

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 4448 of 2015

Swayamprabha Bebartta

.....

Petitioner

Mr. L.K. Mohanty, Adv.

Vs.

State of Orissa and others

.....

Opposite parties

Mr. S. Jena, Standing Counsel S&ME

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

27.04.2022

Order No.

06.

This matter is taken up through hybrid mode.

2. Heard Mr. L.K. Mohanty, learned counsel for the petitioner and Mr. S. Jena, learned Standing Counsel for School and Mass Education Department.

3. The petitioner has filed this writ petition seeking to quash the order dated 24.07.2014 passed in O.A. No. 313 (C) of 2001, by which the Orissa Administrative Tribunal, Cuttack Bench, Cuttack has come to a definite conclusion that the qualification of Sahitya Ratna from Hindi Sahitya Sammelan, Allahabad is clearly not equivalent to B.A. and more over the Government is not the authority to declare equivalence of qualification as a degree since only educational institutions like Universities are competent to do so. On arriving at such a conclusion, the tribunal held that the order dated 03.04.1999 under Annexure-4, having been passed relying upon the Government order no.3218/EYS dated 23.02.1981, is an illegal order based on forged and fabricated government order. Therefore, the tribunal did not find any illegality or irregularity in issuing Annexure-5, lowering the scale of pay of the petitioner and ordering for recovery of excess payment already made.

4. Mr. L.K. Mohanty, learned counsel for the petitioner contended that the petitioner was appointed as a Hindi teacher in the year 1985 having Matric Kovidha qualification and was drawing the scale of pay

of Rs.840-1240/-, i.e. the pay scale of Hindi Teacher. But the dispute is with regard to acquisition of higher qualification, i.e. B.A. But in the meantime the petitioner has already attained the age of 48 years. Thereby, the petitioner is entitled to the trained graduate scale of pay. In such circumstance, no recovery should be made by the authority from the petitioner.

5. Mr. S. Jena, learned Standing Counsel for School and Mass Education Department vehemently contended that since the petitioner was favoured with higher scale of pay vide Annexure-4 dated 03.04.1999, pursuant to a fraudulent Government order no.3218/EYS dated 23.02.1981, direction for withdrawal of such scale of pay and recovery of excess amount vide Annexure-5, is in accordance with law. It is contended that since the petitioner has not come to the Court with clean hands, she is not entitled to get any relief. More so, the Government order no.3218/EYS dated 23.02.1981 has been declared as a fraudulent and non-existent document by judgment of this Court in the case of Swadhin Kumar Barik v. State of Orissa, 2006 (Supp.-I) OLR 1103. Therefore, the petitioner is not entitled to the benefit, as claimed before the tribunal, stating that her qualification Sahitya Ratna from Hindi Sahitya Sammelan, Allahabad is equivalent to B.A. As because the petitioner had approached the tribunal resorting to a fraudulent document, she was not entitled to get the benefit and, as such, the tribunal is well justified in passing the order impugned, which does not warrant interference of this Court.

6. Having heard learned counsel for the parties and after going through records, this Court finds that the petitioner was initially appointed as a Hindi teacher in the year 1985 having Matric Kovida qualification and was drawing the scale of pay of Rs.840-1240/-. As per the rules of the government prevalent then for appointing of UGME School Hindi Teacher, a candidate should have passed Matric plus Kovida. Since the petitioner had requisite qualification, she was

appointed as Hindi Teacher. In the meantime, the Govt. of Orissa in E&YS Department, vide letter dated 28.07.1980, clarified that Hindi Sikhyan Prangata is equivalent to B.Ed. Similarly, the Director of Secondary Education, Govt. of Orissa gave recognition to Hindi qualification acquired through Hindi Sahitya Sammelan, Allahabd and clarified that acquisition of Sahitya Ratna qualification from Hindi Sahitya Sammelan shall be treated as equivalent to B.A. Since the Sahitya Ratna examination was conducted by Hindi Sahitya Sammelan, Allahabd, her qualification is equivalent to B.A. and she is entitled for the scale of pay as per her qualification. But the Director, Secondary Education in its letter dated 08.09.1994 further clarified that Hindi Sikhya Parangata is equivalent to B.Ed. and Sahitya Ratna is also equivalent to B.A. In the said letter, the Government has also given recognition to different degrees/diplomas acquired from Kendriya Sahitya Sansatha. The name of the petitioner was sponsored through her department to appear in the examination of Sahitya Ratna conducted by Hindi Sahitya sammelan, Allahabad. Her name was also sponsored to appear Hindi Sikhya Parangata examination conducted by Hindi Sikhya Sansatha of Agra, but the petitioner could not come out successful. Therefore, the petitioner, after passing Sahitya Ratna, filed representation to the Inspector of Schools, Berhampur to grant higher scale of pay as per the government rules existent then. Accordingly, as per the order under Annexure-4, the petitioner was allowed to draw the scale of pay of Rs.1350-2200 with effect from 27.06.193. But, vide order dated 08.01.2001 of the D.I. of Schools, Berhampur, the same was withdrawn and she was allowed to draw the scale of pay of Rs.975-1060/- and, as such, the excess amount paid to her was directed to be recovered. Challenging the said order, the petitioner approached the tribunal by filing O.A. No.313(c) of 2001 and the tribunal, after due adjudication, confirmed the order of recovery passed by the authority, coming to a definite conclusion that the qualification of Sahitya Ratna

from Hindi Sahitya Sammelan, Allahabad was clearly not equivalent to B.A. and more over the Government is not the authority to declare equivalence of qualification as a degree since only educational institutions like Universities are competent to do so. Thereby, the tribunal held that the order dated 03.04.1999 under Annexure-4 was clearly an illegal order being based on forged and fabricated government order dated 23.02.1981. Therefore, the said illegality was rightly corrected by issuing Annexure-5, lowering the scale of pay of the petitioner and ordering for recovery of excess payment already made. As such, this Court has already fortified this fact in OJC No. 1259 of 1995 and batch, disposed of on 06.05.1997, wherein reference was made to the Government order no.3218/EYS dated 23.02.1981 and, as such, the same has been declared as a fraudulent and non-existent document. Therefore, if the benefit was extended to the petitioner, pursuant to non-existent Government order no.3218/EYS dated 23.02.1981, the petitioner cannot say that such benefit should not be recovered from her. More so such government order was also referred to by a learned Single Judge of this Court in Swadhin Kumar Barik (supra), and finding that on the basis of such forged government order, the benefit was extended, to the petitioners therein, the writ petitions were dismissed. Surprisingly, in one of these cases, Mr. L.K. Mohanty, learned counsel for the petitioner was the counsel in the said batch of case, which was dismissed by the learned Single Judge. Thereby, it is made known to the petitioner that the benefit had been extended to her on the basis of the fraudulent government order which is non-existent one. Thereby, the order impugned passed by the tribunal is well justified and does not warrant interference of this Court.

7. Accordingly, the writ petition merits no consideration and the same is hereby dismissed.

8. However, in course of hearing, Mr. L.K. Mohanty, learned

counsel for the petitioner contended that even if the petitioner has acquired the qualification of Sahitya Ratna, but she has already attained the age of 48 years w.e.f. 01.05.2005. Therefore, otherwise also the petitioner is entitled to get the benefit of trained graduate scale of pay in view of the pleadings available at paragraph-16 of the writ petition. In such view of the matter, whether the petitioner is entitled to get such benefit or not, this Court has not expressed any opinion But, however, it is open to the opposite parties to take a decision on such grievance raised by learned counsel for the petitioner, in accordance with law.

(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE

Ashok/Sukanta

