

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 25636 of 2017

State of Odisha and others

.....

Petitioners

Mr. S. Jena, S.C.(S&ME) Deptt.

Vs.

Brajeswari Pati and another

.....

Opposite Parties

Mr. B. Mohanty, Adv.

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE G. SATAPATHY

ORDER

23.09.2022

Order No.

06.

This matter is taken up through hybrid mode.

2. Heard learned counsel for the parties.

3. By way of this writ petition, the petitioner has challenged the order dated 05.04.2017 passed by the Odisha Administrative Tribunal, Principal Bench, Bhubaneswar in O.A. No. 3589 of 2013.

4. The issue involved in this case is covered by the decision of this Court in W.P.(C) No. 7707 of 2017 and a batch of writ petitions, which were disposed of on 05.02.2018 with the following order:

“Heard Mr. Manoranjan Mohanty, learned Senior Advocate assisted by Mrs. Subhasree Mohanty, learned counsel for the petitioners-applicants, Mr. B. Rout, learned Standing Counsel for School & Mass Education Department and Mr. K. Swain, learned counsel for opposite party-applicant in W.P.(C) No. 12855 of 2017.

Petitioners in W.P.(C) Nos. 7707, 7708, 7715 and 7717 have challenged a part of the common order dated 27.04.2016 passed by the Orissa Administrative Tribunal in O.A. Nos. 3431 (C), 2981 (C), 2993 (C), 2982 (C) and 2992 (C) of 2012, wherein the Tribunal while allowing the prayer made by the applicant-petitioners directed that the financial and service benefits be notionally extended in favour of the petitioners.

The State-functionaries have also filed

W.P.(C) Nos. 17366, 17367, 17368, 17369 and 12855 of 2017 challenging the aforesaid order passed by the Tribunal.

Since in all these writ petitions the common order passed by the Tribunal is under challenge, they are heard together and disposed of by this common order.

The petitioners in W.P.(C) Nos. 7707, 7708, 7715 and 7717 are also the opposite parties in W.P.(C) Nos. 17366, 17367, 17368 and 17369 of 2017. Mr. Mohanty, learned Sr. Counsel for the applicants submitted that the Tribunal taking into consideration the law decided by this Court and by the Apex Court has come to a positive finding and quashed the order of reversion dated 01.09.2012. However the Tribunal instead of extending the actual financial and service benefits, directed that the benefits be extended notionally. He further submitted that the applicants having the requisite qualification and as per Rule-8 (2) (b) of the Odisha Education (Recruitment and Conditions of Service of Teachers and Principals and Staff of Aided Educational Institution) Rules, 1974, hereinafter 1974 Rules, their appointments as Headmaster in the aided high schools have been approved by the competent authority, therefore, they are entitled to the scale of pay for the post of Headmaster as they had been continuing and discharging their duties as such. Their reversion is redundant in view of the decision of the Government subsequently which has taken note by the Tribunal also while passing the impugned order.

Learned Standing Counsel for School & Mass Education Department on the other hand however submitted that the applicants before the Tribunal since were appointed as Headmasters without prior approval of the competent authority, the Tribunal should not have quashed the order of reversion. Thus the order need be interfered with. In support of his contention, he has placed reliance on the decision of the Apex Court in the case of Pabitra Mohan Dash and others v. State of Orissa and others reported in (2001) 2 SCC 480.

The fact of the case, as is revealed from the record is that the applicants having the requisite training qualification and having seven year teaching experience as Trained Graduate Teacher well before 03.06.1988 became the

Headmaster in an aided High Schools with the approval of the Director under Rule-8 (2) (b) of the Odisha Education (Recruitment and Conditions of Service of Teachers and Principals and Staff of Aided Educational Institution) Rules, 1974. However such applicants were reverted to trained graduate post on 09.07.2002. The State Government clarified the matter on 10.02.2003 indicating therein that the headmasters who got promotion under Rule-8 (2)(b) of 1974 Rules prior to coming into force of Rule 8 (3) of 1974 rules, i.e. prior to 03.06.1988 were not supposed to be reverted from the post of Headmaster to a trained graduate post. Accordingly vide order dated 10.02.2003 and 29.03.2003 the State Government revoked the reversion order. However on 01.09.2012 on an erroneous impression, once again the Director, Secondary Education reverted the applicants. Challenging such order, the applicants approached the Tribunal in O.A. Nos. 3431 (C), 2981 (C), 2993 (C), 2982 (C) and 2992 (C) of 2012. The Tribunal taken into consideration the law decided by the Special Bench of this Court as well as by the Apex Court in the case of Pabitra Mohan Dash and others v. State of Orissa and others reported in (2001) 2 SCC 480 wherein it was held that after 29.04.1977, i.e. after the regulation 17 (2)(1) prescribing the qualification for the post of Headmaster as 7 years of teaching experience as a TGT if nobody has been appointed against the post without having 7 years of teaching experience as a TGT, his appointment or promotion is perse invalid. The Tribunal taking note of such settled position held that the applicants' promotion was approved by the Director and they received Headmaster Scale of Pay with effect from 20.07.1985 (for convenience the case of the applicant in O.A. No. 3431 (C) of 2012 was taken by the Tribunal) and therefore, there is no justification to revert them 2nd time to the post of TGT and these 199 Headmasters stand on different footing and they were not to be reverted from the post of Headmasters on the basis of the judgment of this Court as well as by the Apex Court in the case of **Priti Ranjan Pradhan and Pabitra Mohan Das**.

In view of the above, there is no error apparent on the finding of the Tribunal with regard to the dispute regarding prior approval of

the applicants in the post of headmasters by the competent authority. They are entitled to get the Headmaster Scale of pay from the date of their approval by the competent authority. Accordingly the order of the Tribunal is modified to the extent that the applicants are entitled to the Headmaster Scale of Pay from the date of their approval by the Director respectively instead of notionally. The arrears be calculated and released within a period of three months.

With the above modification in the impugned order, W.P. (C) Nos. 7707, 7708, 7715, 7717 of 2017 are accordingly disposed of and the writ petitions filed by the State-functionaries, i.e. W.P.(C) Nos. 17366, 17367, 17368, 17369 and 12855 of 2017 are accordingly dismissed.”

5. However, the State-petitioners have preferred SLP before the Hon’ble Supreme Court against the aforesaid order.

6. Since the subject matter of dispute in this writ petition is pending before the Hon’ble Supreme Court, parties will be governed by the result of the decision of the Hon’ble Supreme Court.

7. This writ petition is accordingly disposed of.

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

(DR. B.R. SARANGI)
JUDGE

(G. SATAPATHY)
JUDGE

Ashok/Subha