

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.18523 of 2022

Birendra Kumar Bariha *Petitioner*
Mr. Pitambar Panda, Adv.
-versus-
State of Odisha and Ors. *Opposite Parties*
Mr. Debasis Mohapatra, SC
(for S & ME Deptt.)

CORAM:

DR. JUSTICE S.K. PANIGRAHI

Order
No.

ORDER
23.08.2022

01. 1. This matter is taken up through hybrid arrangement.
2. Heard learned counsel for the parties.
3. In this Writ Petition, the Petitioner seeks a direction from this Court to the Opposite Parties to regularize his service from the date of initial joining i.e. from 15.01.1999 instead of from the date of rejoining i.e. from 08.11.2011 and allow all consequential service benefits as extended by this Court vide order dated 05.03.2020 passed in W.P.(C) No.10071 of 2018. He also prays for quashment of the order No.12701 dated 31.12.2020 issued by the Opposite Party No.3/ District Education Officer, Bargarh cancelling his regular service and the Office Order No.6560 dated 28.04.2022 issued by the Opposite Party

No.2/ Director, Elementary Education, Odisha, Bhubaneswar rejecting his representation thereby he had requested the authority to regularise his service from the date of initial joining i.e. 15.01.1999 as Assistant Teacher instead of 08.11.2011.

4. At the outset, learned counsel for the Petitioner submits that the present case is covered by the order dated 05.03.2020 passed by the Division Bench of this Court in W.P.(C) No.10071 of 2018 (**State of Odisha & Ors. -vrs.- Sipra Kumari Panda & Anr.**) wherein the order dated 24.04.2017 passed by the Odisha Administrative Tribunal in O.A. No.2469 of 2016 directing to fix the pay of the applicant therein from 09.11.1999 till her reinstatement in service i.e. 09.07.2011, was confirmed. Hence, he submits that this Writ Petition may be disposed of taking into account the order dated 05.03.2020 passed in the case of **Sipra Kumari Panda** (supra).

5. Learned Standing Counsel for the Department of School and Mass Education submits that he has no objection, if this matter is disposed of taking into account the order dated 05.03.2020 passed in the case of **Sipra Kumari Panda** (supra).

6. On perusal of the records and the order dated 05.03.2020 passed in the case of **Sipra Kumari Panda** (supra), it appears that facts and issue are similar in both the cases. The aforesaid order is quoted as follows:

“W.P.(C) No.10071 of 2018

3. 05.03.2020 Heard Mr. D.R. Mohapatra, learned Standing Counsel for School and Mass Education Department.

The petitioner State has filed this application seeking to quash the order dated 24.04.2017 passed by the Odisha Administrative Tribunal in O.A. No. 2469 of 2016, wherein the Tribunal has directed that the pay of the opposite party no.1 be notionally fixed from 09.11.1999 till her reinstatement in service i.e. 09.07.2011 and directed to complete the exercise within two months from the date of receipt of a copy of that order.

Mr. D.R. Mohapatra, learned Standing Counsel for School and Mass Education Department contended that the petitioner was terminated by virtue of the office order dated 30.09.1999 of the then Inspector of Schools, Sambalpur for the irregularity committed by her. Thereby, the appointment of opposite party no.1 cannot have any justification and consequentially she is not entitled to get the benefit as directed by the Tribunal.

We have perused the record. It appears that the opposite party no.1 had filed O.A. No.2911 (C) of 1999 and, as such, she had been protected by the interim order dated 09.01.1999 passed by the Tribunal. But while disposing of the O.A., she

was allowed to rejoin her former post provisionally subject to finalization of selection process as per the then Resolution of the Government, subject to the condition that as per resolution of the Government and as per vacancy as on 30.06.1996, the opposite party no. I shall be allowed to take part in the selection process by relaxing her upper age limit, if she is age barred. However, the period of her continuance shall not confer any right on her to claim the post if she fails in reselection on merit. Subsequently the opposite party no.1 was selected and engaged on 09.07.2011. Therefore, it was contended before the Tribunal that the salary of opposite party no. I be regularized from 09.11.1999 to 09.07.2011 notionally, as similar type of cases had been disposed of by the Tribunal earlier, As it appears, in course of hearing, learned Standing Counsel for School and Mass Education Department had not objected to the relief sought by the opposite party no. 1 in the application itself. "Thereby, the order impugned has been passed on 24.04.2017, by which direction has been given that the salary of opposite party no 1 be notionally fixed from 09.11.1999 till her reinstatement in service i.e. 09.07.2011 and the entire exercise shall be completed within two months from the date of receipt of a copy of that order.

Since the Tribunal has passed a reasoned order, the benefit should be extended to opposite party no. 1. This Court does not find any illegality or irregularity in the order impugned so as to warrant interference of this Court. The writ petition filed by the State and its functionaries

merits no consideration and the same stands dismissed accordingly."

7. In such view of the matter, the Opposite Parties/ authorities are directed to consider the case of the Petitioner taking into account the order dated 05.03.2020 passed in the case of **Sipra Kumari Panda** (supra).

8. Accordingly, this Writ Petition is disposed of.

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

B.Jhankar



(Dr. S.K. Panigrahi)
Judge