

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No.5503 of 2013

And

W.P (C) No.5504 of 2013

W.P (C) No.5503 of 2013

Smt. Arati Dei

.....

Petitioner

Mr. S.K.Das, Advocate

Vs.

State of Odisha and others

.....

Opposite parties

Mr. S. Jena, Standing Counsel S&ME

W.P (C) No.5504 of 2013

Manjulata Swain

.....

Petitioner

Mr. S.K.Das, Advocate

Vs.

State of Odisha and others

.....

Opposite parties

Mr. S. Jena, Standing Counsel S&ME

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE S.K. MISHRA

ORDER

21.06.2022

Order No.

06.

This matter is taken up through hybrid mode.

2. The petitioners in both the writ petitions were appointed as Hindi Teacher in Government High School against the existing vacancies with a condition that they will continue till the posts are filled up by the candidates selected by the Circle Level Selection Committee. On 29.04.1998, the services of the petitioners were directed to be terminated on the ground that they were appointed in contravention of the Employment Exchange (Compulsory Notification of Vacancies) Act and ORV Act. Along with the petitioners, four other similarly situated persons also faced the same result. As a consequence thereof, the petitioners, along with four others, approached the tribunal by filing original applications bearing O.A. Nos.216, 752, 785, 724 and 751 of 1998. The

tribunal disposed of O.A. No. 216 of 1998, vide order dated 06.01.1999 with a direction that if the post against which the applicant therein was appointed is still lying vacant, he may be readjusted against the same, duly observing the provisions of the O.R.V. Act and Rules and if regular selection process is going to be held for the post against he was appointed, the applicant shall be given opportunity to compete with others and in the meantime if the applicant is overaged, relaxation of his overage may be considered under the provisions of the Odisha Service Code specially in view of his past service rendered in the Department. O.A. Nos.752, 724 and 751 of 1998 were disposed of by a common order dated 14.09.1998 with the same direction as that of O.A. No. 216 of 1998. The tribunal while disposing of M.P. No. 1095 of 1998 (arising out of O.A. No. 785 of 1998), vide order dated 28.10.1998, directed that if the post against which the applicant was engaged is still vacant, then she may be readjusted in that post for a spell not exceeding 45 days so that provisions of O.R.V. Act are not violated. If the said post has already been filled up by a candidate of reserve category and a post of Hindi Teacher meant for general category is vacant in some other school under the opposite party-authority, then the applicant be adjusted in that school subject to the condition that such temporary adjustment will not confer any right on her to claim regular appointment on a future date or weightage arising out of such adjustment for regularization. The said original application was finally disposed of vide order dated 01.11.2011 with a direction to the authority that he will do well to consider the prayer of the applicants in the original application in accordance with applicable Rules and

orders. Service benefit as may be admissible as per law in the circumstance of the case shall also be allowed.

3. Pursuant to the order of the tribunal, the applicants were readjusted against their former posts for a period of 44 days from the date of their joining against the post with a break of one day to one spell to another spell till the post is regularly filled up vide orders dated 08.03.1999, 09.11.1998, 18.08.1998, 19.09.1998 and 23.09.1998 respectively and, as such, the spell appointment was continuing. But, instead of giving regular appointment by following due procedure under the Rules, the Government vide order dated 07.07.2007 stated that continuance of such ad hoc teachers appointed illegally for indefinite period is not desirable. Immediately transfer and posting of surplus Hindi teachers from M.E. Schools in these High Schools may be made and these ad hoc Hindi Teachers should be disengaged. They may be allowed to appear for contractual engagement when advertisement for the purpose is made in relaxation of age and subject to fulfillment of other required criteria. The said order of the Government was challenged before the tribunal in O.A. No. 1922, 1923, 1924 and 2098 of 2007 and O.A. No. 54 of 2008 and while entertaining the original applications, the tribunal passed interim order protecting the interest of the applicants. As a consequence thereof, the petitioners are continuing in the school. But subsequently, vide impugned order dated 17.10.2012, tribunal disposed of all the original applications with the following order:-

“ xxx Considering the submissions made by the learned counsel for both the parties and keeping in view of the fact that the applicants were appointed as Hindi Teachers in different schools on adhoc basis without following the recruitment procedure and in violation of O.R.V. Act., we

are of the considered view, there is no illegality or irregularity in the impugned order dated 7.7.2007.

However, keeping in view the averment made in the counter that the applicants shall be allowed to appear in the selection test for contractual engagement when advertisement for the purpose is made in relaxation of age subject to fulfillment of other required criteria, so also the applicants shall be allowed to participate in the selection test, as and when any advertisement shall be made by the respondent authorities for appointment of Hindi Teachers on contractual basis, these applicants along with other similarly situated Hindi Teachers are at liberty to apply for the post subject to fulfilling all the terms and conditions of the advertisement except the upper age limit criterion. So far as upper age limit is concerned, the respondent authorities shall extend the benefit of relaxation of the upper age limit, taking into account the number of years each one of the respective applicants rendered their services in Government/Taken over schools and thereafter allow them to appear in the selection test.

So far as prayer for disbursement of salary in favour of the applicants is concerned, if the applicants are working as Hindi Teachers by virtue of the interim order of the Tribunal/Court of law and attending the school regularly, the salary for the period they have worked be disbursed in their favour within a period of four months from the date of receipt of copy of the order.

All these O.As. are accordingly disposed of in terms of the above order/direction.

Since the O.As. are disposed of, interim order passed in these cases accordingly stand vacated and the pending M.P./S.Ps are also disposed of.”

4. Against the aforesaid order of the tribunal, the petitioners approached this Court by filing the present writ petition and this Court vide order dated 15.04.2013 in Misc Case No.8791 of 2013 passed interim order to the following effect:-

“Misc. Case No. 8790 of 2013

This misc. case has been filled in Court today. The same be registered as such.

Heard.

Issue notice as above.

In the interim, it is directed that there shall be stay operation of the impugned orders under Annexure-7 and 10 till the next date.

Urgent certified copy of this order be granted on proper application."

5. Mr. S.K. Das, learned counsel for the petitioners brings to the notice of the Court that Manjulata Swain, the petitioner in W.P.(C) No. 5504 of 2013 has retired in the meantime on attaining the age of superannuation and also filed writ petition bearing W.P.(C) No. 41933 of 2021 claiming for retiral benefits which was disposed of vide order dated 04.02.2022 directing the authority to consider her representation. It is further contended that the petitioner in other writ petition, i.e., W.P.(C) No.5503 of 2013 has not yet retired and, as such, by virtue of the interim order passed by this Court, she is continuing. But till date no regular recruitment has been made by the opposite party-authority.

6. Mr. S. Jena, learned Standing Counsel for School and Mass Education Department also endorsed the contention raised by learned counsel for the petitioners that no regular recruitment has been made by the authority till date and, as such, by virtue of the interim order passed by this Court, the petitioners are continuing.

7. Having heard learned counsel for the parties and after going through the records, this Court is of the considered opinion that since the petitioner in W.P.(C) No. 5503 of 2013 is continuing till date by virtue of the interim order passed by the tribunal as well as this Court and, as such, the State Government has not gone for fresh recruitment by following Rules and regulations as

directed, a right has been accrued in her favour and, as such, her continuance pursuant to interim order passed by this Court has to be taken into consideration. As such, she is entitled to get the benefits in accordance with law and should be allowed to continue till she attained the age of superannuation, as a few years only left for her superannuation.

8. In the above view of the matter, the order dated 17.10.2012 passed by the tribunal is modified to the extent that the petitioner in W.P.(C) No. 5503 of 2013, namely, Smt. Arati Dei, who is continuing from 1998 till date, shall be allowed to continue till she attained the age of superannuation, and that till date since Government has not gone for fresh recruitment by following Rules and regulations, she shall be entitled to get the consequential service and financial benefits in accordance with law and this Court directs accordingly.

9. With the above modification of the order impugned passed by the tribunal, the writ petitions stand disposed of.

Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

(S.K. MISHRA)
JUDGE

Ashok/PCD