

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.21089 of 2019

Gunanidhi Panda

....

Petitioner

Mr. T.K.Pattanayak
Advocate

-versus-

State of Odisha & others

....

Opposite Parties

Mr. P.K.Panda,
Standing Counsel S & M.E

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER

20.9.2022.

Order No.

05.

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the Petitioner and learned Standing Counsel for the School and Mass Education Department.
3. The Petitioner has approached this Court seeking the following relief:-

“To admit this writ petition. Quash the order dated 20.9.2019 passed by the Opp. Party No.1 under Annexure-1. To direct the Opp. Parties to promote the petitioner to the post of Headmaster of M.E.

School notionally with effect from 26.3.1993, the date when his junior Sri Gagan Chandra Dash got such promotion and in teeth with different implementation order of different candidates at different point of time as annexed under Annexure-2 series and Annexiure-6.

To direct the Opp. parties to fix the pay of the petitioner in the T.G. scale of pay (Headmaster Scale of pay) w.e.f. 26.3.1993 and in subsequent ORSP Rules with usual annual increments and fix the last pay as on the date of retirement i.e., 31.10.2013. To direct the Opp. Parties to refix the pension and other pensionary benefits accordingly and pay the arrears flowing there from within a stipulated time.”

4. The case of the Petitioner, in nutshell, is that he was appointed as a Primary School Teacher on 24th October, 1975 and acquired trained graduate qualification on 14th November, 1981. He retired as a Level-IV Headmaster on 31st January, 2013 on attaining the age of superannuation. It is his grievance that though his juniors have been promoted to the post of Headmaster w.e.f. 26th March, 1993 he was not given such benefit. Consequentially non-fixation of his pay in the trained graduate scale of pay with effect from the said date under the O.R.S.P. Rules, 1989 and O.R.S.P. Rules 1998 and 2008 has resulted in wrong fixation of his pension and other retirement benefits. Being aggrieved, the Petitioner approached the erstwhile Odisha Administrative Tribunal, Bhubaneswar in O.A. No.394/2011. Learned Tribunal disposed of the said O.A. on 21st October, 2011 by passing the following order:-

“After careful consideration and hearing the learned counsel for both sides, it is directed that the applicant’s case for grant of promotion to the rank of headmaster against the vacancy arose prior to 12.8.1997 should be considered in accordance with the seniority from the date of his entitlement as an Asst. Teacher. If he is entitled to get any promotion prior to 12.8.1997 the date from which Elementary Cadre Rule 1997 came into force, then that may be granted to him, but the same should be a notional one and however his pay should be fixed notionally in the higher scale after giving annual increments and the same shall also be revised from time to time in accordance with ORSP Rules. But the applicant is not entitled to get arrear pay accrued between the date of notional promotion, if any and the date of actual promotion.

The exercise be completed within three months from communication of this order.”

5. Mr. T.K.Pattnayak, learned counsel for the Petitioner, has drawn attention of this Court to the gradation list of Primary School Teachers of Keonjhar District, wherein the name of the Petitioner finds place at Sl. No.103. It is alleged that the Teachers placed at Sl. Nos.110 and 111 have been granted the required scale on the basis of orders passed by the Tribunal in Original Applications filed by them. Since the Petitioner’s application was not considered, he filed another O.A. being O.A. No.1310(C) of 2019, which was disposed of by order dated 24th July, 2019 by the Tribunal by passing the following order:-

“Hence without going into the merits of the claim of the applicant, copies of the paper book is remitted to respondent no.1 at the cost of the applicant to treat the same as his representation and to consider his grievance, keeping in view the averments of the O.A. and annexures appended thereto, within a period of two months from the date of receipt of a copy of this order and convey the result thereof to the applicant soon thereafter”.

6. Pursuant to such order of the Tribunal, the Commissioner-cum-Secretary to Government in School and Mass Education Department considered the paper book of the O.A. as the representation and rejected the same by holding that the Petitioner is a fence-sitter having approached the Court only after favourable orders were passed in respect of similarly placed employees. In doing so, the Commissioner-cum-Secretary has relied upon the decision of the Supreme Court in the case of ***State of Odisha and another v. Mamata Mohanty***; reported in (2011) 3 SCC 436.

7. There is no quarrel as to the proposition relating to fence-sitting by litigants as highlighted in the decision of the Apex Court. However, the question is, can the Petitioner in the instant case be treated as one. As has already been discussed herein before, the Petitioner had approached the Tribunal way back in the year 2011 in which the order quoted above was passed. The said order was a clear direction to the authorities to consider his case and grant him the benefits by ascertaining whether the concerned vacancies arose prior to 12th August,

1997 or not. This aspect appears to have missed the attention of the Commissioner-cum-Secretary. In fact, there is no reference at all to the order passed in O.A. No.394/2011 filed by the Petitioner in the impugned order.

8. Such being the case, the Petitioner obviously cannot be treated as a fence-sitter, rather he must be treated to have approached the Tribunal before Fakir Charan Behera (O.A. No.248(C)/2014), who has in the meantime been granted all the benefits claimed by him. In such view of the matter, the impugned order cannot be sustained in the eye of law and is, therefore, quashed.

9. The matter is remitted to the Commissioner-cum-Secretary, School and Mass Education Department, Bhubaneswar (Opposite Party No.1) to decide the representation of the Petitioner afresh taking into account the order passed by the Tribunal in O.A. No.394/2011 as also O.A. No.1310(C)/2019 filed by the Petitioner and after affording an opportunity of hearing to him. It is made clear that this Court has not expressed any opinion on the merits of the case. The entire exercise shall be completed within a period of four weeks from today.

10. The Writ Petition is accordingly disposed of.

11. Urgent certified copy of this order be granted on proper application.

AKB

(Sashikanta Mishra)
Judge

