated 11.09.2012 passed in O.A. No.1902(C) of 2000, by which the Orissa Administrative Tribunal, Cuttack Bench, Cuttack, has dismissed the Original Application, and to issue direction to the Opposite Parties to accord approval of his appointment as against the post of Physical Education Teacher in “Shri Abhiram Bidyapitha”, Karamal, Dist. Puri and to release his monthly salary with effect from the date of his joining till today.

4. Mr. K. Swain, learned Counsel for the Petitioner contended that the Petitioner was working as Physical Education Teacher in “Shree Abhiram Vidyapitha”, Karamal, Dist. Puri and, as such, his post has to be approved. Against denial of such approval, he

approached the Tribunal and in turn the Tribunal, without application of mind, rejected his claim. It is contended that by virtue of interim Order passed by this Court on 24.09.1996 in OJC No.8438 of 1996, the Petitioner is discharging his duties as Physical Education Teacher in the School in question. Therefore, he is entitled to the remuneration for the period he rendered service and, as such, that benefit should have been extended to him.

5. Mr. S. Jena, learned Standing Counsel for the State contended that no post is available to be allowed to the petitioner to continue as Physical Education Teacher. In absence of any post, Petitioner is not entitled to get any benefit and, therefore, the Tribunal is well justified in passing the order impugned, which does call for interference by this Court.

6. Having heard learned Counsel for the parties and after perusing the record, this Court finds that the Petitioner, having H.S.C. and C.P.E.D. qualification, was appointed as Physical Education Teacher in Shree Abhiram Bidyapitha, Karamal in the district of Puri with a stipulation that his service is purely temporary and terminable at any time without assigning any reason, and that his appointment is subject to the approval of the Inspector of Schools, Puri, vide Order dated 16.01.1994 issued by the Headmaster, as per the Resolution of the Managing Committee dated 12.01.1994. The Headmaster-cum-Secretary of the School in question had recommended the case of the Petitioner to the Inspector of Schools, Puri for approval of his appointment. On 02.01.1995, the Inspector of Schools, Puri intimated the Headmaster of the School in question that his appointment as

P.E.T. on adhoc basis in the School was rejected, vide letter dated 21.01.1994, since the District Selection Board is empowered to appoint the P.E.T. in Non-Government Aided High Schools, and, as such, approval of appointment of the Petitioner-Bhagaban Parida, as P.E.T. in the School on temporary basis does not arise. The said order was challenged before this Court in OJC No.8438/1996. Since one Parsuram Mohanty, P.E.T. of “Sarada Bihari High School” was transferred to “Shree Abhiram Bidyapitha”, Karamala in place of the Petitioner, vide Order dated 03.08.1996, the Petitioner challenged the said Order of posting of Parsuram Mohanty in the writ application bearing OJC No. 8438 of 1996 and this Court passed an interim Order protecting the interest of the Petitioner, vide Order dated 24.09.1996 passed in Misc. Case Nos.7608 of 1996 and 8725 of 1996. By virtue of the interim Order, the Petitioner continued as Physical Education Teacher in the school in question. Vide Order dated 15.07.1999, this Court disposed of the Writ Application bearing OJC No.8438/1996, directing the Director, Secondary Education to take a decision in the matter within four months from the date of receipt of the Order. However, the Director rejected the claim of the Petitioner on the ground that his appointment was irregular, vide Order dated 31.03.2000, which was communicated vide office Order dated 27.04.2000. The Order dated 27.04.2000 passed by the Director, Secondary Education was also challenged before the Tribunal. In the meantime, the School in question was taken over by the Government w.e.f. 07.06.1994. But the Tribunal, after due adjudication, came to a conclusion that the Petitioner, who claimed to be appointed as Physical Education Teacher by the

Headmaster of the School, being the Secretary of the School, vide Order dated 16.01.1994, as per the decision of the Managing Committee dated 12.01.1994, was not a proper meeting of the Managing Committee, which was constituted as per the Order dated 16.09.1992 of the authority concerned and, as such, the decision of such committee for appointment of the Petitioner was also without following the proper procedure to be followed for appointment of a Teacher in a recognized School, i.e., the procedure prescribed in Rule 5 of the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Education Institutions) Rules, 1974 so also keeping in view the fact that since the School in question was taken over by the Government w.e.f. 07.06.1994 as per Resolution dated 16.12.1994, the post of P.E.T. shall have to be filled up as per Rules applicable for appointment of the Teachers in Government Schools, but not in accordance with the Rules, 1974. As such, the specific prayer of the Petitioner, that he may be allowed to continue till a Selection Board candidate is sponsored, cannot be entertained, since at the time of filing of the Original Application, the School was taken over and no proper procedure was followed for selection and appointment of the Petitioner. By holding so, the Tribunal, has dismissed the Original Application.

7. In the above view of the matter, this Court does not find any illegality or irregularity committed by the Tribunal in passing the Order impugned so as to call for interference by this Court.

8. Accordingly, the Writ Petition merits no consideration and the same is hereby dismissed.

9. Mr. K. Swain, learned Counsel for the Petitioner contended

by that by virtue of the interim Order passed by this Court, though the Petitioner is continuing in the School in question, but he has not been paid any remuneration till date. If that be so, the Petitioner may approach the Authority concerned, if he is so advised, for such benefit, which shall be considered in accordance with law, subject to verification that the Petitioner has discharged his duties by virtue of interim Order of this Court.

(DR. B.R. SARANGI)
JUDGE

Ashok/Padma

(S.K. MISHRA)
JUDGE

