

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P. (C) No. 20808 of 2019

An application under Sections 226 and 227 of the Constitution of India.

Suptimayee Acharya

Petitioner

-Versus-

State of Odisha and others

Opp. Parties

Advocate(s) appeared in this case :-

For Petitioner : M/s. Rakesh Sahu, T. Begum &
 S. Ray, Advocates

For Opp. Parties : Mr. P.K. Panda
 Standing Counsel (School & Mass
 Education Department

CORAM:

JUSTICE SASHIKANTA MISHRA

J U D G M E N T

1st November, 2022

SASHIKANTA MISHRA, J.

The petitioner has filed the writ petition seeking
the following relief:-

*“It is, therefore prayed that this Hon’ble
Court may graciously be pleased to admit
this Writ Petition, issue notice to Opp. Parties*

and thereby directing to file a show cause and if no show cause is filed/or insufficient cause has been shown and after hearing from both parties, this Hon'ble Court may be pleased to issue a Writ in the nature of certiorari/mandamus or any other suitable forms thereby quashing Letter No.4A-02-2019-II, 4223, dt.25.10.2019 under Annexure-9 for the interest of justice.

And further directed to republish the merit list and incorporating the name of the petitioner.

And pass any other order(s)/direction(s) as the Hon'ble Court may deem fit and proper for the interest of justice.

And for this act of kindness, the petitioner as in duty bound shall every pray."

2. Sans unnecessary details, the facts of the case are that pursuant to an advertisement/notification issued by the Director, Secondary Education, Odisha on 23.02.2019 for recruitment to the post of Contractual Trained Graduate Teachers (TGT) in Government schools of the State, the petitioner having the necessary qualification applied for the same through online mode. The number of vacancies so advertised was 1828. She appeared in the online competitive examination held on the date fixed. The provisional result of such examination was published wherein the petitioner was found to have qualified being

placed at Serial No.1662. The said list was published on 14.8.2019. By notice dated 28.08.2019, the candidates were called upon to submit the documents on 05.09.2019 before the District Education Officer, Cuttack for verification. After such verification, two lists were published under notice dated 21.09.2019 being draft common merit list and draft reject list. The candidates were allowed to file their objections in the prescribed format between 23.09.2019 and 26.09.2019. The petitioner's name was reflected at Serial No.196 of the draft reject list citing the reason that her name differs in the B.A. and B.Ed. certificates and NCTE wanting (2013-14). The petitioner's name being 'Suptimayee' was wrongly reflected as 'Suprimayee' in the mark list and provisional certificate of B.Ed. course. Accordingly, the petitioner got the certificate corrected and submitted the same in compliance to the objection raised. However, in the provisional selection list issued on 25.10.2019, the petitioner's name was absent. It is stated that the petitioner possesses the requisite qualification and had

also duly qualified in the online test for which she was eligible for appointment. But because of wrong mentioning of her name in the B.Ed. certificate, she was deprived. On such facts, the petitioner has approached this Court seeking the relief as stated hereinbefore.

3. Counter affidavit is filed by the District Education Officer (opposite party no. 3). It is stated that the petitioner's candidature was rejected on the ground of mismatch of her name in B.Ed. and B.A. certificates and for want of NCTE certificate. Since the requirement is for the candidate to produce certificate of the equivalence and the certificate of recognition of NCTE and affiliation certificate in case of candidates passing Bachelor Degree or B.Ed. from other States, it was necessary for the petitioner to have produced the same. As she did not produce the certificate of equivalence issued by NCTE, her candidature was rightly rejected.

4. The petitioner filed a rejoinder to the said counter stating that after coming to know of the wrong mentioning of her name in the B.Ed. certificate and the certificate of

recognition granted by NCTE, she applied online on 28.10.2019 for necessary correction. Both the certificates were corrected by the concerned authorities and the petitioner submitted the same before the District Education Officer, Cuttack.

5. Counter affidavit is also filed by the Director Secondary Education (Opposite Party No.2) reiterating the facts stated by the opposite party no.3 in his counter.

The petitioner filed a rejoinder to the said counter reiterating her averments in the rejoinder filed by her to the counter filed by opposite party no.3. It is further stated that the petitioner had duly passed B.Ed. examination but the same was wrongly mentioned as B.EL.Ed. in the certificate of NCTE. On application by the petitioner the error was corrected. Despite such correction, the certificate was not taken into consideration, which is illegal.

The District Education Officer (O.P. No.3) filed a reply to the rejoinder stating that as per Clause-5, the candidate is required to produce authenticated proof of

equivalence from Board/University of Odisha, affiliation of the institution by a recognized University and recognition of such training course and institute by NCTE. The petitioner passed the B.Ed. degree from M.A.M. College of Education, Andhra Pradesh, which mentioned the degree as B.EL.Ed. and not B.Ed. Though the petitioner submitted the corrected certificate but the same was not within the stipulated time and hence, her candidature was not considered.

6. Heard Mr. Rakesh Sahu, learned counsel for the petitioner and Mr. P.K. Panda, learned Standing Counsel for the School and Mass Education Department.

7. It is argued by Mr. Sahu that the petitioner having submitted the corrected certificates cannot be denied appointment. As regards delay in submission of such certificate, it is submitted that the same can only be attributed to the concerned institution over which the petitioner cannot be expected to have any control. Even otherwise there being more than 700 vacancies at present

and the petitioner having qualified in the competitive test can be adjusted against the same.

Mr. Sahu has relied upon several decisions in support of his contention that the so called cut-off date for submission of documents cannot be used as a tool to deny admission to meritorious students, particularly when no fault is attributed to the candidate for not producing the certificate earlier.

8. Mr.P.K. Panda, on the other hand, contended that at the stage of verification, it was found that there was mismatch in the name of the petitioner in the B.A. and B.Ed. certificate as also mismatch of course in the NCTE certificate. Further, the petitioner did not produce the equivalence certificate, which is mandatory as per the advertisement. Opportunity was given to the petitioner to produce the corrected certificates within a specified period but she failed to do so. That apart, there is some doubt as regard the authenticity of the B.Ed. certificate produced by the petitioner, which she could not satisfactorily

explain. Mr. Panda therefore, contends that the petitioner's candidature was rightly rejected.

9. From the facts and contentions narrated above, it is evident that the petitioner qualified in the computer based competitive test and her name was included in the provisional list. It is further evident that the petitioner had produced provisional certificate and mark sheet issued by Acharya Nagarjuna University showing her to have passed the degree of Bachelor of Education (B.Ed.) from M.A.M. College of Education, Guntur in the State of Andhra Pradesh. Her name was wrongly mentioned as 'Suprimayee Acharya' in both the certificates. The name was subsequently corrected in both the certificates by the Controller of Examination on 16.09.2019. So far as the NCTE certificate is concerned, it is seen that a certificate dated 24.09.2019 was issued in favour of the petitioner stating that she had passed Bachelor of Elementary Education (B.EL.Ed.) degree course from M.A.M. College of Education, Andhra Pradesh, which is a duly recognized institution by Southern Regional Committee, NCTE for the

session 2013-14. Another certificate was issued by NCTE on 30.10.2019 stating that the petitioner has passed Bachelor of Education (B.Ed.) course with other particulars remaining the same as in the previous letter. The candidates were called upon to attend verification of documents on 05.09.2019, during which the discrepancy as mentioned above came to the notice. The candidates were thereafter called upon to rectify the defects between 23.09.2019 and 26.09.2019. While the B.Ed. certificate was corrected on 16.09.2019 and produced before the opposite party no.3 within the prescribed period, i.e. on 25.09.2019 yet the corrected NCTE certificate was produced on 31.10.2019. It has been contended that the petitioner after having come to learn about the objection regarding her certificate had applied to NCTE on 28.10.2019 for correction, but the same was corrected on 30.10.2019. It is therefore, submitted that the petitioner cannot be blamed for the mistake committed by the concerned institution and the delay caused in making the necessary correction.

10. The question that now arises is, can the petitioner be treated as eligible for consideration of her case for appointment. In other words, can it be said that the petitioner fulfilled the required criteria so as to be considered for appointment. It would be apposite to refer to the terms of the advertisement dated 23.02.2019, a copy of which has been enclosed as Annexure-1 to the writ petition. Clause-5-C(f) reads as follows:-

“f) Candidates possessing Academic/ Training qualifications from Boards/Universities/ Institutions outside Odisha shall have to produce the authenticated proof of equivalence from Board/Universities of Odisha, affiliation of their institution to a recognized University and recognition of such Training course and institute by NCTE failing which he/she shall not be considered as eligible for selection.”

Clause 13(u), which is also relevant for the present purpose reads as follows:-

*“u) The word **equivalence** used in the para 5 C(f) and 14(x) of the advertisement means: equivalence given by Board or Universities of Odisha to the educational qualifications (academic or training) which are mentioned in para 5.B, if such qualification have been obtained from institutions in states other than Odisha.*

If any case, qualifications with any nomenclature other than those mentioned in the para 5.B. of the advertisement shall not be accepted.

For example, a candidates passing B.A./B.Com./B.Sc. from other states shall be allowed if he/she produces equivalence from any University in State of Odisha. But if a candidate possesses any similar degree with some other nomenclature her candidate shall not be considered even if he/she produces a certificate of equivalence.

Similarly, if a candidate has passed B.Ed. from an institution located outside Odisha his/her candidature shall be considered if he/she produces equivalence to B.Ed. issued by universities of Odisha. But if he/she possesses degrees such as Special B.Ed./B.Ed in English/B.Ed in Hindi/Sikhya Shastri/Parangat/B.H.Ed or similar training qualifications, his/her candidature shall not be considered even if he/she produces an equivalence certificate.”

Thus, the candidate is required not only to produce the certificates regarding her academic qualification but in case he or she has obtained such qualification outside Odisha, she is required to produce (i) authenticated proof of equivalence from the Board/University of Odisha, (ii) affiliation of the institution to a recognized University and (iii) recognition of such training course and institute by NCTE. The word

‘equivalence’ is held to mean equivalence given by Board or Universities of Odisha to the educational qualification mentioned in para-5(B), if such qualifications have been obtained from institution in a State other than Odisha. The petitioner claims to have passed her Bachelor of Education degree (B.Ed.) examination from M.A.M. College of Education, Guntur in the State of Andhra Pradesh. She produced the certificate of NCTE showing that the said College is a duly recognized institution by NCTE. What is wanting is, the certificate of equivalence issued by any University/Board of Odisha. As already stated, this is a mandatory requirement of the advertisement and cannot be dispensed with/relaxed in any manner. It has also not been averred as to if any certificate is issued by the competent authority showing equivalence of the B.Ed. degree course from M.A.M. University, Guntur as being equivalent to such degree/course offered by any University of Odisha. It is stated in the counter filed by opposite party no.3 that though the petitioner produced documents issued by the Utkal University and Controller

of Examinations, Acharya Nagarjuna University, Andhra Pradesh correcting her name but since she could not submit certificate of equivalence issued by the NCTE with regard to B.Ed. certificate and produced the certificate of NCTE required for elementary teachers, her candidature was not considered. From the above discussion, this Court finds that the mismatch of name of the petitioner in the B.A. and B.Ed. certificates has been duly rectified. The wrong mentioning of her course as B.EL.Ed. instead of B.Ed. has also been corrected appropriately. The first objection raised by the authorities in this regard is that such corrections were not carried out in time. It would be profitable at this stage to refer to the settled position of law in this regard. In the case of **Dolly Chhanda vs. Chairman, JEE and Others**, reported in AIR 2004 SC 5043. The Apex Court observed as under:-

“7.The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of

holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or mark sheets. Similarly, in order to avail of the benefit of reservation or weightage etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement for benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.”

11. In the case of **Asha vs. Pt. B.D. Sharma**
University of Health Sciences and Others, reported in
AIR 2012 SC 3396, the Apex Court observed as under:-

“31. There is no doubt that 30th September is the cut-off date. The authorities cannot grant admission beyond the cut-off date which is specifically postulated. But where no fault is attributable to a candidate and she is denied admission for arbitrary reasons, should the cut-off date be permitted to operate as a bar to admission to such students particularly when it would result in complete ruining of the professional career of a meritorious candidate, is the question we have to answer. Having recorded that the appellant is not at fault and she pursued her rights and remedies as expeditiously as possible, we are of the considered view that the cut-off date cannot be used as a technical instrument or tool to deny admission to a meritorious students. The rule of merit stands completely defeated in the facts of the present case. The appellant was a candidate placed higher in the merit list. It cannot be disputed that candidates having merit much lower to her have already been given admission in the MBBS course. The appellant had attained 832 marks while the students who had attained 821, 792, 752, 740 and 731 marks have already

been given admission in the ESM category in the MBBS course. It is not only unfortunate but apparently unfair that the appellant be denied admission. Though there can be rarest of rare cases or exceptional circumstances where the courts may have to mould the relief and make exception to the cut-off date of 30th September, but in those cases, the Court must first return a finding that no fault is attributable to the candidate, the candidate has pursued her rights and legal remedies expeditiously without any delay and that there is fault on the part of the authorities and apparent breach of some rules, regulations and principles in the process of selection and grant of admission. Where denial of admission violates the right to equality and equal treatment of the candidate, it would be completely unjust and unfair to deny such exceptional relief to the candidate."

Therefore, the so called cut-off date is not to be treated as an insurmountable wall to deny candidates their rightful due of consideration for appointment, even if no fault lies with them for submission of the required certificates in time. As already discussed, the defects having been pointed out, the petitioner took steps for removal of the same and while one of the certificates could be corrected promptly, the other took time to be corrected. It is not the case of the opposite parties that the petitioner does not possess the qualification as reflected in the certificates in question. Therefore, her candidature cannot

be rejected only on the ground of non submission of the corrected certificates in time.

12. This brings the Court to the next contention raised by the opposite parties that the mandatory requirement of production of authenticated proof of equivalence was not complied with by the petitioner. To this it can only be said that whether the B.Ed. course offered by Acharya Nagarjuna University, Guntur in the State of Andhra Pradesh is equivalent to the B.Ed. Course/Degree offered by the Universities of Odisha or not is a matter there can also be otherwise verified by the authorities themselves. The point is, a candidate who is otherwise meritorious cannot be denied a chance to be appointed only on such technicalities, it is reality such equivalence between the course in Odisha and Andhra Pradesh exists.

13. In the finally analysis, this Court find that the petitioner having duly qualified in the computer based competitive test is ordinarily entitled to be given appointment. Further, the so called discrepancy occurring in the certificates relating to her name has since been

corrected and so also the discrepancy relating to the name of the course passed by her. The only requirement that remains is, production of certificate of equivalence. It is also stated on affidavit that at present more than 700 vacancies are available to be filled up.

14. In the circumstances, the writ petition is disposed of with a direction to the opposite parties authorities to consider the case of the petitioner for her appointment as TGT against the available vacancies subject to production of the certificate of equivalence by her in terms of the advertisement. It is needless to mention that if the petitioner submits such certificate within a period of four weeks, necessary order for her appointment shall be issued by the authorities within a further period of four weeks.

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Sashikanta Mishra,
Judge