

ORISSA HIGH COURT : CUTTACK

W.P(C) NO. 2327 OF 2012

In the matter of an application under Articles 226 and 227 of the Constitution of India.

AFR Aswinee Kumar Raj Petitioner

-Versus-

State of Orissa & Ors. Opp. Parties

For petitioner : M/s. K.K. Swain, P.N. Mohanty,
K. Swain and P.K. Mohapatra,
Advocates

For opp. parties : Mr. S. Jena, Standing Counsel,
S&ME Department

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND**

THE HONOURABLE MR. JUSTICE S. K. MISHRA

DECIDED ON : 22.06.2022

DR. B.R. SARANGI, J. The petitioner, by way of this writ petition, seeks to quash the order dated 04.11.2010 passed in O.A. No.3485 (C) of 2001, by which the Orissa Administrative Tribunal, Cuttack Bench, Cuttack, while disposing of the said O.A., held that the initial appointment of the petitioner being against a non-

existent post and not through the prescribed open competition, he cannot claim to have been appointed on regular basis and claim payment and, as such, his subsequent adjustment in Town High School, Jaleswar, vide office order no.6268 dated 06.05.1999, at Annexure-2 to the O.A., has rightly been withdrawn as per office order no.19295 dated 03.11.2001, at Annexure-4 to the said O.A., passed by the Inspector of Schools, Balasore revoking his earlier order dated 06.05.1999.

2. The factual matrix of the case, in brief, is that the petitioner had approached the tribunal by filing O.A. No.3485(C) of 2001 contending that Simanta Sikshya Niketan, Kashidiha, Balasore, was previously an aided educational institution within the meaning of Section 3(b) of the Orissa Education Act, 1969 and, as such, the said institution and its employees are governed under the various provisions of the said Act and the Rules framed thereunder. Subsequently, the school was taken over by the State Government by virtue of the resolution dated 16.12.1994 w.e.f. 07.06.1994.

2.1 The petitioner claims that he was appointed against the post of 4th peon on 20.11.1988 by the erstwhile managing committee of the school. Pursuant to the order of appointment, he joined the said post and continued to discharge his duties. After his appointment, his case was recommended to the Inspector of Schools, Balasore, for approval of his appointment. Notwithstanding the aforesaid recommendation, when no steps were taken by the Inspector of Schools, Balasore, to accord approval of his appointment, the petitioner approached this Court by filing OJC No.17240 of 1997, which was disposed of on 30.04.1998 directing the opposite parties to take steps for adjustment of the petitioner in any of the institutions, where vacancies were available. Accordingly, the petitioner was adjusted in Town High School, Jaleswar, by virtue of the order dated 06.05.1999 of the Inspector of Schools, Balasore, pursuant to which he joined against the post of 3rd peon (Night Watchman-cum-Sweeper) on 02.06.1999 and got his monthly salary regularly since 02.06.1999 in the

prescribed scale of pay. But, by order dated 03.11.2001, the Inspector of Schools, Balasore, revoked his earlier order dated 06.05.1999 on the ground that very appointment of the petitioner was illegal and contrary to Rules.

2.2 Challenging the order dated 03.11.2001 passed by the Inspector of Schools, Balasore, the petitioner approached the Orissa Administrative Tribunal by filing O.A. No.3485(C) of 2001. The Tribunal, after due adjudication, dismissed the said O.A., vide order dated 04.11.2010, by holding that the very appointment of the petitioner was illegal and his adjustment in Town High School, Jaleswar, was also illegal and, as such, the order dated 03.11.2001 passed by the Inspector of Schools revoking his previous order dated 06.05.1999 was well justified. Hence, this writ petition.

3. Mr. K. Swain, learned counsel for the petitioner contended that although the petitioner was initially appointed by the management as 4th peon, but

subsequently he was adjusted as 3rd peon in Town High School, Jaleswar, by virtue of order dated 06.05.1999 passed by the Inspector of Schools, Balasore, in compliance of the order of this Court passed in OJC No.17240 of 1997. Therefore, the withdrawal of said order dated 06.05.1999 by the Inspector of Schools, Balasore, vide order dated 03.11.2001, cannot sustain in the eye of law. As such, the Tribunal has committed gross error apparent on the face of the record in confirming the order dated 03.11.2001 passed by the Inspector of Schools, Balasore, for which interference of this Court is warranted.

4. Mr. S. Jena, learned Standing Counsel for the School and Mass Education Department, vehemently contended that the post of 4th peon was not created in the school in question. Therefore, the appointment of the petitioner against the said post by the erstwhile Managing Committee of the school cannot sustain in the eye of law. Thereby, his subsequent adjustment in the post of 3rd peon in Town High School, Jaleswar, by the Inspector of Schools, Balasore, cannot have any

justification. When the Inspector of Schools, Balasore, came to a conclusion that the initial appointment of the petitioner was void ab initio, as a consequence thereof, his subsequent adjustment in Town High School, Jaleswar, in the post of 3rd peon cannot sustain in the eye of law. Thereby, the Inspector of Schools, Balasore, vide order dated 03.11.2001, withdrawn his earlier order of adjustment dated 06.05.1999, which has been confirmed by the Tribunal after due adjudication. Therefore, the order of the Tribunal does not warrant interference of this Court at this stage.

5. This Court heard Mr. K. Swain, learned counsel appearing for the petitioner and Mr. S. Jena, learned Standing Counsel for the School and Mass Education Department appearing for the opposite parties by hybrid mode and perused the records. Pleadings having been exchanged between the parties, with the consent of learned counsel for the parties this writ petition is being disposed of finally at the stage of admission.

6. Having heard learned counsels for the parties and after going through the records, it is emerged that the petitioner was appointed as 4th peon in Simanta Sikshya Niketan, Kashidiha, which is an aided school. It was subsequently taken over by the State Government on 07.06.1994. When the petitioner was not allowed to discharge his duties, he approached this Court by filing OJC No.17240 of 1997 and by virtue of order dated 30.04.1998 passed by this Court, he was adjusted in Town High School, Jaleswar, in the post of 3rd peon, in which the petitioner claims appointment as he had been discharging his duties. As a matter of fact, in pursuance of interference of this Court, the petitioner was adjusted in the post of 3rd peon in Town High School, Jaleswar, which is not admissible. As per the Circular of the Government prevalent then, where the Roll strength of a High School exceeds 100 originally and subsequently 500, a promotional post of Daftary to be filled up from the posts of Class-IV is admissible. The posts of Class-IV in such School shall comprise of one Office Peon, one Science Attendant, and one Night Watchman-cum-

Sweeper and, as such, the post of 4th peon is not admissible so that the petitioner can be appointed. If any error was committed by the erstwhile Managing Committee by giving appointment to the petitioner against 4th peon, that itself cannot give a right to the petitioner to continue in the said post, as the said post is not admissible. More so, if an error was committed by the erstwhile Managing Committee of the School, the petitioner cannot claim that a right has been accrued in his favour to continue in such post.

7. In any case, the petitioner was adjusted against the vacancy available in the Town High School, Jaleswar, in the 3rd post of peon. Subsequently, when it was found that his initial appointment was illegal as no post of 4th peon was created in the school and the petitioner cannot be adjusted against the regular vacancy in the Town High School, Jaleswar, as a consequence thereof, vide order dated 03.11.2001, the Inspector of Schools, Balasore withdrew his adjustment in the said School, as his initial appointment in Simanta Sikshya Niketan, Kashidiha, was illegal.

8. Learned counsel for the petitioner vehemently argued that once the petitioner entered into service by giving appointment against 4th post of peon and subsequently he was adjusted in the post of 3rd peon, the order should not have been withdrawn by the Inspector of Schools. But fact remains, if the post of 4th peon has not been created, the question of appointment against such post cannot be admissible to the petitioner. Therefore, the very entry of the petitioner into service is absolutely illegal. But this Court, vide order dated 15.03.2022, gave an opportunity to the petitioner to produce the documents with regard to creation of 4th post of peon in the School in question, in view of the stand taken before the Tribunal with regard to creation of said post and also appointment of the petitioner in a consequential vacancy, as per law laid down by the apex Court in ***State of Orissa-vs. Rajendra Kumar Das***, (2004) 10 SCC 411. But the petitioner could not be able to produce any material with regard to creation of 4th post of peon in the School in question, even though

opportunities were given on 20.04.2022, 29.04.2022 and 17.05.2022.

9. As the post of 4th peon has not been created in the School in question, the appointment of the petitioner against the said post cannot be said to be legal and justified and, more so, his subsequent adjustment in the Town High School, Jaleswar, also cannot sustain in the eye of law.

10. In view of such position, this Court is of the considered view that the order dated 06.05.1999 passed by the Inspector of Schools, Balasore, with regard to adjustment of the petitioner in the Town High School, Jaleswar, which has been withdrawn vide order dated 03.11.2001 by the Inspector of Schools, is justified. Therefore, this Court does not find any illegality or irregularity in the order dated 04.11.2010 passed by the Tribunal in O.A. No.3485(C) of 2001 confirming the order dated 03.11.2001 passed by the Inspector of Schools, Balasore.

11. There is thus no merit in this writ petition, which is hereby dismissed. There shall be no order as to costs.

(DR. B.R. SARANGI)
JUDGE

S. K. MISHRA, J. I agree.

(S. K. MISHRA)
JUDGE

Orissa High Court, Cuttack
The 22th June, 2022, Alok/Padma

