

ORISSA HIGH COURT: CUTTACK

W.P.(C) NO.16134 OF 2018

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

Puspanjali Tripathy & Others **Petitioners**

-Versus-

State of Orissa & Others **Opp. Parties**

For Petitioners : M/s.M.K.Mohanty

For Opp. Parties : M/s. S. Jena, SC S & ME
Deptt, Mr. B.Routray (O.P.
No.3) & Mr. B.S.Tripathy-1
(O.P.Nos.4-16)

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
HONOURABLE MR. JUSTICE B.P.SATAPATHY**

DATE OF HEARING:4.11.2022 DATE OF JUDGMENT: 30.11.2022

B.P.SATAPATHY, J. This Writ Petition has been filed with a prayer to quash the order dated 05.05.2018 passed by the learned Odisha Administrative Tribunal, Bhubaneswar Bench, Bhubaneswar (in short 'Tribunal') in O.A No.3187(C)/2009 under Annexures-5 & 6 and pass such further order or orders as deem just and proper.

2. The factual matrix of the case, in brief, is that the Petitioners without being impleaded as parties in O.A. No. 3187(C)/2009 was filed before the learned Odisha Administrative Tribunal, Bhubaneswar Bench, Bhubaneswar (in short 'Tribunal') by the private Opposite Party Nos.3 to 16 with a prayer to set aside the provisional gradation list published by the Director, Secondary Education, Odisha vide Order No.3095 dated 19.01.2009 under Annexure-1 to the Original Application and with a further direction to the Opposite Party Nos.1 and 2 to count their seniority from the date of their initial appointment under the Government and

with a further prayer to extend the benefit of seniority with consequential benefits by treating the Opposite Party Nos.3 to 16 as enblock senior to regularly recruited teachers from the date of their initial appointment. The Opposite Party Nos.3 to 16 were appointed on contract basis in the year 1989 as a large number of trained Graduate posts remained unfilled on the ground of non-functioning of the selection board. Because of such difficulty, Government in the Department of Education and its Youth Service Department vide Order No.8657 dated 22.02.1989 decided to appoint teachers on contractual basis with fixed consolidated remuneration of Rs.600/- per month.

2.1. Pursuant to the said decision, in total 236 teachers were appointed on contractual basis, which includes the private Opposite Party Nos.3 to 16. The private Opposite Parties along with other selected contractual teachers were appointed after 09.11.1990. Since as per the term of the contract, the appointment on contractual basis was valid from the date of

appointment till 30th April of the next year, some of the contractual teachers including the present Opposite Party Nos.3 to 16 filed O.A. No.293 of 1990 before learned Tribunal along with a batch of cases for a direction to the Government to allow them to continue in service until the posts are filled up by regular selected candidates through Selection Board. The said Original Application was disposed of vide order dated 13.01.1992 with an observation that the private Opposite Parties along with the other contractual teachers shall continue in service until regularly selected candidates through the selection board are made available. Learned Tribunal further observed that the applicants therein if make any application for regular selection through the selection board, Government should consider their case sympathetically by giving age relaxation.

2.2. While so continuing on contractual basis an advertisement was published on 18.04.1995 to fill up the post of Assistant Teachers in different Govt.

High Schools of the State in Junior Grade of Odisha Sub-ordinate Education Service. But the private Opposite Party Nos.3 to 16 never made any application pursuant to the said advertisement and some of the Petitioners herein were selected in the said selection process undertaken in terms of the advertisement issued on 18.04.1995 and they were given appointment vide order dated 10.05.1996 of the Director, Secondary Education, Odisha. Not only that Odisha Staff Selection Commission also issued another advertisement on 11.04.1997 for filling up the post of Assistant Teachers under Jr. S.E.S. Cadre in the Govt. High Schools. The private Opposite Parties once again did not take part in the selection process and some of the Petitioners by facing due selection process were selected and appointed in different Government High Schools vide order dated 07.12.1998 of the Director of Secondary, Education, Odisha.

2.3. In the meantime, Government issued an order on 01.02.1996 for replacing the contract teachers

by appointing regular teachers. The private Opposite Parties being aggrieved by such action of the Govt.- Opposite Party No.1 approached learned Tribunal in O.A. No.292(C) of 1996. On receipt of the notice in the said O.A, Government vide order dated 20.03.1996 decided that the contract teachers as per the order passed in O.A. No.293(C) of 1990 be allowed to continue till the rest 152 posts out of the sanctioned 700 T.G. Posts are filled up by regularly selected candidates. But subsequently, vide Government order dated 02.08.1997, the private Opposite Parties along with other contractual teachers appointed in the year 1990 were regularized in their services. Pursuant to the said order of the Government passed on 02.08.1997, the private Opposite Parties along with other similarly situated contractual teachers were appointed on regular basis in Jr. Grade of Sub-ordinate Education Service w.e.f. 02.08.1990. In terms of the said order passed by the Director, Secondary Education, private Opposite Parties joined against the posts that they were holding on contractual basis. But since in the order

dated 02.08.1997 of the Government, it was indicated that the private Opposite Parties and similarly situated contractual teachers shall be placed enblock below the regularly recruited candidates, the said condition was challenged by the Secondary Teachers' Association and some contractual teachers in O.A No.1735 (C) of 2004. During pendency of the said O.A, the O.A. No.3187(C) of 2009 was filed by the private Opposite Party Nos.3 to 16 and the said O.A along with a batch of O.As were disposed of by the learned Tribunal vide the impugned order dated 05.05.2018.

2.4. Learned Tribunal vide order dated 05.05.2018 disposed of the matter with a direction on the Opposite Parties to take appropriate action to regularize the applicants in the said batch of O.As from the date of their initial appointment with consequential benefits. Since the Petitioners herein who were regularly appointed pursuant to the selection process initiated on 18.04.1995 and 11.04.1997 were aggrieved by such direction of the learned Tribunal in its order

dated 05.05.2018 filed the present Writ Petition with the prayer as indicated hereinabove.

3. It is the main contention of the learned counsel for the Petitioners that since the interest of the Petitioners are squarely affected in view of the order passed by learned Tribunal on 05.05.2018 in O.A No.3187(C) of 2009 and batch of Original Applications, learned Tribunal should not have passed such an order without giving the Petitioners an opportunity of hearing in the matter. The applicants in O.A No.3187(C) of 2009 also did not implead the present Petitioners as parties to the Original Application and no objection was raised with regard to non-joinder of necessary parties. Even though the claim in O.A No.3187 (C) of 2009 was to regularize their services from the date of their initial appointment made in the year 1990, but none of the Petitioners were arrayed as Opposite Parties. The Petitioners on coming across the impugned order dated 05.05.2018 though had the option to file a Review Petition seeking review of the order, but since during

the relevant time, no Division Bench was available in the learned Tribunal, the Petitioners in order to protect their interest filed the present Writ Petition with a prayer to quash the order dated 05.05.2018. Since the Petitioners were never impleaded as parties in O.A. No.3187(C) of 2009 and the order impugned is going against their interest with regard to loss of seniority, it is prayed that this Court should interfere in the matter.

4. Mr. Budhadev Routray, learned Senior Counsel along with Mr. B.S.Tripathy-1, learned counsel for the private Opposite Parties on the other hand raised a preliminary objection with regard to maintainability of the present Writ Petition *inter alia* on the ground that since the order impugned has been passed in a batch of Original Applications, the present Writ Petition challenging the order passed only in O.A No. 3187(C) of 2009 is not maintainable. Accordingly, this Court on the consent of the respective counsels heard the matter on the question of maintainability.

5. Mr. Manoj Kumar Mohanty, learned counsel for the Petitioners contended that since during the relevant time, no Division Bench was available before the learned Tribunal enabling the Petitioners to file a Review Petition against the order dated 05.05.2018, the Petitioners have no other option than to challenge the same in the present Writ Petition. Not only that since the Petitioners are prima-facie affected by the order impugned, the present Writ Petition has been rightly filed challenging the same.

6. Mr. Mohanty with regard to maintainability of the Writ Petition relied on the decision of this Court in the case of **Gayatri Datta Nayak and others vs. State of Orissa and others** reported in **2010(II) OLR-103** and the decision of the Hon'ble Apex Court in the case of **Mahesh Yadav and another vs. Rajeshwar Singh and others** reported in **(2009) 2 SCC-205**, in the case of **K. Venkatachala Bhat and another vs. Krishna Nayak (D) By Lrs. & Others** reported in **(2005) 4 SCC-117** and in the case

of ***Sarguja Transport Service vs. State Transport Appellate Tribunal, M.P., Gwalior and others*** reported in ***(1987) 1 SCC-5***.

7. Mr. B. Routray, learned Senior Counsel along with Mr. B.S.Tripathy-1, learned counsel appearing for the private Opposite Parties on the other hand contended that since vide a common order a batch of Original Applications along with O.A. No.3187(C) of 2009 were disposed of, the present Writ Petition filed against the order passed only in O.A. No.3187(C) of 2009 is not maintainable, in view of the decision of this Court reported in ***Nityananda Panigrahi and others vs. Commissioner of Consolidation and others (reported in 1994 (II) OLR-214)***.

8. Mr.B. Routray, learned Senior Counsel along with Mr. Tripathy-1, learned counsel also contended that pursuant to the order passed by this Court in W.P.(C) No.10125 of 2022, W.P.(C) No.22692 of 2020 and W.P.(C) No.33919 of 2020, the order

impugned has already been implemented by giving the benefits. Hence, in view of such development, which has taken place during pendency of the matter, the present Writ Petition is not entertainable.

9. It is also the submission of the learned counsel appearing for private Opposite Parties that even if, no Division Bench was available at the relevant point of time, the Petitioners herein could have filed a Review Petition and subsequently could have approached this Court in the Writ Petition seeking appropriate relief in the matter. Since the Petitioners have straight away approached this Court challenging the order passed in the batch of Original Applications, in view of decision of this Court passed in the case of **Nityananda Panigrahi** as cited (supra), the present Writ Petition is not maintainable.

10. We have heard Mr. M.K.Mohanty, learned counsel appearing for the Petitioners and Mr. B. Routray, learned Sr. Counsel appearing for Opposite Party No.3 along with Mr. B.S.Tripathy-1, learned

counsel appearing for the Private Opposite Party Nos.4 to 16 as well as Mr. S. Jena, learned Standing counsel appearing for the Opposite Party Nos.1 and 2. This Court after going through the pleadings made and the materials available on record finds that the order impugned was passed in a batch of Original Applications, which includes in O.A No.3187(C) of 2009. Therefore, in view of the decision of this Court passed in the case of **Nityananda Panigrahi** as cited (supra), the present Writ Petition is held not to be maintainable. This Court in Para-5 of the said judgment has held as follows:-

"5. A similar question came up for consideration before a Bench of this Court in the case of Titagarh Paper Mills Co. Ltd. v. State of Orissa and Anr. (AIR 1975) Ori. 90 and this Court held that a single writ petition seeking to quash two different orders passed in two different proceedings cannot be maintained. In coming to the aforesaid conclusion the Bench of this Court had relied upon the earlier decision of the Patna High Court in AIR 1953 Patna 653 and Allahabad High Court in AIR 1965 Allahabad 517. In the Patna case AIR 1958 Patna 653 : Biswaranjan Bose v. Honorary Secy., Ram Krishna Mission. Vivekanand Society, Jamshedpur) their Lordships had observed : "Separate applications must be made for issue of separate writs to quash separate orders otherwise, on one application. If it succeeds, several separate writs will have to be issued and that will lead to an absurd position." In Allahabad case (AIR 1965 All 517 Khurjawala Buckles Manufacturing Co. v. Commr. Sales Tax. UP.) a single writ petition had been filed for quashing two assessment orders relating to two different assessment years and their Lordships have held that a single petition was not

maintainable. In the case in hand when different objection cases had been filed against different persons by the petitioner under Section 9(3) of the Act, the identity of interest cannot be the same and, therefore, when different objection cases were disposed of though by a common order and were challenged by several appeals and further those appellate orders challenged by several revisions, a single writ petition against the revisional orders passed in different revision cases could not be sustained. It is no doubt true that whether in a given case a single petition would be permitted or not depends upon the facts and circumstances of the case and no hard and fast rule can be laid down but the relief claimed not being on the same cause of action a single petition is not maintainable. The Rajasthan High Court in AIR 1974 Rajasthan 193 (Rajasthan State Electricity Board, Jaipur v. M/s. Resouria Ice Factory Ltd.) held that a single petition against the decisions of several appeals is not maintainable even if those appeals were decided by a common judgment. In a case where income tax authorities had passed separate assessment orders for each assessment year and assessee filed one writ petition against all the orders, it was held by the Delhi High Court that a single petition is not maintainable. (See 1986 (158) I.T.R. 303-A. M. Sarvaria v. Commissioner of Wealth Tax, Delhi and Anr.). To the same effect is the view of the High Court of Jammu and Kashmir in (1988) 171 ITR 498 (Krishan Chand Girdhari Lal and Co. v. Commissioner of Income Tax, Amritsar I and Anr.) The Madras High Court also has taken the similar view in (1978) 2 MLJ 66 (A.P. Vasuoewan v. State of Madras, represented by the Commissioner for Land Revenue, Food Production and Commercial Taxes, Board of Revenue, Madras). In view of the aforesaid position of law, in our considered opinion, a single writ petition is not maintainable and therefore, the preliminary objection raised by the learned counsel for the opposite parties has to be sustained and the writ application will fall on that score”.

This Court also finds that the common order dated 05.05.2018 passed in O.A No.1735 of 2004 was challenged by the State before this Court in W.P.(C) No.10125 of 2022. This Court vide order dated

11.05.2022 was not inclined to entertain the said Writ Petition and dismiss the same.

11. Therefore, in view of such confirmation of the order impugned by this Court in dismissing the Writ Petition filed against the common order dated 05.05.2018, it is the view of this Court that the Writ Petition filed against such common order is not entertainable. This Court also finds that pursuant to the order passed by this Court in W.P.(C) No.22692 of 2020 and W.P.(C) No.33919 of 2020, the common order passed on 05.05.2018 has already been implemented and thereby giving fresh cause of action to the Petitioners. It is the view of this Court that the decisions relied on by Mr. Mohanty, learned counsel for the Petitioners is not applicable to the facts of the present case as all the decisions stand in a different footing. Not only that in view of the decision passed by the Hon'ble Apex Court in the case of **Pohla Singh vs. Union of India** reported in **(2004) 6 SCC- 126**, the

judgment rendered by this Court reported in **2010 (II) OLR-103** is not applicable to the facts of the case.

12. In any view of the matter, it is the considered view of this Court that since the Order impugned has already been implemented after confirmation of the same by this Court in W.P.(C) No.10125 of 2022, the present Writ Petition is held as not maintainable and accordingly while holding so, this Court is not inclined to entertain the Writ Petition and dismiss the same. However, there shall be no order as to costs.

संयुक्त न्याय

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B.P.SATAPATHY,
JUDGE

DR. B.R.SARANGI, J. I agree.

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DR. B.R. SARANGI,
JUDGE

Orissa High Court, Cuttack
The 30th of November, 2022, Subrat (Sr. Steno)