

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No. 22450 of 2019

Tarun Kumar Parida

.... Petitioner

Mr. S.K. Jee, Advocate

- Versus -

State of Odisha & Others.

.... Opposite Parties

Mr. R.N. Acharya,
Standing Counsel for SM& E

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER

02.08.2022

Order No.
08.

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioner and learned Standing Counsel for School and Mass Education Department.

"It is therefore, prayed that your lordships may be graciously pleased to issue a Rule 'NISI' calling upon the opposite parties to show cause as to why :-

- a) Trained Scale of pay.
- b) Salary component for the leave period shall not be paid to the petitioner in accordance with law, if the opposite parties fail to show cause or show insufficient cause a writ in nature of Mandamus may be issued and rules therein be absolute"

3. Bereft of unnecessary details, the facts of the case are that the petitioner was appointed by the Management of J.E.L.C. UP School Gotiguda in the district of Koraput as an Asst. Teacher and joined as such on 08.09.1992. As per order passed by the then District Inspector of Schools, Koraput on 08.06.1993, appointment of the petitioner along with other teachers of different schools was approved subject to the condition that the untrained candidates should get themselves trained within three years of their date of joining as per Rule 16(1) of the Orissa Education Rules, 1974.

4. It is stated that after such approval, the competent authority was receiving grant-in-aid from the Government in the scale of pay of Rs.950-1500/-. By resolution dated 10.09.1996 of the Government in School and Mass Education Department it was decided that the GIA will not be available to the untrained/under qualified teachers appointed after 10.08.1979 in approved posts in non-Govt. Primary Schools. It is stated that the institution in question is a minority managed institution. The petitioner was relieved from his duties on 31.03.2001 to undergo C.T. training. But he was not successful and thereafter, he was allowed to join in the School on 03.04.2001. It is claimed that the petitioner suffered from a serious physical ailment due to which he could not resume his duties for a long period of time i.e., till 31.07.2015, on which date he submitted his joining report. The Management sought for permission from the B.E.O., Narayanpatana in this regard, which was forwarded to the Government. The petitioner was required to undergo medical examination with regard to his fitness. Vide letter dated 27.11.2017, enclosed as Annexure-13, the Government in Department of School and Mass Education held that as per the Orissa Education (Minority managed aided educational Institution employees' Method of Recruitment and conditions of Service) Order, 2003, the Managing Committee is the appropriate authority to regulate the service conditions of the employees of such institutions. It was further indicated that the GIA sanctioned in favour of the petitioner has ceased w.e.f. 10.09.1996 since he could not get himself trained within the prescribed time limit and as such he is not entitled to receive any GIA from the Government. The petitioner submitted a representation on 28.06.2019 to the Principal

Secretary to the Government in School and Mass Education Department ventilating his grievance that his salary in the untrained scale should be paid to him. In consideration of such representation, the Government vide letter dated 19.07.2019, enclosed as Annexure-19 to the writ application, held that since the joining report of the petitioner has been accepted by the Managing Committee they are to take the responsibility of paying salary and other benefits if any, to him from the date of acceptance of his joining report. It is submitted that no action has been taken in the matter and the petitioner has been going without salary ever since his date of joining, i.e., 16.03.2018.

5. It is submitted Mr. S.K Jee, learned counsel for the petitioner that nonpayment of the salary has caused undue hardship to the petitioner and that he would be satisfied if the salary of the untrained scale is given to the petitioner. It is further submitted that as per order dated 16.03.2018, enclosed as Annexure-14, the Block Education Officer, Narayanpatana directed the petitioner to join in the School in question and therefore, it is not correct on the part of the Government to hold that the Managing committee had accepted the joining report on its own. It is further stated that the Government cannot delegate its responsibility to the Managing Committee when the Block Education Officer acting upon its order as also the order passed by the Director, Elementary Education had directed the petitioner to join in the School in question. The petitioner having joined admittedly on 16.03.2018 and discharging his duties without any break thereafter, he is certainly entitled to his salary though at the untrained Scale. It is also open to the petitioner to get himself trained as per the Rules as an in service candidate.

6. Considering the submissions as above and without expressing any opinion on the merits of the contentions raised before this Court, the writ petition is disposed directing the Principal Secretary to the Government in School and Mass Education Department to issue necessary instructions for payment of salary to the petitioner in the untrained scale from the date of his joining, i.e., 16.03.2018 onwards without any further delay and in any event, not later than two months from the date of communication of this order or on production of certified copy thereof by the petitioner.

A.K. Rana

(Sashikanta Mishra)
Judge

