

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No. 3283 of 2009

<i>Prafulla Kumar Moharana</i>	<i>....</i>	<i>Petitioner</i>
		<i>Mr. P.K. Mohapatra, Advocate</i>
		<i>-Versus -</i>
<i>State of Odisha and Ors.</i>	<i>....</i>	<i>Opp. Parties</i>
		<i>State Counsel</i>

CORAM:
DR. JUSTICE B.R. SARANGI

ORDER
24.01.2022

Order No.
01

This matter is taken up through video conferencing mode.

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

3. The petitioner has filed this writ petition seeking to quash the order dated 07.11.2009 under Annexure-6, so far as petitioner is concerned.

4. Mr. P.K. Mohapatra, learned counsel for the petitioner contended that although the petitioner was appointed as Asst. Teacher, but his post was not approved.

5. Mr. S. Jena, learned Standing Counsel for School & Mass Education Department contended that since the petitioner was appointed by the Managing Committee of the school itself, in view of the judgment of this Court in ***State of***

Orissa and Ors. v. Nabin Kumar Beura, 2011 (I) OLR 149, the benefit sought cannot be admissible to the petitioner and, thereby, the writ petition is to be dismissed.

6. Having heard learned counsel for the parties and after going through the records, it appears that the petitioner was appointed as an Asst. Teacher against Addl. Section post of Class-IX(B) in Jenapur High School, pursuant to resolution of the Managing Committee. There was no correspondence with the higher authorities to create additional section post in the school nor has any prior permission to appoint any Additional Section Teacher been obtained by the school authority before appointment of the petitioner. As per the provisions of Section 5(2) of the Orissa Education Act, 1969, prior permission is required to fill up the vacancy in the institution and, as such, in the present case no prior permission has been taken by the institution for opening of additional section and, thereby, no post was sanctioned. Similar question had come up for consideration in ***Nabin Kumar Beura*** (supra), wherein this Court held that the requisite criteria of obtaining prior approval if not fulfilled, any appointment made by the Managing Committee is illegal in the eye of law. In view of such position, since no prior permission was obtained, so far as petitioner's appointment is concerned, this Court is not inclined to interfere with order impugned.

7. For all the above reasons, the writ partition merits no consideration and the same thus stands dismissed.

As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's

website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No. 4798 dated 15th April, 2021 and Court's office order circulated vide Memo Nos. 514 and 515 dated 7th January, 2022.

(Dr. B.R. Sarangi)
Judge

GDS

