

ORISSA HIGH COURT: CUTTACK

W.P(C) NO. 16431 OF 2020

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

AFR Kamalakanta Kar Petitioner

-Versus-

State of Odisha & Ors. Opp. Parties

For Petitioner : Mr. N.C. Das, Advocate,

For Opp. Parties : Mr. S. Jena, Standing Counsel,
School & Mass Education
Department

P R E S E N T:

THE HONOURABLE DR. JUSTICE B.R.SARANGI

संक्षिप्त न्यायो

DECIDED ON : 14.11.2022

DR. B.R. SARANGI, J. The petitioner, who was a candidate for Sikshya Sahayak, has filed this writ petition seeking direction to opposite parties no.2 & 3 to consider his case in the manner as has been considered in respect of other teachers for appointment as Regular Primary School Teacher (Level-V) by opposite party no.3 under Annexure-6, by quashing the order dated 12.06.2020

under Annexure-7 passed by opposite party no.1, and further to issue direction to opposite party no.2 to treat the order dated 22.01.2015 passed by this Court in W.P.(C) No.26830 of 2011, as the precedent, if the case of the petitioner is similar, and fix the seniority of the petitioner in pursuance of the advertisement dated 22.01.2011 published by opposite party no.3 and pay the financial benefits, as admissible to him, within a stipulated period

2. The factual matrix of the case, in brief, is that pursuant to advertisement issued on 22.01.2011 by opposite party no.3 inviting applications from the intending candidates, having minimum educational qualification of I.Sc. C.T., for the post of Sikshya Sahayak in the district of Bhadrak, the petitioner along with others applied for the said post. But the candidature of the petitioner was rejected on the ground that he had possessed the higher qualification. Therefore, he approached this Court by filing W.P.(C) No.15865 of 2014 seeking direction to the authority to consider his candidature for the post of

Sikshya Sahayak in the district of Bhadrak. This Court, vide order dated 08.05.2015, disposed of the said writ petition directing opposite party no.3 to consider the case of the petitioner for the post of Sikshya Sahayak and publish the result within a period of one month from the date of receipt of the certified copy of the order and if the petitioner is found suitable, he shall be appointed in the post of Sikshya Sahayak within the aforesaid period of one month. In compliance thereof, opposite party no.3 issued engagement order on 07.08.2015 in favour of the petitioner by posting him in Bamanabindha Project Upper Primary School under Tihidi Block in the district of Bhadrak. Accordingly, the petitioner joined in his post.

2.1 Opposite party no.1 issued Resolution No.15107 dated 01.08.2011 under Annexure-2 regarding Career Advancement Policy of Sikshya Sahayak/Junior Teachers, stating therein that the Sikshya Sahayaks, who have completed three years of continuous satisfactory engagement will be appointed as Junior Teachers and the Junior Teachers, who have

completed three years of continuous satisfactory engagement will be appointed as regular teacher. Pursuant to such resolution, some Sikshya Sahayaks were appointed as Junior Teacher by opposite party no.3, vide order No.2331 dated 22.08.2014. But, as the petitioner was engaged as Sikshya Sahayak on 07.08.2015, his case was not considered as Junior Teacher in the year 2014. Therefore, he submitted a representation before opposite parties no.3 & 4 ventilating his grievances to consider his seniority as per the advertisement dated 22.01.2011, since he fulfilled all the criteria laid down in the advertisement.

2.2 When the representation of the petitioner was pending, at that point of time, the State Government in School and Mass Education Department issued an order, vide no.5319 dated 14.03.2018 to the Director, Elementary Education, Odisha pertaining to regularization of eligible Junior Teachers as Elementary Teacher Level-V, pursuant to which 24,702 eligible Junior Teachers were regularized as Regular Primary School Teachers in the Grade of Level-V of the

Elementary Cadre in 30 districts of the State under Non-plan Scheme under respective Zilla Parishads w.e.f. the day following the date of completion of six years of continuous service as Sikshya Sahayak/Junior Teacher taken together, in addition to fulfillment of the conditions contained in the Resolution No.15107/SME dated 01.08.2011. Accordingly, the Junior Teachers, who had completed six years from the date of their joining, were appointed as Regular Teachers (Level-V) by opposite party no.3, vide order No.2334 dated 03..05.2018 in pursuance of the Resolution dated 01.08.2011.

2.3 Since the case of the petitioner was not considered by opposite parties no.2 & 3, he approached this Court by filing W.P.(C) No.18904 of 2019 and this Court, vide order dated 21.10.2019 disposed of the said writ petition directing the petitioner to file a fresh representation before the authority ventilating his grievance and in the event he filed such representation along with certified copy of the order, the authority shall consider and pass appropriate order in conformity with

the provisions of law within a period of four weeks by affording opportunity of hearing to the parties. In compliance thereof, the petitioner filed a fresh representation along with the certified copy of the order, but opposite party no.2, vide order dated 12.06.2020, rejected the claim of the petitioner stating that as he was declared as Junior Teacher on 07.08.2018, he can only be appointed as Regular Primary School Teacher (Level-V) after completion of three years from 07.08.2018 subject to fulfillment of the criteria mentioned in the Govt. Resolution dated 01.08.2011. Hence, this writ petition.

3. Mr. N.C. Das, learned counsel appearing for the petitioner contended that the petitioner does not want to claim any financial benefit in the event his seniority will be fixed as per the publication of select list, as has been done in case of Pratap Kumar Biswal, whose name found place at Sl. No.33 of the order dated 07.08.2015 issued by District Project Coordinator, SSA, Bhadrak. Therefore, he contended that the petitioner's services should have been regularized taking into

consideration his six years service from the date of his initial appointment and extended the benefit in accordance with law.

4. Mr. S. Jena, learned Standing Counsel for School & Mass Education Department vehemently contended that the petitioner is not entitled to get the relief sought. It is contended that earlier the petitioner had approached this Court by filing W.P.(C) No.15865 of 2014 and this Court, vide order dated 08.05.2015 disposed of the said writ petition directing opposite party no.3 to consider the case of the petitioner for the post of Sikshya Sahayak and publish the result within a period of one month from the date of receipt of the certified copy of the order and if the petitioner is found suitable, he shall be appointed in the post of Sikshya Shayak within the said period, pursuant to which the petitioner was issued with appointment order and has been continuing. After completion of six years of service, his case was considered as regular teacher. It is further contended that similar question had come up for consideration before this Court in W.P.(C) No.6479 of 2015

(***Shivadatta Tripathy v. State of Orissa***), which was disposed of on 06.05.2022 taking into consideration of the judgment of the apex Court in ***K. Meghachandra Singh v. Ningam Siro*** (2020) 5 SCC 689 and ***State of Bihar v. Arbind Jee***, 2021 SCC Online SC 821. Therefore, it is vehemently contended that the petitioner is not entitled to get the relief sought by the petitioner and seeks for dismissal of the writ petition.

5. This Court heard Mr. N.C. Das, learned counsel appearing for the petitioner and Mr. S. Jena, learned Standing Counsel for School and Mass Education Department in hybrid mode. Pleadings have been exchanged between the parties and with the consent of learned counsel for the parties, the writ petition is being disposed of finally at the stage of admission

6. On the basis of the pleadings available on record, it appears that an advertisement was published on 22.01.2011 by the District Project Office, Sarva Sikshya Abhiyan, Bhadrak inviting applications from the intending candidates for the post of Sikshya Sahayak,

pursuant to which the petitioner along with others applied for the said post after due formalities. After scrutinizing their candidatures, on 22.03.2011 selection was made and the engagement orders were issued in favour of the eligible and selected candidates by the D.P.C. except the petitioner on the ground that he has possessed the higher qualification. Due to non-consideration of his candidature, the petitioner approached this Court by filing W.P.(C) No.25326 of 2011, which was disposed of by this Court on 02.10.2011 with a direction to the Collector-cum-C.E.O., Zilla Parishad (SSA), Bhadrak to consider the grievance of the petitioner within a period of six weeks from the communication of the order. In compliance of the said order, Collector-cum-C.E.O., Zilla Parishad (SSA), Bhadrak, vide order dated 16.12.2011 rejected the grievance of the petitioner.

7. Challenging the order dated 16.12.2011 passed by the Collector-cum-C.E.O., Zilla Parishad (SSA), Bhadrak, the petitioner again approached this Court by filing W.P.(C) No.10901 of 2012, wherein this

Court, vide order dated 30.08.2012 in Misc. Case No.9477 of 2012 passed interim order directing Collector-cum-C.E.O., Zilla Parishad (SSA), Bhadrak to keep one post reserve for him. After hearing learned counsel for the parties, this Court, vide order dated 14.03.2014, disposed of the said writ petition directing the Collector-cum-C.E.O., Zilla Parishad (SSA), Bhadrak to pass fresh order after giving reasonable opportunity of being heard to the petitioner within a period of two months from the date of production of certified copy of the order along with the writ petition. Accordingly, the petitioner produced the said order before the Collector-cum-C.E.O., Zilla Parishad (SSA), Bhadrak, who, vide order dated 30.05.2014 rejected the prayer of the petitioner being devoid of merit.

8. Challenging the order dated 30.05.2014 passed by the Collector-cum-C.E.O., Zilla Parishad (SSA), Bhadrak, the petitioner again approached this Court by filing W.P.(C) No.15865 of 2014 and this Court, vide order dated 08.05.2015 disposed of the said writ petition directing the Collector-cum-C.E.O., Zilla

Parishad (SSA), Bhadrak and D.P.C. to consider the case of the petitioner for the post of Sikshya Sahayak and published the result thereof within a period of one month from the date of receipt of the certified copy of the order. In compliance thereof, the District Project Co-ordinator, SSA, Bhadrak issued appointment order on 07.08.2015 in favour of the petitioner and accordingly, he joined in his post. Needless to say, the petitioner claims that he should be appointed as junior teacher w.e.f. 22.03.2014 and regular teacher w.e.f. 22.03.2017 as per Resolution dated 01.08.2011 published by the Government of Odisha, Department of School and Mass Education. But fact remains, he is ineligible to be appointed as junior teacher w.e.f. 22.03.2014 and regular teacher w.e.f. 22.03.2017, pursuant to said Resolution because he had not acquired three years experience as junior teacher. It is also contended that persons like that of the petitioner who had got engagement orders w.e.f. 22.03.2011 as Sikshya Sahayaks, they have been appointed as junior teachers w.e.f. 22.03.2014 and regular teacher w.e.f. 22.03.2017 respectively, but the petitioner has been discriminated. Admittedly, the petitioner was issued

appointment order on 07.08.2015, pursuant to order dated 08.05.2015 passed by this Court in W.P.(C) No.15865 of 2014. Thereby, the same cannot be treated at par with the other persons, who had got appointment orders w.e.f. 22.03.2011. Thus the petitioner's claim that his appointment should relate back to the publication of result i.e. 22.03.2011 so also fixation of his seniority with retrospective effect cannot have any justification. More so, the appointment of Pratap Kumar Biswal, whose name found place at Sl. No.33 in the letter dated 07.08.2015 issued by District Project Co-ordinator, SSA, Bhadrak showing his date of appointment as Regular Teacher w.e.f. 10.03.2015, is much prior to appointment of the petitioner. Therefore, the benefit granted to Pratap Kumar Biswal cannot be granted to the petitioner.

9. Similar question had come up for consideration before this Court in **Shivadatta Tripathy** (supra), which was dismissed, vide judgment dated 06.05.2022 taking into consideration of the judgment in **K. Meghachandra Singh & Arbind Jee**, (supra) observing that the petitioner therein, who got

appointment at the direction of this Court had never claimed to treat him as a “Sikshya Sahayak” appointee of the year 2011, without continuing in service from 2011.

10. Applying the ratio decided in **Shivadatta Tripathy** (supra) to the present case, this Court finds that the petitioner was issued with appointment order on 07.08.2015, pursuant to direction of this Court contained in order dated 08.05.2015 passed in W.P.(C) No. 15865 of 2014, and he joined as Sikshya Sahayak on 07.08.2015 and he was to be eligible to be appointed as regular teacher after completion of six years of service. Thereby, the claim of the petitioner for retrospective appointment and fixation of seniority has no justification.

11. Therefore, the writ petition merits no consideration and the same is accordingly dismissed. There shall be no order as to costs.

(DR. B.R. SARANGI)
JUDGE