

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.23979 OF 2017

(An application under Articles 226 and 227 of the Constitution of India)

Badrinarayan Rath ... Petitioner

-versus-

State of Odisha & others ... Opposite Parties

Advocates appeared in the case through hybrid mode:

**For Petitioner : Mr.S.P.Sahoo,
Advocate**

-versus-

**For Opposite Parties 1 to 3 : Mr.P.K.Panda,
Standing Counsel
(S & M.E. Deptt.).**

For Opposite Parties 4 and 5: None.

CORAM:

JUSTICE SASHIKANTA MISHRA

**JUDGMENT
12.08.2022.**

Sashikanta Mishra,J. Pursuant to an advertisement for the post of teacher in Chemistry, Botany and Zoology (CBZ) issued by the Secretary of Saraswati Academy, Kania, the Petitioner was selected and

appointed as Asst. Teacher against the said post as per order of the Secretary of the Management dated 25th March, 2008. Accordingly, the Petitioner joined on 25th March, 2008 by submitting his joining report. The Petitioner possessed B.Sc. (CBZ) qualification in the year 2008. While performing his duties he was asked to perform the duties as in-charge Headmaster by order of the then Inspector of Schools communicated vide letter dated 23th July, 2011. The Management suggested him to be trained as required under law to hold the post of CBZ and accordingly he applied for leave to the Secretary to undergo in-service training of B.Ed. course. The Secretary, vide letter dated 20th October, 2011 stated his no objection to the Petitioner completing the course during the Session 2011-2012 or till completion of the same course. Since his original certificates had not been returned, he could not take admission in B.Ed. course and rejoined the School and discharged his duties as before. He took admission in B.Ed. course in the year 2013-14 and completed the course in the year 2016. The Petitioner thereafter submitted his joining report in the School on 23th September, 2016, but the Secretary did not accept the same. He approached the Secretary again on 17th October, 2016 and 22nd October, 2016, but to no avail. The Petitioner came to

know that in the mean time the Secretary had illegally recommended the name of Opposite Party No.5 for the post of Asst. Teacher (CBZ) though he had been appointed as a stop gap arrangement against the leave vacancy of the Petitioner. The Petitioner, thereafter submitted representations on 25th October, 2016 to the District Education Officer and 4th November, 2016 to the Director, Secondary Education to consider his case and not to release the Block grant in favour of Opposite Party No.5. He also sent an Advocate's notice to Government on 17th November, 2016 not to release the Block grant till its finalization. Since no action was taken in the matter, the Petitioner filed a G.I.A. Case bearing No.102/2017 on 13th April, 2017 before the Education Tribunal, Odisha, which is still pending. However, the Petitioner came to know that subsequently, the authorities have released Block Grant in favour of Opposite Party No.5 ignoring the right of the Petitioner. It is stated that non-acceptance of the joining letter amounts to termination and since no approval was taken by the authority as provided under Section 10-A of the Odisha Education Act, the same is illegal and invalid. Being aggrieved thus, the Petitioner has approached this Court seeking the following relief:-

“(a) Declaration declaring the action of management not allowing the Petitioner to sign on attendance register and not allowing to discharge his duties after study leave as bad and illegal,

(b) Declaration declaring the continuance of O.P.No.5 against the post of CBZ, who had been appointed on leave vacancy of Petitioner and release of aid in his favour as illegal,

(c) Declaration declaring the non-following the provisions of Section 10-A of the Odisha Education Act, 1969, which is mandatory in nature as bad, illegal and unlawful, hence the action of management is not sustainable in the eye of law,

(d) Direction directing the management, the O.P.No.4 to allow the Petitioner to sign in the attendance register and discharge his duty as Asst. Teacher against the post of CBZ,

(e) Direction directing the O.P.Nos.3 and 4 to recommend his case to O.P.Nos.2 and 1 for necessary approval,

(f) Direction directing the O.P.No.2 to accord approval and O.P.No.1 to sanction aid in favour of Petitioner,

(g) Order allowing release of aid and arrears in favour of Petitioner by the O.P.Nos.1 to 3,

(h) Order allowing any other benefits as available under law.”

2. Despite repeated opportunities, no counter was filed by the State-Opposite Parties. The Managing Committee of the School (Opposite Party No.4) and the private Opposite Party No.5 also did

appear despite sufficient service of notice including notice through Special Messenger. As such, the Writ Petition was heard on the basis of available pleadings and materials on record.

3. Heard Mr. S.P.Sahoo, learned counsel for the Petitioner and Mr.P.K.Panda, learned Standing Counsel for the School and Mass Education Department.

4. At the outset, a preliminary objection is raised by Mr. P.K.Panda, learned Standing counsel, as regards maintainability of the Writ Petition. It is urged that even if the Petitioner's case is accepted on its face value, it would be a case of illegal termination being in violation of Section 10-A of the Odisha Education Act, which can be challenged before the Odisha Education Tribunal as per Section 10-A (3) of the Act.

In response, Mr. S.P. Sahoo has relied upon some decisions of this Court in which it has been held that when the facts are undisputed, the bar of alternative remedy cannot be raised.

5. For the reasons to be indicated hereinafter, this Court does not deem it proper to refer to the said decisions or render any finding with regard to the maintainability of the Writ Petition.

It has been averred in the Writ Petition under Paragraph-10 that after coming to know of the recommendation of the case of Opposite Party No.5 (wrongly mentioned as Respondent No.6), the Petitioner submitted representations on 25th October, 2016 to the District Education Officer and on 4th November, 2016 to the Director of Secondary Education. He also issued an Advocate's notice to the said authorities, copy of which is enclosed as Annexure-10. None of these representations are disposed of as yet. In the Advocate's notice as also the representations, the Petitioner has ventilated his grievance in detail. It would therefore, be in the fitness of things if the representation, as above, is considered by the concerned authorities in accordance with law at the first instance. This is not so much an order on maintainability of the Writ Petition on the ground of availability of alternative remedy but an observation that if the authority competent to redress the grievance of the Petitioner has already been approached and the said authority is said to be in seisin over the matter, it cannot be said that the Petitioner has approached this Court after fully exhausting his legal remedies.

6. Therefore, without expressing any opinion with regard to the merits of the contentions raised before this Court, it is deemed

proper to dispose of the Writ Petition by directing the Director of Secondary Education, Odisha, Bhubaneswar (Opposite Party No.2) to consider the representation of the Petitioner, if not already disposed of, in accordance with law after affording opportunity of hearing to the Petitioner, the Management of the School and Opposite Party No.5 by passing a lawful order within a period of two months from the date of communication of this order or on production of certified copy thereof by the Petitioner. Further, while disposing of the representation, the Opposite Party No.2 shall take into consideration the mutual claims of the Petitioner and the Opposite Party No.5 to the post in question having due regard to the provision under Section 10-A of the Odisha Education Act.

7. The Writ Petition is disposed of accordingly.

Ashok Kumar Behera

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Sashikanta Mishra,
Judge





