

IN THE HIGH COURT OF ORISSA AT CUTTACK
WPC (OA) No.50 of 2018

Smt. Mamata Sahoo

....

Petitioner

Mr. R.K. Bisoi, Advocate

-versus-

State of Odisha and Others

....

Opposite Parties

Mr. Ranjit Samal, Standing Counsel, S & ME Department

CORAM:

SHRI JUSTICE B. P. ROUTRAY

ORDER

24.8.2022

Order No.

01. 1. The matter is taken up through hybrid mode.
2. Heard Mr. R.K. Bisoi, learned counsel for the Petitioner and Mr. R. Samal, learned Standing Counsel for School and Mass Education Department.
3. The case of the Petitioner is that she was initially appointed as Additional Section Teacher, Hindi (Kovida), Class-VII-B on 27th September, 1990 by the Managing Committee of Tulasipur M.E. School, Nimapara. On that date the school was an Aided Educational Institution within the meaning of Section 3(b) of the Odisha Education Act. It was subsequently taken over by the Government on 1st April, 1991. Since the service of the Petitioner was not approved same was also not taken over and being aggrieved by the same, she initially filed OA No.3417 (C) of 2003. The tribunal in order dated 22nd January, 2014 directed the Government of Odisha to consider the case of the applicant by passing a reasoned order. Subsequently, the Government in order dated 30th May, 2015 rejected the case of the Petitioner. She again filed OA No.1824 of 2015 challenging the order dated 30th May,

2015. The tribunal by order dated 25th April, 2017 again directed the Government to reconsider the grievance of the Petitioner. The Government again by order dated 10th November, 2017 rejected the case of the Petitioner. As such, the Petitioner approached in the present petition.

4. The impugned order under Annexure-8 reveals that the Petitioner contended before the Government that she was standing on same footing with one Chaturbhuja Patra, the Additional Section Teacher, Class-VI-B of Lathipada U.P. School under the D.I. of Schools, Nayagarh who was appointed on 7th October, 1988 and subsequently his service was taken over being approved by the authority. The Government rejected such contention in the impugned order stating that the case of the Petitioner is different from said Chaturbhuja Patra as his date of appointment was prior to coming into force of Notification dated 14th August, 1989 i.e. the Ordinance amending the Orissa Education Act. According to the Government, the Managing Committee of an Aided Educational Institution required to appoint qualified teachers on and after 14th August, 1989 from out of the list of candidates selected for the purpose by the Selection Board and the appointment of the Petitioner admittedly being on 27th September, 1990 is illegal and as such cannot be approved.

5. Mr. Bisoi, learned counsel for the Petitioner submits that in terms of the notification dated 14th August, 1989 bringing into force the Orissa Education (Amendment) Ordinance, 1989, it confers the power under Clause-9 i.e. Section 27 of the Principal Act that, the State Government may make rules to regulate the establishment, reorganization, etc. of private educational institutions in respect of all such matters expressly required or allowed by the Act to be

prescribed. In the present context by operation of amendment of Section 27 of the Principal Act, i.e. Orissa Education Act, the rule relating to Selection Board was framed with effect from 25th September, 1992 and therefore, the appointments made prior to that cannot be said as illegal or invalid.

6. Admittedly the Orissa Education (Selection Board for the State) Rules, 1992 (hereinafter referred as '1992 Rules') came into force with effect from 25th September, 1992 prescribing the procedure of constitution of Selection Board and its recommendation with regard to vacancy, examination, selection and preparation of selection list.

7. However, the submission made by the Petitioner that the procedure prevailing earlier in terms of Section 7 of the Orissa Education Act prior to coming into force of 1992 Rules, authorizing the Managing Committee to select and appoint qualified teachers is not found convincing for the reason of prescription of Section 7-B in the Ordinance. Section 7-B as inserted into the Orissa Education Act by 1989 Ordinance that came into force with effect from 14th August, 1989 prescribes as follows:-

“7-B (1) The State Government or any officer or authority authorized by it may prescribe the qualifications to be possessed by persons for appointment as teachers including the norms relating to the requirement of such teachers in different categories of private educational institutions.

(2) Every private educational institution shall, in order to be recognized by the State Government, appoint the required number of qualified teachers as provided in sub-section (1) from out of the list of candidates selected for this

purpose by the Selection Board constituted under sub-Section (2) of Section 10 in the prescribed manner.”

8. A bare reading of said section 7-B makes it clear that all the private educational institutions after coming into force of the Ordinance are only to appoint qualified teachers as provided in Sub-Section (1) of Section 7-B from out of the list of candidates selected for this purpose by the Selection Board constituted under sub-Section (2) of Section 10 in the prescribed manner. It would be incongruous to interpret that in absence of constitution of Selection Board till coming into force of 1992 Rules, the power continues with the managing committee to appoint qualified teachers. It is rather made clear from the Ordinance, which came into force with effect from 14th August, 1989, that such power to appoint the teachers by Managing Committee has been restricted by operation of newly inserted Section 7-B by the Ordinance. Therefore the impugned order under Annexure-8 refusing to approve the case of the Petitioner, who admittedly was appointed after 14th August, 1989 by the Managing Committee, cannot be faulted with. Resultantly no merit is seen in the contention of the Petitioner to interfere with the impugned order.

9. In view of the discussions made above, the writ petition is dismissed.

(B.P. Routray)
Judge