

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No.16199 of 2021**

**Ayesha Tanwir & Anr.** .... **Petitioners**  
Mr. B. Routray, Sr. Adv.  
Along with  
Mr. S.P. Nath, Adv.  
-versus-  
**State of Odisha and Ors.** .... **Opposite Parties**  
Mr. Sonak Mishra, SC  
(for S & ME Deptt.)

**CORAM:**  
**Mr. JUSTICE S.K. PANIGRAHI**

**ORDER**  
**31.05.2022**

**Order**  
**No.**

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1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the Petitioners and learned counsel for the Opposite Party No.1-S & ME Deptt.
3. The Petitioners in the present Writ Petition have challenged the action of the Opp. Parties in not regularizing their services even though similarly placed persons have been appointed on regular basis.
4. Shorn of unnecessary details, the substratum of the matter presented before this court remains that there is no contractual appointment of Teacher Educators as per the Personnel Policy of DIET and the Teacher Educators are appointed

on regular basis against vacant posts and moreover the advertisement issued subsequent to the appointment of the petitioners have been made on regular basis but the petitioners have been seriously prejudiced by the Opp. parties by giving them contractual appointment. The Opp. Party No. 2 has recommended the cases of the petitioners for regularization vide order dated 26.06.2013 but till date no action has been taken, as a result of which, the petitioners are seriously prejudiced. Hence the present Writ Petition.

5. An advertisement was issued for engagement of teacher educators in the existing DIETS of the State on contractual basis and the eligibility criteria, remuneration, 10 year of engagement and another procedure of selection was laid down in the said advertisement which was published in the local daily Newspaper and the said advertisement was also uploaded in the website of the opp. party No.2 and the monthly remuneration for the said post was fixed to Rs.9300/- only without any grade pay, daily allowance, house rent allowance and other allowances and the prescribed application form was notified to reach the office of the opp. party No.2 on or before 10<sup>th</sup> January 2011. The

petitioners having satisfied all the eligibility criteria pursuant to the advertisement issued by the opp. party No.2, the candidatures of the petitioners were submitted, considered, they were selected and got engaged as teacher educators on 14.02.2013 and accordingly engagement orders were issued in their favour.

- 6.** Learned counsel for the petitioners submit that another advertisement was issued and the said advertisement seeking appointment of teacher educators on regular basis and accordingly vide office order date 25<sup>th</sup> April 2013, appointment orders were issued in their favour as prescribed under the regular scale of pay. But so far as the petitioners are concerned, they have been appointed on contractual basis and the concept of contractual teacher educator is against the personnel policy under Annexure-1. Therefore, the action of the opposite parties is not sustainable in the eye of law. Subsequently, another advertisement was issued for appointment of teacher educator on regular basis and vide office order dated 18<sup>th</sup> June 2015, appointment orders were issued. However, in so far as the case of the present petitioners are concerned, they have been given appointment on contractual basis though there is no concept of

contractual teacher educator as per the personnel policy dated 30<sup>th</sup> November 1990. Hence, such action of the opposite parties in giving contractual appointment to the petitioners is not sustainable in the eye of law.

- 7.** Even if such personnel policy is also ignored, as per Orissa Group B Posts (Contractual appointment) Rules, 2013, the services of the petitioners are required to be regularised after completion of 6 years of service in the said contractual post. Rule-16(a) of the said Rules states:

*“On the date of satisfactory completion of six years of contractual service under rule 9, they shall be deemed to have been regularly appointed. A formal order of regular appointment shall be issued by the Appointing Authority.”* सत्यमेव जयते

Therefore, the action of the Opp. Parties in not regularising the services of the petitioners is not sustainable in the eye of law.

- 8.** Indisputably, in the case at hand, the Court is of the opinion that the petitioners have been appointed against sanctioned post of teacher educators even though the post of teacher educators was originally contractual in nature, it should have been regularised by now.

9. The Opp. Party No.2 vide letter dated 08.09.2020 (Annexure-9) has recommended the Opp. Party No.1 to consider the case of the Petitioners for regularization in terms of the GA Dept. Notification No.1147/Gen, dated. 17.01.2014 and further vide letter dated 26.06.2013, it has been clearly mentioned that:

*"They have been posted on contractual basis against the sanctioned posts in 13 old DIETS as per the Government order No. 10174/SME, dtd.17.06.2010 and Finance Department vide UOR No. 119 SS 1/dt.24.05.2010.*

*They have performed well on these DIETS over a period of one year.*

*On the basis of their performance appraisal, one year extension is allowed to them.*

*There is utter discontentment among contractual Teacher Educators on the discriminatory salary package among Teacher Educators on regular basis and Teacher Educators on contractual basis, though all of them hold the same post & perform the same work in the same institution.*

*In 12th Five year Plan (2012-17) 75% of total salary of Teacher Educators under CSP is borne by the Government of India only 25% is borne by Government of Odisha.*

*As Government is regularizing the contractual services of personnel in different*

*Departments, the same benefit may be extended to the contractual Teacher Educators, otherwise this disparity in salary will gradually demotivate & demoralize the Teacher Educators to perform their best.*

*In view of the above circumstances, the prayer of the Teacher Educators on contractual basis may be considered and their services may be regularized at Government level".*

**10.** The office order dated 18.06.2015 clearly suggests that a number of candidates have been appointed on contractual basis under Annexure-A of the Additional Affidavit filed by the Petitioners and they have been later regularised on 18.10.2021 vide office order No.4A-TE-83/2021/5993/TE&SCERT dated 18.10.2021 issued by Director of Teacher Education and SCERT, Odisha, Bhubaneswar under Annexure-B of the Additional Affidavit filed by the Petitioners. If such candidates have been regularised who were appointed much later than the petitioners, the case of the petitioners deserve to be considered on the same footing.

**11.** While deliberating on this issue, Supreme Court in the case of **Amarkant Raivs State Of Bihar & Ors**<sup>1</sup> held that:

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<sup>1</sup>CIVIL APPEAL NO. 2835 OF 2015

*"13. Applying the ratio of Umadevi's<sup>2</sup> case, this Court in Nihal Singh &Ors. v. State of Punjab &Ors.<sup>3</sup>, directed the absorption of the Special Police Officers in the services of the State of Punjab holding as under:*

*"35. Therefore, it is clear that the existence of the need for creation of the posts is a relevant factor with reference to which the executive government is required to take rational decision based on relevant consideration. In our opinion, when the facts such as the ones obtaining in the instant case demonstrate that there is need for the creation of posts, the failure of the executive government to apply its mind and take a decision to create posts or stop extracting work from persons such as the appellants herein for decades together itself would be arbitrary action (inaction) on the part of the State.*

*36. The other factor which the State is required to keep in mind while creating or abolishing posts is the financial implications involved in such a decision. The creation of posts necessarily means additional financial burden on the exchequer of the State. Depending upon the priorities of the State, the allocation of the finances is no doubt exclusively within the domain of the legislature.*

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<sup>2</sup>(2006) 4 SCC 1

<sup>3</sup>(2013) 14 SCC 65

However in the instant case creation of new posts would not create any additional financial burden to the State as the various banks at whose disposal the services of each of the appellants is made available have agreed to bear the burden. If absorbing the appellants into the services of the State and providing benefits on a par with the police officers of similar rank employed by the State results in further financial commitment it is always open for the State to demand the banks to meet such additional burden. Apparently no such demand has ever been made by the State. The result is the various banks which avail the services of these appellants enjoy the supply of cheap labour over a period of decades. It is also pertinent to notice that these banks are public sector banks."

14. In our view, the exception carved out in para 53 of *Umadevi* is applicable to the facts of the present case. There is no material placed on record by the respondents that the appellant has been lacking any qualification or bear any blemish record during his employment for over two decades. It is pertinent to note that services of similarly situated persons on daily wages for regularization viz. one Yatindra Kumar Mishra who was appointed on daily wages on the post of Clerk was regularized w.e.f. 1987. The appellant although initially

*working against unsanctioned post, the appellant was working continuously since 03.1.2002 against sanctioned post. Since there is no material placed on record regarding the details whether any other night guard was appointed against the sanctioned post, in the facts and circumstances of the case, we are inclined to award monetary benefits be paid from 01.01.2010.”*

- 12.** Having considered the matter in aforesaid perspective and guided by the precedents cited hereinabove, this Court allows the petition and directs the Opp. Parties to regularise the job of the petitioners within a period of three months from today.
- 13.** The Writ Petition is, accordingly, disposed of in terms of the above directions. There shall be no order as to costs.
- 14.** Urgent certified copy of this order be granted on proper application.

**( S.K.Panigrahi )**  
**Judge**