

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.16376 of 2022

Ramesh Chandra Dhal *Petitioner*
Mr. Pitambar Panda, Adv.
-versus-
State of Odisha and Ors. *Opposite Parties*
Mr. Biswajit Mohanty, SC
(for S & ME Deptt.)

CORAM:
DR. JUSTICE S.K. PANIGRAHI

Order
No.

ORDER
11.08.2022

03.

1. This matter is taken up through hybrid mode.
2. Heard Learned Counsel for the Petitioner and learned Counsel for the Opposite Parties.
3. In this Writ Petition, the petitioner challenges the action of Opposite Parties in not regularising his service as an Assistant Teacher, who is continuing as Junior Teacher (Contractual) since 03.11.2014 in Batagaon Upper Primary School, Batagaon under Block Education Officer, Naktideul in the district of Sambalpur pursuant to Engagement order No.1169 dated 31.10.2014 issued by the Collector-Cum-Chief Executive Officer Zillaparishad, Sambalpur.

4. Learned counsel for the petitioner submitted that the petitioner was appointed as a Sikshya Sahayak on 31.10.2014 and joined on 03.11.2014 under the opposite party No.6- Block Education Officer, Naktideul having duly selected by the District Selection Committee. The petitioner being a Physically disabled candidate was initially appointed as a Sikshya Sahayak under the PH Category although he was an untrained candidate at the time of recruitment. Thereafter, the District Education Officer, Sambalpur vide letter No.7353 dated 08.09.2017 instructed the present petitioner to take admission online and acquire training qualification through National Institute of Open Schooling (NIOS). Accordingly, the present petitioner admitted in to the training course as per instruction of District Education Officer, Sambalpur and was issued Identity Card by the NIOS vide Enrolment No.21030703151001 for 2017. The petitioner after admission into the course appeared in the examination during 2019 but the result published was withheld by the NIOS authority on the ground that the petitioner did not possess 45 % marks in +2 Examination. National Council For Teacher Education (NCTE) vide Notification dated 23.08.2010 prescribed the norms for

minimum qualification required for teachers appointed in Class-VI to VIII in paragraph-1(ii)(a) i.e. B.A./ B.Sc and 2 years Diploma in Elementary Education (by whatever name known). Subsequently, the NCTE vide Notification No.012/16/2018 dated 28.06.2018 clarified that Graduation and two years diploma in Elementary Education (by whatever name known) the following shall be inserted namely: “(Graduation with at least 50% marks and Bachelor of Education (B.Ed))”.

5. Learned counsel for the petitioner further submitted that the present petitioner was initially applied for engagement as Sikshya Sahayak under the category of B.A B.Ed (untrained) and subsequently selected and engaged under the category of Untrained Physically disabled by the authority in consonance with the provision contained in the advertisement made. Moreover, the present petitioner was appointed in Upper Primary school and completed the OTET examination conducted by the BSE, Odisha specially for recruitment of teachers in the State in Paper II in the year 2013 prior to his appointment.
6. It was further submitted that the petitioner was duly selected and was appointed and joined as Sikshya

Sahayak on 03.11.2014 through a properly constituted Circle Selection Committee in the year 2014. Thereafter, the petitioner admitted into training course through NIOS as directed by the District Education Officer, Sambalpur and appeared the examination and declared successful in the training course in the year 2019. NIOS declared the petitioner in the examination as pass candidate, but subsequently withheld the result, as a result of which the petitioner is suffering a lot for regularization of his service as an Assistant teacher in Elementary cadre due to lack of training qualification.

7. He further submitted that the petitioner is entitled to be regularised as an Assistant Teacher with effect from 03.11.2020 on completion of 6 years of continuous service as Sikshya Sahayaka as well as junior teacher in accordance with the rules prescribed and benefit extended to many similarly placed persons taking into consideration the result published in the website by the NIOS in the year 2019, i.e. much prior to the date of entitlement of the petitioner for regularization. In that view of the matter, the petitioner has made prayer in this Writ Petition seeking direction to the opposite parties to publish

the result and issue final result of training certificate and regularize his service from the date of entitlement for regularization i.e. on 03.11.2020 and allow appropriate scale of pay with all consequential service benefits.

8. Learned counsel for the Department of School and Mass Education submitted that the prayer made in the Writ Petition is misconceived and not at all sustainable in law. In the instant case, the prayer of the petitioner is two folds such as (i) for publication of result and issuance of training certificate by the opposite party No.2 (ii) for regularization of service of the petitioner as regular primary school teacher w.e.f. 03.11.2020 along with all consequential service benefits.
9. He further argued that unless the petitioner acquires the training qualification as per his first prayer, the 2nd prayer made against the State- opposite parties cannot be entertained. As per the Rules and Regulations governing the field in respect of regularization of primary school teacher, the training qualification of C.T/ B.Ed is necessary. But, in the instant case, till date the petitioner has not acquired such training qualification, for which his further claim

for regularisation as regular primary school teacher on completion of six years as Sikshaya Sahayak is totally misconceived. Hence, the Writ Petition is liable to be dismissed being devoid of merit.

10. Heard the learned counsel for the parties. The very engagement order issued in favour of the petitioner clearly reveals at clause-18 that in case of untrained candidates, whose engagement will be renewed beyond 31.01.2015, shall have to acquire C.T/B.Ed training qualification within March, 2015 as per the stipulation made in the Right to Education Act, 2009 (RTE Act, 2009), failing which she/he will be disengaged automatically. By accepting such terms and conditions made in the very engagement order, the petitioner joined as Sikshya Sahayak without having training qualification, but as per the D.O Letter dated 03.08.2017 issued by the Government of India, Ministry of Human Resources Development, Department of School Education and Literacy, whereby it has been decided that untrained Elementary Teacher who do not have minimum qualification as mandated under the RTE Act, 2009, will not be allowed to continue in service beyond 01.04.2019 and procedure for dismissal shall be

initiated against such teachers. It was submitted that referring such letter of Government of India dated 03.08.2017, the District Education Officer, Sambalpur in his letter dated 08.09.2017 though allowed the petitioner to undergo training qualification through NIOS during the Session 2017-18. But till date the petitioner has not acquired such training qualification. Rather, the opposite party No.2 issued Annexure-3 by cancelling the training qualification on the ground that the petitioner does not fulfill the eligibility criteria of securing 45% of mark in Class-XII examination, which is clearly evident from Annexure-3 to the Writ Petition. Therefore, unless and until the petitioner secures the training qualification, his service cannot be regularized. Rather, in view of the Government of India D.O letter dated 03.08.2017, so also the condition mentioned in the engagement order under Annexure-1, the petitioner may not be allowed to continue any further as junior teacher.

11. A key principle of service jurisprudence is that a candidate must possess the requisite qualification for a post on the date of issue of employment notification. Additionally, it has also been well established by law that the court should not interfere with the process of

appointment unless it involves a substance of arbitrariness or the process is violative of rule of law. The Apex Court in the case of *Maharashtra Public Service Commission vs Sandeep Shriram Warade*¹ held that:

“10. The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being at par with the essential eligibility by an interpretive re-writing of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the Court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. In no case can the Court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the

¹ (2019) 6 SCC 362

advertisement contrary to the plain language of the same."

12. Reliance can also be placed on the judgment of the Apex Court in *Pramod Kumar vs. U.P. Secondary Education Services Commission & others*² wherein the employee was appointed as Assistant Teacher and was found not having the minimum qualifications from a recognized University. It was held that irregularity cannot be regularized and the appointment contrary to the statutory rules are void in law as the essential qualifications are not satisfied. Accordingly, the appeal filed by the employee was dismissed, upholding the judgment passed by the High Court.
13. It is settled principle that an ineligible candidate cannot seek the benefit of appointment or promotion without possessing the requisite criteria. Moreover, in service jurisprudence, the interference of Court is inessential unless there is a violation of rule of law. In the present case, it is clearly evident that the petitioner does not possess the requisite qualification to fulfill the eligibility criteria. Consequently, the regularization of his service is out of question until

² 2008 (7) SCC 153

and unless he secures the requisite training qualification.

14. Considering the facts and circumstances of the present case and the precedents cited hereinabove, this Court is of the view that the prayer made in the Writ Petition is unsustainable and the same is liable to be dismissed being devoid of merit.

15. Accordingly, the present Writ Petition is disposed of.
No order as to cost.

BJ



(Dr. S.K. Panigrahi)
Judge