

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.16089 of 2018

Saralabala Nanda

.... ***Petitioner***

Mr. D.K.Sahoo,
Advocate

-versus-

State of Odisha & others

.... ***Opposite Parties***

Mr. B.P.Tripathy,
Addl. Govt. Advocate

Mr. S.K.Mishra,
Advocate(Caveator)

Mr. A.R.Mohanty, Advocate
(for O.P. No.5)

W.P.(C) No.17833 of 2018

Tapaswini Pattnaik

.... ***Petitioner***

Mr. S.K.Mishra,
Advocate

-versus-

State of Odisha & others

.... ***Opposite Parties***

Mr. B.P.Tripathy,
Addl. Govt. Advocate

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER

22.07.2022.

Order No.

18. 1. These matters are taken up through hybrid mode.
2. Both the Writ Petitions involve the same issue and similar facts. For convenience, both were heard together and are disposed by this common order.
3. The Petitioner (Saralabala Nanda) in W.P.(C) No.16089/2018 has filed the Writ Petition seeking to challenge the order dated 19th July, 2018 passed by the Director of Higher Education, Odisha, Bhubaneswar (Opposite Party No.2). The Petitioner (Tapaswini Pattnaik) in W.P.(C) No.17833/2018 has filed the Writ Petition with prayer to issue a direction to the authorities to implement the very same order i.e., dated 19th July, 2018 passed by the Opposite Party No.2.
4. The facts of the case are that Tapaswini Pattnaik (Opposite Party No.6 in W.P.(C) No.16089/2018 and Petitioner in W.P.(C) No.17833/2018) was appointed on 15th April, 1998 as Lecturer in Sanskrit Vyakaran against the Second Post in Saraswati Sanskrit Mahila Mohavidyalaya at Barti in the district of Jagatsinghpur. It is stated that the said Tapaswini Pattnaik having remained unauthorizedly absent from her duty,

the Governing Body of the College vide Resolution dated 9th March, 2003 and 28th June, 2003, unanimously resolved to terminate her service with immediate effect. Thereafter, an advertisement was published for appointment to the post of Lecturer in Vyakaran pursuant to which, Saralabala Nanda and two other candidates appeared in the interview on 2nd March, 2003. Saralabala Nanda was selected and joined as Lecturer in Sanskrit Vyakaran on 25th March, 2003. While the matter stood thus, the said Tapaswini Pattnaik approached this Court in W.P.(C) No.11860/2010 with prayer to direct the Opposite Party-authorities to dispose of her appeal/representation dated 20th March, 2004. The said Writ Petition was disposed of by this Court vide order dated 26th July, 2010 as follows:-

“ Heard learned counsel for the Petitioner.

The grievance of the Petitioner in this writ petition is that she has filed a representation dated 20.3.2004 (Annexure-3) before the Opposite Party No.2, Director, Higher Education, Odisha, Bhubaneswar highlighting her grievance but the same is still pending.

In view of such submission, we dispose of the writ petition directing Opposite Party No.2- Director, Higher Education, Orissa to take a decision on the representation of the Petitioner by 15th September, 2010, if the same is still pending.

The Petitioner is directed to produce the certified copy of this order along with a copy of the representation dated 20.3.2004 before the

Director, Higher Education on 9th August, 2010. On his appearance, the Director shall fix a date of hearing and conclude the same within the stipulated time giving opportunity of hearing to the Petitioner as well as any of the parties, if he considers necessary for proper adjudication of the case.

The writ petition is accordingly disposed of.”

5. Pursuant to such order the Opposite Party No.2 sought for factual position regarding the matter from the Deputy Director (Sch), who in turn instructed the Sub-Collector, Jagatsinghpur-cum-President of the Governing Body of the College to comply with the same. The Sub-Collector, Jagatsinghpur asked the Principal-in-charge of the College to submit the factual position. A report was submitted by the Principal vide letter dated 27th July, 2018. In the mean time, the Opposite Party No.2 disposed of the appeal/grievance petition of Tapaswini Pattnaik by order dated 19th July, 2018 holding as under:-

“ xxx xxxx xxx

In such view, I am of the opinion that there is no dispute that the appellant was appointed in the college as a Lecturer in Sanskrit Vyakaran and till date no other person has been appointed in her place as revealed from the written note of Principal concerned. In such view of the matter the Sub-Collector, Jagatsinghpur who is the President of the Governing Body is hereby

directed to allow her to resume her duties with immediate effect.

xxxxx xxxxx xxxx xxxxx”

6. After passing of the said order, Tapaswini Pattnaik submitted her joining report before the Sub-Collector, Jagatsinghpur on 23rd July, 2018. The Sub-Collector by his letter dated 6th August, 2018 informed the Deputy Director (Sch) that Tapaswini Pattnaik was appointed in the Second Post of Sanskrit Vyakaran in the year 1998 and she was terminated by the Governing body and in her place Saralabala Nanda is now continuing in the said post and further that in view of the above there is legal constraint to accept the joining letter. Being aggrieved, Tapaswini Pattnaik approached this Court in W.P.(C) No.17833/2018 seeking a direction for implementation of the order dated 19th July, 2018 passed in her favour. Saralabala Nanda has approached this Court in W.P.(C) No.16089/2018 challenging the very same order on the ground that the same was passed behind her back in contravention of the order dated 26th July, 2010 passed by this Court in W.P.(C) No.11860/2010.

7. Several contentions have been raised before this Court. All such contentions are based on disputed facts, which this Court exercising jurisdiction under Article 226 of the Constitution of India, obviously cannot entertain. However, fact remains that Tapaswini Pattnaik was appointed in the

Second Post of Sanskrit Vyakaran in the year 1998 and her services are said to have been terminated w.e.f. 29th June, 2003. Saralabala Nanda, on the other hand, appears to have been appointed also in the Second Post on 25th March, 2003 and has been continuing as such till date. The impugned order has been passed by holding that till date no other person has been appointed in place of Tapaswini Pattnaik as revealed from the written note of the Principal concerned. This is obviously factually incorrect. Some argument has been made by learned counsel appearing for Tapaswini Pattnaik to the effect that Saralabala Nanda having been appointed prior to issuance of the order of termination of Tapaswini Pattnaik cannot be held to have been validly appointed. However, these are matters that can be considered by the appropriate authority, i.e. the Opposite Party No.2. It is also contended that Saralabala Nanda cannot be treated as being appointed against the termination vacancy of Tapaswini Pattnaik and hence, is not a necessary party so as to be granted an opportunity of hearing by the Opposite Party No.2. This Court is unable to accept such contention for the reason that while disposing of the earlier Writ Petition filed by Tapaswini Pattnaik i.e., W.P.(C) No.11860/2010, this Court had specifically directed the Opposite Party No.2 to grant opportunity of hearing not only to Tapaswini Pattnaik but also to any of the parties, if he considers necessary for proper adjudication of the case. In the instant case, basing on the so called note submitted by the Principal, the Opposite Party No.2 proceeded on the factually incorrect premise that no one had

been appointed in place of Tapaswini Pattnaik. Fact remains that Saralabala Nanda had been appointed by the Governing Body and has been in service for nearly 19 years by now. Whether such appointment was against a termination vacancy or otherwise legally valid or not, can also be decided by the Opposite Party No.2 on consideration of the facts obtaining at the relevant time as would be revealed from the relevant records. Moreover, the impugned order having been passed directing Tapaswini Pattnaik to resume her duties with immediate effect is likely to affect the services of Saralabala Nanda since both of them appear to be raising claim over the same post. To such extent, therefore, Saralabala Nanda has every right of being heard while disposing of the appeal/grievance petition submitted by Tapaswini Pattnaik.

8. Therefore, without expressing any opinion as to the merits of the contentions raised, this Court deems it proper to remit the matter to the Opposite Party No.2 to pass order on the appeal/grievance petition of Tapaswini Pattnaik afresh after granting proper opportunity of hearing to her as well as Saralabala Nanda as also on consideration of all factual aspects of the matter.

The above exercise shall be concluded within a period of four weeks from the date of communication of this order or on production of certified copy thereof by any of the parties.

Status quo with regard to Saralabala Nanda shall be maintained till disposal of the appeal/grievance petition by the Opposite Party No.2.

9. Both the Writ Petitions are disposed of accordingly.

10. Certified copy of this order be granted on proper application.

AKB



(Sashikanta Mishra)
Judge