

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) Nos.20773 and 25344 of 2021

Kabita Mohapatra *Petitioner*
(in W.P.(C) No.20773 of 2021)

Mr. Budhadev Routray, Sr. Adv.

-versus-

State of Odisha and Ors. *Opposite Parties*
Mr. Saswat Das, AGA
(for O.Ps.1 to 4)
Mr. Sameer Kumar Das, Adv.
(for O.Ps.5 and 6)

Kabita Mohapatra *Petitioner*
(in W.P.(C) No.25344 of 2021)

Mr. K.K. Swain Adv.

-versus-

State of Odisha and Ors. *Opposite Parties*
Mr. Saswat Das, AGA
(for O.Ps.1 to 3)
Mr. Sameer Kumar Das, Adv.
(for O.P.4)

CORAM:

DR. JUSTICE S.K. PANIGRAHI

Order

No.

11.

ORDER

20.09.2022

1. Both the matters are taken up through hybrid mode.
2. Both the Writ Petitions have been filed by the same Petitioner. W.P.(C) No.20773 of 2021 has been filed challenging the order dated 13.07.2021 under Annexure-

12 passed by the Director, Higher Secondary Education wherein the Opposite Party No.4 relying upon the guidelines dated 31.08.2020 fixed the seniority of the Opposite Party No.6 based on her date of birth above the present Petitioner and consequentially appointed the Opposite Party No.6 as the Principal-in-charge-cum-secretary of Rani Sukadei Mahila Higher Secondary School, Banki, Cuttack. W.P.(C) No.25344 of 2021 has been filed challenging the revised seniority list of Teachers of the said School prepared by the then Principal-In-Charge placing the Petitioner at serial No.2 of the said list.

3. Shorn of unnecessary details, the substratum of matter presented before this Court remain that the pursuant to appointment order dated 30.06.1993, the Petitioner was appointed to the post of Lecturer in Economics. The Petitioner received Block Grant Aid with effect from 20.01.2009 as per GIA Order, 2008.
4. The Opposite Party No.6 was appointed to the post of Lecturer in Odia vide appointment order dated 17.07.1993 and she received Block Grant Aid with effect from 20.01.2009 as per GIA Order, 2008. Subsequently, both the Petitioner as well as the Opposite Party No.6

were allowed to receive the regular grant vide GIA Order 2017 with effect from 01.01.2018.

5. The Government vide letter No.27964 dated 31.08.2020 issued guidelines towards fixing the seniority of teachers of Non-Govt. Aided Colleges for the appointment of Principal and HODs. In the said notification, it was clarified that the seniority will be determined on the basis of date of birth.
6. After the issuance of letter dated 31.08.2020, the Opposite Party No.6 who is senior in terms of age, tried to get her name approved as the Principal(I/C) of Rani Sukadei Mahila Higher Secondary School, Banki, Cuttack, ahead of the Petitioner. Furthermore, the revised format seniority list of the teachers of the college prepared by the Principal also enlisted the name of the Petitioner in Sl. No. 2 with her date of joining mentioned as 05.07.1993 whereas the name of the Opposite Party No.6 has been reflected in Sl. No.1 and her date of joining is mentioned as 17.07.1993.
7. In the meantime, Mr. Shyama Sundar Rout, Reader of Banki College who was posted in the Petitioner's college retired on 30.06.2021 and before the retirement of Mr. Rout, the Sub-Collector by referring to guidelines dated 31.08.2020 recommended the name of the Opposite

Party No.6 even though she is junior to the Petitioner in terms of date of entry into service.

8. It is submitted by learned Counsel for the Petitioner that the guidelines dated 31.08.2020 under Annexure-8 is arbitrary and discriminatory and vide order dated 11.07.2022, the same has already been quashed by this court in *Kamala Kanta Das v. State of Odisha & Ors*¹.
9. Per Contra, it is contended by Learned Counsel for the Opposite Parties that Rani Sukadei Mahila Higher Secondary School is a junior college and the office order dated 31.08.2020, issued by the Department of Higher Education, Odisha cannot be made applicable to the current set of facts.
10. On perusal of the abovementioned pleadings, this Court is of the view that in the matter of adjudging seniority of the teachers, the principle of initial date of appointment/continuous officiation or date of entry into service is the valid principle for adjudging inter se seniority of the teachers. This principle was iterated in the case of *Sudhir Kumar Atrey v. Union of India*². The Supreme Court observed:

“We are also of the view that in the matter of adjudging seniority of the candidates selected

¹W.P.(C) No.230 of 2022

²(2022) 1 SCC 352

in one and the same selection, placement in the order of merit can be adopted as a principle for determination of seniority but where the selections are held separately by different recruiting authorities, the principle of initial date of appointment/continuous officiation may be the valid principle to be considered for adjudging inter se seniority of the officers in the absence of any rule or guidelines in determining seniority to the contrary."

11.In the case of *Ram Janam Singh v. State of U.P.*³, the Supreme Court observed that:

"From time to time controversy regarding inter se seniority is raised between persons recruited from different sources to the same service. In past, notional seniority used to be given to one group of officers, purporting to mitigate their hardship or to rectify any alleged wrong done to them in the process of recruitment or promotion. Ultimately it was realised that if liberty is given to fix seniority of an officer or group of officers belonging to a particular category with reference to a notional date, that will lead to great uncertainty in public service. The date of entry into a particular service was considered to be the most safe rule to follow while determining the inter se seniority between one officer or the other or between one group of officers and the other recruited from the different sources. After referring to different judgments of this Court, a Constitution Bench in the case of Direct Recruit Class II

³(1994) 2 SCC 622

*Engineering Officers' Assn. v. State of Maharashtra*⁴ came to the same conclusion. The same has been reiterated in the case of *State of W.B. v. AghoreNathDey*⁵. It is now almost settled that seniority of an officer in service is determined with reference to the date of his entry in the service which will be consistent with the requirement of Articles 14 and 16 of the Constitution."

12. Similarly, in another instance, the Supreme Court in the case of *Prem Kumar Verma v. Union of India*⁶, held that:

"the principal mandate of the rule is that seniority is determined on the basis of date of appointment. Proviso (2) lists out two rules. The first is that those selected and appointed through a prior selection would rank senior to those selected and appointed through a later selection process.....The second limb of the second proviso clarifies that when merit based, or seniority based promotions are resorted to, the applicable norm would be seniority in the feeder cadre, to forestall any debate about the rule of merit (in the selection) being the guiding principle". Further, the court observed that "the advertisements were issued one after the other, and more importantly, that this was the first selection and recruitment to a newly created cadre, the delay which occurred on account of administrative exigencies (and also the completion of procedure, such as verification of antecedents) the seniority of the promotees given

⁴(1990) 2 SCC 715

⁵(1993) 3 SCC 371

⁶(1998) 5 SCC 457

on the basis of their dates of appointment, is justified by Rule 27 in this case", and hence, dismissed the appeals."

13. With respect to the issue of "date of birth", the State has contended that in the category of teachers receiving block grant and working in category-III colleges, the date of appointment varies from the date of admissibility of the post in many cases. It will be highly difficult on part of the Department to assess the eligibility date by scrutinizing each and every individual post of such colleges. Hence, they have adopted a common apparatus to fix the date of birth of the employees concerned of the college for determination of inter-se seniority. However, this approach of the State seems to be extremely fallacious and having poor legal sustainability index. Difficulty in following a certain rigorous procedure does not allow a State Department to deviate from the principal logic established by the Supreme Court. Moreover, the date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from the different sources.

14. From the above, the legal position with regard to determination of seniority in service, it can be summarized as follows:

- i. The effective date of selection has to be understood in the context of the service rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be.
- ii. Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from the different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

15. In the light of above discussions, and guided by the precedents narrated hereinabove and in accordance to decision of this court in *Kamala Kanta Das* (supra), this Court hereby quashes the Guidelines dated 31.08.2020 issued by the Department of Higher Education, Government of Odisha containing the mechanism for fixing the seniority of teachers of non-Government Colleges for the purpose of appointment of Principal and

HODs and directive issued by the State Government whereby the inter se seniority was to be adjudged according to the date of birth.

16. Consequently, the Government letter No.4M-50-21-IV dated 13.07.2021 issued to the Opposite Party.No.6 is also invalidated. It is further clarified that all the appointments of Principal-in-Charge made by following the Guidelines dated 31.08.2020 issued by the Department of Higher Education, Government of Odisha be made afresh by taking into consideration of date of entry into service as the basis for seniority. The Opposite Party No.1 is directed to come out with fresh guidelines accommodating the principle of seniority as enunciated by the Supreme Court of India which is an integral part of our service jurisprudence.

17. Both the Writ Petitions are, accordingly, allowed. No order as to cost.

(Dr. S.K. Panigrahi)
Judge

B.Jhankar