

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.28615 of 2021

Ajaya Kumar Mohapatra *Petitioner*
Mr. Sameer Kumar Das. Adv.

-versus-

State of Odisha & Ors. *Opposite Parties*
Mr. S.K. Samal, AGA
(for O.Ps.1 and 2)
Mr. Tathagata Sahoo, Adv.
(for O.P.4)
Mr. Prasanta Ku. Mohanty 2, Adv.
(for O.Ps.3 and 5)

CORAM:
DR. JUSTICE S.K. PANIGRAHI

Order

No.

8.

ORDER

21.07.2022

1. This matter is taken up through hybrid mode.
2. Heard Mr. Sameer Ku. Das, learned counsel for the petitioner, Mr. S.K Samal, learned Additional Government Advocate for State, Mr. Tathagat Sahoo, learned counsel for opposite party No.4 and Mr. P.K Mohanty, learned counsel for opposite party Nos. 3 and 5.

3. This Writ Petition has been filed with a prayer to quash the Government Orders dated 31.08.2020 and 13.09.2021 and to restore the seniority of the petitioner over Opposite parties 4 and 5 and to allow the petitioner to continue as Principal in charge of J.N. College, Kuanpal. The writ petition raises the issue of inter-se seniority dispute between the petitioner vis-à-vis opposite party Nos.4 and 5. The petitioner commenced his service as a Lecturer in Botany (2nd Post) in Remuli College, Remuli, District Keonjhar from 28.02.1989. His appointment was approved from 27.04.1998 and he was brought into the Grant-in-Aid fold from 01.06.1994. According to the petitioner the valid and deemed date of joining for all practical purpose was 28.02.1989. Thereafter, he was transferred to J.N College, Kuanpal and has been continuing there in that post till date. Meanwhile, the State Government issued order No.27964 dated 31.08.2020, prescribing guidelines for fixation of seniority of teachers for the appointment of "Principal" and "Head of Department" in non-government colleges. The said notification superseded the earlier circulars and guidelines with regard to the appointment of principals in aided colleges. Opposite Parties Nos. 4 and 5 were posted in the +3 wing of the said college w.e.f

01.06.1989. The said appointments were approved vide GIA order dated 21.06.2004. Further, the appointments were approved under the Grant-in-Aid scheme vide order dated 21.12.2011, and were paid Grant-in-Aid from 01.06.1994.

4. Learned counsel for the petitioner submits that +3 wing of J.N. College, Kuanpal, came into existence from the session 1989-90. But, the opposite party Nos. 4 and 5 were continuing in J.N. College, Kuanpal from 05.11.1986 against non-sanctioned, in-admissible and non-created post. The O.P. Nos.4 and 5 also belong to the same Group-B teachers as per Clause-1 of the Government Guidelines issued on 31.08.2020. Thus, the past services of the Opposite Party Nos. 4 and 5 i.e. from 05.11.1986 and 08.08.1988 respectively till 31.05.1989 are void and non-existent in the eyes of law. Moreover, their valid date of joining could be 01.06.1989. Premising on the aforesaid averments it is clear that the petitioner has seniority in service over opposite party Nos. 4 and 5. This makes the petitioner the senior most approved lecturer of the institution, and he has supervening merit to be the Principal in-charge of the College. Additionally, the Government Notification fixing the seniority by virtue of date of birth is unwarranted in

service jurisprudence, since the said notification prescribes date of joining as the sole criterion for determining seniority.

5. Learned counsel for the opposite parties 1 and 2 submits that the appointments of opposite party Nos. 4 and 5 have been made in accordance with prescribed guidelines issued by the Department vide Letter No. 27964 dated 31.08.2020. In the said notification, the appointments of the Opposite Party Nos. 4 and 5 fall under the purview of Category-B, enshrining the determining factor of seniority to be the deemed date of joining.
6. Since, the deemed date of joining of the Petitioner and Opposite Party Nos. 4 and 5 is the same, date of birth was taken as a yardstick for determining seniority. Furthermore, the petitioner has moved this Court with wrong and mala-fide submissions. The disputes regarding fixation of seniority in the present writ petition relates to the Teachers working in Category-II Colleges. All the Teachers working in Category II Colleges are in receipt of Grant-in-Aid with effect from 1.6.1994. The guideline dated 31.08.2020 regarding fixation of seniority for principal-in-charge is not a

substantive, but only an interim arrangement. Fixation of seniority for the Principal-in-Charge does not affect anybody's vested rights. Further on being posted as Principal-in-charge is not entitled to any additional benefits nor does it reinforces any change in the emoluments pattern.

7. Heard learned counsel for the parties. To begin with, the criterion of seniority as fixed by the State Government vide Order No.27964 dated 31.08.2020, includes the petitioner and the Opposite Party Nos. 4 and 5 under the purview of Category-B, since all of them received the Grant in aid from 01.06.1994.

8. The thrust of the rule is that seniority is determined on the basis of date of appointment ("shall be fixed from the date of their appointment"). The legal footprint on the issue as left by the Supreme Court has firmly shaped the legal conduct at the executive domain on inter se seniority issue. The Supreme Court in the case of ***Prem Kumar Verma v. Union of India***¹, 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.

¹(1998) 5 SCC 457.

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

9. Additionally, in ***Ram Janam Singh v. State of U.P. and Anr***², it was iterated that the date of entry into a service is the safest 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. It was observed that this is in consistent with the requirement of Articles 14 and 16 of

²1994 AIR 1722.

the Constitution. It was, however, viewed that if the circumstances so require, a group of persons can be treated as a class separate from the rest for any preferential or beneficial treatment while fixing their seniority, but, normally such classification should be triggered by statutory rule or rules framed under Article 309.

10. The Constitution Bench of Supreme Court in *Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra & Ors.*³ stated the legal position with regard to inter se seniority of direct recruits and promotes. While doing so, inter alia, it was stated that once an incumbent is appointed to a post according to rules, his seniority has to be counted from the date of his appointment.

11. In the case of *D.K. Mitra and Ors. v. Union of India and Ors*⁴, the Supreme Court observed that for the purpose of determining seniority among promotees, the petitioners should be treated as having been appointed to permanent vacancies from the respective dates of their original appointment and the "entire period of

³1990 AIR 1607.

⁴ [1985] Supp. SCC 243

officiating service performed by them should be taken into account as if that service was of the same character as that performed by the substantive holders of permanent posts."

12. The Hon'ble Supreme Court in the case of *Sudhir Kumar Atrey vs Union Of India*⁵ held that

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

13. Consequent to the order in W.P.(C) No.230 of 2022 wherein this Court decided to quash the circular vide Order No.27964 dated 31.08.2020, the State Government has been directed to issue fresh guidelines to fix criterion of seniority in accordance to the law. In light of

⁵ SLP(Civil) No(s).6572 OF 2014.

said decision of the High Court in W.P.(C) No.230 of 2022, this Writ Petition is, accordingly allowed.

14. Urgent certified copy of this order be granted as per rules.

(Dr.S.K.Panigrahi)
Judge

Bj