

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No.20209 of 2018

Iswar Chandra Khara

.....

Petitioner

Mr. Srikanta Mahunta, Adv.

Vs.

State of Odisha and others

.....

Opposite Parties

*Mr. S. Jena, SC
for S & M.E. Deptt.*

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE S.K. MISHRA

ORDER

20.07.2022

Order No.

15.

This matter is taken up through hybrid mode.

2. Heard Mr. Srikanta Mahunta, learned Counsel appearing 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 10.01.2018 passed in O.A. No.3774(c) of 2010 under Annexure-10, by which the Odisha Administrative Tribunal, Cuttack Bench, Cuttack, has dismissed the Original Application on the ground of limitation.
4. Mr. Srikanta Mahunta, learned Counsel for the Petitioner contended that Petitioner was appointed as a Non-Formal Education Instructor, vide letter dated 03.03.1989. As per the instructions of the Government, the Non-Formal Education Instructor/facilitator has to be absorbed as Primary School Teacher against existing vacancy on 30.06.1996. Since the Authorities have not taken steps for absorption, the Petitioner approached the Tribunal by filing O.A. No. 1447 of 2000 and batch seeking direction to the Opposite Parties to take necessary steps to appoint

the Petitioner as Primary School Teacher. The Tribunal, vide Order dated 25.07.2008, disposed of the said Original Applications, directing the Opposite Parties to appoint the applicants as regular Primary School Teacher relaxing the upper age limit, within a period of one month. Pursuant to such order, the District Inspector of Schools, Koraput, gave appointment to such applicants as regular Assistant Teacher in Primary Schools, as Level-V Teacher, whereas the present Petitioner was not given such appointment. Therefore, he again approached the Tribunal by filing O.A. No. 3774 of 2010, but the Tribunal, without any application of mind, rejected the claim of the Petitioner on the ground of limitation, which cannot be sustained in the eye of law.

5. Mr. S. Jena, learned Standing Counsel for the School and Mass Education Department contended that the Petitioner is an untrained Madhyama passed candidate, who is continuing as Non-formal Instructor and belonged to ST category, is without having C.T. qualification. The Orissa Elementary Education (Method of Recruitment and Condition of Service of Teachers and officers) Rules, 1997, which have been given effect to w.e.f. 12.08.1997, envisage H.S.C., C.T. as minimum qualification for post of Primary School Teacher. As per the provisions contained in the Rules itself, a person, who got requisite qualification, is only entitled to be appointed as Primary School Teacher. Since the Petitioner had approached the Tribunal by filing the Original Application in the year 2010 against the cause of action of the year 2000, the same was barred by limitation. Consequently, the Tribunal is well justified in passing the Order impugned.

6. Having heard learned Counsel for the Parties and after going through the records, this Court finds that since Rules

prescribed qualification for appointment of a regular teacher, the same should have been adhered to and, as such, there is no dispute that the Petitioner was discharging his duties as Non-formal Instructor. Therefore, he should have been appointed as Primary School Teacher, provided he satisfies the qualification and other requirements, as per the Rules. But fact remains, the Opposite Parties have given similar benefit to the others by giving them appointment as Primary School Teacher and they are continuing, whereas the Petitioner has been discriminated. Aggrieved thereby, the though Petitioner approached the Tribunal, but the Tribunal rejected his claim on the ground of limitation.

7. During Pendency of this Writ Petition, an Additional Affidavit has been filed by the Petitioner, in which it has been brought to the notice of the Court that the Petitioner was engaged as Gana Sikhyak, vide letter dated 11.08.2008, and as such, the Petitioner is continuing against the said post. Therefore, the claim for appointment as Regular Primary School Teacher is based on the fact that similarly situated persons have been appointed against such post. In view of such position, the rejection of the claim of the Petitioner by the Tribunal on the ground of limitation cannot sustain in the eye of law. Thereby, Order dated 10.01.2018 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.3774(c) of 2010, cannot be sustained in the eye of law and is liable to be quashed and is hereby quashed.

8. In view of such position, as the Petitioner was appointed as Gana Sikhyak, vide letter dated 11.08.2008, this Court directs the Opposite Parties to consider his case for appointment as Regular Primary School Teacher, subject to availability of vacancy and fulfillment of other eligibility criteria as per Rules and in

accordance with law. The entire exercise shall be completed within a period of three months from the date of production of certified copy of this Order.

9. With the aforesaid observation and direction, the Writ Petition stands disposed of.

Issue urgent certified copy as per Rules.

(DR. B.R. SARANGI)
JUDGE

(S.K. MISHRA)
JUDGE

Ashok/Padma

