

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.696 of 2018

Kanhu Charan Jena **Petitioner**
Mr. Laxmikanta Mohanty, Advocate
-versus-
State of Odisha and others **Opposite Parties**
Mr. R.C. Pattanaik,
Standing Counsel for the School and
Mass Education Department

WPC(OAC) No.697 of 2018

Laxmidhar Behera **Petitioner**
Mr. Laxmikanta Mohanty, Advocate
-versus-
State of Odisha and others **Opposite Parties**
Mr. R.C. Pattanaik,
Standing Counsel for the School and
Mass Education Department

WPC(OAC) No.698 of 2018

BiJay Kumar Nayak **Petitioner**
Mr. Laxmikanta Mohanty, Advocate
-versus-
State of Odisha and others **Opposite Parties**
Mr. R.C. Pattanaik,
Standing Counsel for the School and
Mass Education Department

WPC(OAC) No.699 of 2018

Ujjal Kumar Behera **Petitioner**
Mr. Laxmikanta Mohanty, Advocate
-versus-
State of Odisha and others **Opposite Parties**
Mr. R.C. Pattanaik,
Standing Counsel for the School and
Mass Education Department

CORAM:
JUSTICE A.K. MOHAPATRA

ORDER

Order No. **Date of hearing on 09.03.2022 : Date of order : 22.04.2022**

01.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).

The above noted four applications involved a similar issue and have been filed with identical prayers. Therefore, all the four matters are taken up together for final hearing and for the sake of brevity the facts involved in the WPC(OAC) No.696 of 2018 is being discussed by this Court here in below for analysis of the factual background of the four cases.

2. Heard Mr. Laxmikanta Mohanty, learned counsel for the petitioner and Mr. R.C. Pattanaik, learned Standing Counsel for the School and Mass Education Department.

3. The above noted four applications were initially filed before the Odisha Administrative Tribunal and upon abolition of the Odisha Administrative Tribunal, the matters have been transferred to this Court along with many other pending matters.

4. The above noted Original Applications have been filed by the petitioners with a prayer to direct the Opposite Parties to take into account the period of service rendered by the petitioners as resource teachers for the purpose of counting seniority, promotion, pension and fixation of their pay. It has also been prayed by the petitioners for a direction to the Opposite Parties to fix the pay of the petitioners after giving them benefit of pay protection which they would have

got as per the ORSP Rules, 2006 and that a further direction be given to the Opposite Parties to consider and treat the case of the petitioners under the provisions of Orissa Civil Services (Pension) Rules, 1992 as it stood prior to its amendment in the year 2005.

5. The factual backdrop of the case, as culled out from the pleadings of the parties, is that the Government of India under the National Education Policy formulated and floated a scheme, which is known as Scheme of Integrated Education for the Disabled Children (in short 'IEDC'). The said scheme was also adopted by the State of Odisha and pursuant to the scheme stapes were taken to recruit the Teachers in accordance with the scheme. Accordingly, the Director, State Council for Education Research and Training, Odisha, Bhubaneswar-Opposite Party No.2 placed requisition with the employment exchange to sponsor the names of the eligible candidates to be recruited as Resource Teachers.

6. Pursuant to the aforesaid advertisement, the employment exchange sponsored the name of the present petitioners, who was I.A.(C.T.) candidate. The petitioners were called to appear before the selection board and after scrutinizing their candidature, who had applied for recruitment to the post of resource teachers, the Selection Board selected the petitioners for the said posts. Thereafter, the Opposite Party No.2 issued appointment letters dated 22.02.1997, appointing the petitioner under the aforesaid IEDC Scheme in the regular scale of pay of Rs.1080-1800/- (trained scale) with usual D.A. as admissible under the Rules from time to time. The petitioners were also asked to attend the orientation programme at their cost and full time training in Special Education when required by the Director. In support of their contentions, the petitioners have

filed extract of their respective Service Books.

7. After their appointments and joining, the petitioners were not allowed to subscribe to the G.P.F. and they were not allowed to contribute to the G.I.S. The petitioners were only extended the benefit of revised pay under the ORSP Rules, 1998. The petitioners were allowed and they were continuing as a regular Government Servant and they were also being extended all the benefits and facilities, which are payable to Government servant.

8. While the petitioners were discharging their duties to the satisfaction of the authorities, the above noted scheme was modified by the Central Government in the year 2001. Under the modified scheme although nomenclature of the scheme remained the same with slight modification and variation, however, the broad guidelines remained the same. Therefore, the petitioners were allowed to continue as such without any variation in the terms of appointment.

9. It is apt to mention here that the State Government also formulated a scheme which is known as State Policy for persons with disability and the said scheme provides as follows:-

“The State shall endeavour to provide opportunities for early childhood and pre-school education for children with disabilities.

The State shall ensure provisions of required number of trained teachers, therapists, supporting staff, teaching learning materials and assistive devices in special schools for the children with disabilities.

Special curriculum shall be devised for children in each category of disability in consultation with specialized institutions and experts with the objective of reducing the physical and academic burden on children and to make learning a joyful.

State Government shall provide scholarship to the students with disabilities from primary level to University level, vocational/technical training besides conveyance allowance to locomotor handicapped students and readers allowance to visually handicapped students.”

10. On 21.10.2008, the Government of India in the Ministry of Human Resources Development communicated to the Commissioner-cum-Secretary to Government, School and Mass Education Department, Orissa, Bhubaneswar-Opposite Party No.1 highlighting the fact that the new scheme of Inclusive Education for Disabled at Secondary Stage (IEDCS) has been approved by the Government of India for implementation from the current financial year. It was further clarified that the new scheme was to be replaced in place of the existing scheme i.e. IEDC. The new scheme was prepared to take within its fold the children after completion of eight years of elementary schooling and to pursue further studies at the secondary stage (Class-IX to XII). Thus, the scheme was designed to cover all children passing out of elementary school and studying at the secondary stage in Government/local body/Government aided schools and that persons with one or more disabilities have been continued under the provisions of the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

11. Further in the aforesaid letter dated 21.10.2008 in paragraph-6 it has been clearly indicated that the Government of India has requested the State Governments to take necessary steps and also to make necessary provisions in the State Budget to implement the scheme by making adequate financial provisions from out of the State own funds. The letter dated 21.10.2008 was forwarded by Opposite Party Nos.1 and 2 for taking all necessary follow up

actions.

12. Pursuant to letter dated 21.10.2008 and 29.12.2008, the Opposite Party No.2 issued office order dated 16.03.2009 stating therein that the existing scheme i.e. IEDC would continue upto 31.03.2009. It was also indicated that the service of the Resource Teachers will come to an end on 31.03.2009. In view of the condition in the appointment letter, accordingly list of teachers was also prepared and published vide an office order, whose services are likely to be terminated which includes the name of the petitioners also.

13. It is submitted by learned counsel for the petitioners that the letter dated 21.10.2008 and letter dated 29.12.2008 nowhere indicates that the existing scheme i.e. IEDC is going to be closed. On the contrary, the existing scheme was being replaced by a new and better scheme for imparting education to the disabled children. He further submits that under the new scheme, the scope and area of operation has been expanded and the same has been extended to the secondary stage of education for the disabled children. Therefore, the main thrust of the argument of the learned counsel for the petitioners was that the scheme was completely misinterpreted by the Opposite Parties with a *malafide* intention. He further submits that his contention also gets corroboration from the fact that on 30.03.2009, the Government of India sanctioned a sum of Rs.84,38,395/- in favour of the School and Mass Education department, Government of Odisha. Further, expenditure has been incurred for imparting Integrated Education to the Disabled Children in the State.

14. Learned counsel for the petitioners made an attempt to draw a distinction between the integrated and inclusive education and as

such, he submits that the State Government more particularly Opposite Party No.2 has also lost sight of such facts. It was submitted by him that inclusive education is different from integrated education. Under Integrated education, students with disability were placed in a school without making any change in school, to accommodate and support the diverse needs of the disabled children. Further such children are taken care of by developing a system and structure in such a manner that the same will meet the specific needs of all learners.

15. Learned counsel for the petitioner further submits that a proposal was routed by the Respondent No.2 in response to letter dated 12.05.2009 of the Government of India for assessing the suitability/unsuitability of the teachers and attendants who were appointed under the IEDC Scheme for their appointment/adjustment in the new scheme i.e. IEDCS. He further contends that the Director of Secondary Education carrying out the aforesaid exercise and prepared a list of suitable candidates which includes the name of the petitioner for appointment as a teacher under the new scheme. Although the proposal was sent to Opposite Party No.2, no steps were taken by Opposite Party No.1 to finalize the list of suitable candidates and as such, the appointment of the petitioner could not take place and that he was not absorbed/adjusted under the new scheme.

16. The Government of Odisha in School and Mass Education Department issued a resolution dated 10.11.2021 inter alia providing that vacant posts as well as newly created posts for the elementary schools shall be filled up by the candidates having the requisite qualification. Pursuant to the said resolution although the petitioner had the requisite qualification, they were never given appointment on

regular basis as decided by the Government under the aforesaid resolution. It is further stated that pursuant to letter dated 21.05.2010 of Opposite Party No.1 followed by letter dated 07.07.2010 of Opposite Party No.2, the Opposite Party No.3 issued office order on 18.08.2010 by allotting the petitioner to the District Inspector of Schools for absorption in the Elementary Cadre for Level-V posts in Government Primary Schools against an existing vacancy in the scale of Pay of Rs.5200-20200+GP 2200 with other admissible benefits.

Pursuant to the letter dated 18.08.2010 by Opposite Party No.3, the petitioner was issued with an appointment letter by the opposite parties whereunder the petitioner was appointed as elementary teacher in Level-V posts against the existing vacancy in Sharaddhapur Nodal U.P. School, Jaleswer and accordingly, the petitioner joined on 19.08.2010.

17. It is further contended by learned counsel for the petitioner that the petitioner was recruited in a regular manner against the vacant sanctioned posts and he was extended with all the benefits as is due and admissible to a regular Government servant. However, the aforesaid appointment of the petitioner by the Government was never carried out in letter and spirit. On the contrary, the petitioner was allowed to perform his duties in lieu of a fixed remuneration, which was much less than the regular pay scale attached to the sanctioned posts which they were holding. It is further alleged that while the petitioner was working as the Resource Teacher under IEDC Scheme, the petitioner has not been paid his admitted salary for the period November, 2002 to March, 2009. Although several representations were made, the authorities did not pay any heed to such representations. It is further alleged that similarly placed

persons, who were appointed prior to the petitioner have been adjusted against elementary cadre in the year 1995 without terminating their services and further they have also got benefit of continuity in service and pay protection. They were also extended the benefit of GPF. It is further alleged that although the petitioner stands on similar footing, they have not been extended such benefit of service and other benefits including the pensionary benefits. It is further stated that although the petitioner was subsequently appointed in the regular elementary cadre and he has been discharging duties similar to that of a primary school teacher i.e. teaching disabled children in the primary section along with normal students, they have been grossly discriminated and as such, the petitioner and similarly placed other resource teachers have not been extended the benefits as has been given to the such primary school teachers.

18. The Director, Elementary Education, Odisha-Opposite Party No.3 has filed a counter affidavit in this case wherein it has been admitted that the petitioner was appointed as an Assistant Teacher under the scale of pay of Rs.5200-20200-with GP-2200 with usual DA as admissible. It is further stated that the petitioner was engaged as resource teacher under the Central Sponsored scheme for disabled children and that after closure of the scheme, the petitioner along with similarly situated other persons were absorbed in the Elementary Cadre Teacher in Level-V posts. In the counter affidavit, the Director, Elementary Education, Odisha has categorically denied that the petitioners are not entitled to the benefit of counting their service period as resource teacher while considering their seniority and other financial benefits. It is further stated that the engagement of the petitioner as resource teacher was conditional and that after

closure of scheme on 31.03.2009, the service of the petitioner and similarly placed other persons were terminated and thereafter on humanitarian ground, the petitioner and other similarly placed persons were absorbed as primary school teachers afresh.

19. In the counter affidavit, it is further stated that as per Rule-56 of the Orissa Service Code a Government servant begins to draw the pay and allowances to his post w.e.f. the date of which he/she assumes the duties and further as per the provision in Orissa Service Code, the petitioner is entitled to draw the initial salary from the date he actually joined as regular primary school teacher. Further referring to the judgment of the Hon'ble Supreme Court in the case of *State of Odisha and others vrs. Dipti Paul* in Civil Appeal No.1499 of 1998 dated 11.08.1999, it was submitted that a person employed under a specific scheme had no right to claim any regularization of his service only because he has completed 240 or more days of work. Similarly reliance was also placed on a judgment of the Hon'ble Supreme Court in the case of *Dhyan Singh and others vrs. Stae of Hariyana* ; reported in (2002) 10 SCC 656 to emphasize no service period shall be considered for regularization/seniority.

20. Further referring to Rule-15(explanation-1) of the Elementary Cadre Rules 1997 (Amended Rules 2014), it was contended that all persons working as regular Assistant Teachers of Government Primary and Upper Primary Schools shall be treated as Level-V from the date of commencement of the said Rules. The seniority of such persons shall be determined with reference to the date of their appointment as such. Therefore, it was argued by the learned counsel for the School and Mass Education Department on one fact that retrenched Resource Teacher were reappointed against the regular

teachers on the date he/she has joined as such. Thereby much emphasis was led by learned Standing Counsel for the School and Mass Education Department that the period of service under the Scheme cannot be counted towards seniority for Level-V service under the Orissa Elementary Education (Method of Recruitment and Conditions of Services of the Teachers and Officers) Rules 1997. In such view of the matter, learned Standing Counsel for the School and Mass Education Department justifies the action of the Government in denying the benefit of counting service of the petitioner and similarly placed persons rendered under IEDC Scheme for the purpose of considering the seniority/promotion/pension etc. and for pay protection.

21. Learned counsel for the petitioner relying upon the rejoinder affidavit submits that the petitioner was appointed against a Regular Vacant post of primary school teacher with regular scale of pay. It is further submitted that the resource teachers were appointed by the Opposite Party No.2 on being sponsored by State Employment Exchange, Odisha. In such view of the matter, it was further stated that the petitioner and similarly placed other persons cannot be treated in a discriminatory manner and further they should have been extended similar benefits as has been given to the persons, who were regularized in service in the year, 1995. It is further submitted in the rejoinder affidavit that after regular appointment w.e.f. 19.08.2010, the service book of the petitioner was opened indicating his entry in Government service w.e.f. 22.02.1997. Therefore, it is submitted by learned counsel for the petitioner that once the Government has accepted the petitioner is initially entry into Government service w.e.f. 22.02.1997, later on Government is estopped to turn around and take stand that the period from 22.02.1997 up to 19.08.2010

shall not be taken into consideration for considering the seniority/promotion/pay protection, pension of the petitioner. In other words, once the service book has been opened indicating the entry of the petitioner in Government service w.e.f. 22.02.1997, it is no more open to the Government to take a stand that the petitioners were continuing under the Scheme from 22.02.1997 to 31.03.2009 under the scheme.

22. It is further stated in the rejoinder affidavit that persons similarly placed as resource teachers like the petitioner and whose services were terminated along with the petitioner, had approached the Odisha Administrative Tribunal by filing O.A. No.53(C) of 2016 and a batch of cases. The Odisha Administrative Tribunal after hearing the parties, allowed the cases by its order dated 04.01.2018 with a clear direction to count the entire period of service from the date of initial appoint for the purpose of grant of secondary service benefits like seniority/promotion/pension and fixation of pay under ORSP Rules, 2008 within a period of three months from the date of the order. Order dated 04.01.2018 passed by the Odisha Administrative Tribunal in O.A. No.53(C) of 2016 and batch of cases, were challenged by the Opposite Parties before this Court in W.P.(C) No.4826 of 2019. This Court after hearing the parties dismissed the writ application vide order dated 03.12.2019 thereby confirming the order dated 04.01.2018 passed by the Odisha Administrative Tribunal in O.A. No.53(C) of 2016.

23. It is further contended by learned counsel for the petitioner that the order dated 04.01.2018 passed in O.A. No.53(C) of 2016, which was confirmed by this Court by order dated 03.12.2019 passed in W.P.(C) No.4826 of 2019 was further challenged before the Hon'ble Supreme Court of India by the State of Odisha, which was

registered as SLP(Diary) No.218 of 2021. The said SLP(Diary) No.218 of 2021 was taken up for admission by the Hon'ble Apex Court and by order dated 01.03.2021 SLP preferred by the State of Odisha has been dismissed by the Hon'ble Supreme Court of India thereby confirming the order dated 04.01.2018 passed by the Odisha Administrative Tribunal in O.A. No.53(C) of 2016.

24. It is further submitted that O.A. No.3214 (C) of 2011 was also filed by the persons similarly placed with the petitioner before the Tribunal, which was also allowed by the Odisha Administrative Tribunal. Thereafter the same was challenged before this Court by filing W.P.(C) No.3254 of 2017 and batch of other writ applications. This Court after hearing the parties dismissed all the writ application. The order passed in W.P.(C) No.3254 of 2017 was carried in appeal before the Hon'ble Supreme Court at the instance of the State of Odisha by filing SLP. The said SLP which was filed by the State of Odisha before the Hon'ble Supreme Court was also dismissed. Thereafter, the Opposite Party No.1 vide order dated 19.12.2019 directed the Director, Elementary Education, Odisha to comply with the said orders by granting benefits as directed through all the District Education Officer and Block Education Officer of the concerned district.

25. Having heard the rival contentions advanced by the respective parties, taking into consideration the factual background of the present case and the fact that the order passed in the matter of similarly place teachers by the Odisha Administrative Tribunal, which was confirmed by this Court as well as by the Hon'ble Supreme Court, this Court is of the considered view that it is no more open to this Court to take a different view than the view that was taken by the Odisha Administrative Tribunal in its order dated

04.01.2018 while disposing of the O.A. No.35(C) of 2016 and a batch of other matters which were not only confirmed by this Court but eventually affirmed by the Hon'ble Supreme Court of India by dismissing the SLP filed by the State of Odisha. In such view of the matter, this Court hereby allows the above noted writ petitions and directs the Opposite Parties to count the period of service of the petitioner as well as other similarly placed persons from the date of their initial appointment as resource teachers and to extend the consequential benefits like seniority/promotion/pension and fixation of pay under ORSP Rules, 2008 as due and admissible. Further it is directed that since the petitioners in above noted writ petitions were appointed prior to the OCS Pension Rules, 2005 came into force, they are also eligible to cover under OCS Pension Rules, 1992, and they are entitled to benefits thereunder. Further the Opposite parties are directed to carry out the entire exercise as directed hereinabove within a period of three months from the date of production of certified copy of this order.

26. With the aforesaid observation/direction, these writ petitions stands disposed of. However, there shall no order as to cost.

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

(*A.K. Mohapatra*)
Judge

