

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No. 1618 of 2018

Jyotshna Kumari Mohanty

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

09.12.2022

Order No

- 03.** 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard Mr. Amiya Kumar Mohanty (A), learned counsel for the Petitioner and Mr. N.N. Satapathy, learned Standing Counsel appearing for the Opp. Parties.
3. The present writ petition has been filed inter alia with the following prayer:-

“In view of the aforesaid facts mentioned in para-6 of this original application, the O.A may be allowed and the order of absorption of the applicant made under Annexure-10 may be modified keeping in view of the appointment of Soudamini of Soudamini Dei dated 09.09.1991 under Annexure-13 as Saudamini Dei and the applicant both were non-formal facilitators sent for in-service training in one day under Annexure-1 and necessary direction may be issued to the respondents to modify the order of absorption of the regular primary school teacher with effect from 09.09.1991 with all consequential financial benefits within a stipulated time.”

4. It is contended that the Petitioner was engaged as a Non-Formal Instructor of Prathamika Chatasali in Krushnapur Prathamik Chatasali under Pipli Block from 1.1.1983 to 26.12.1983. Thereafter, she was posted at Kamaja Sagar Patana Prathamik Chatasali from 27.12.1983 to 9.8.1984. While continuing as Non-Formal Instructor by the order of the D.I. of Schools, Nimapara, Puri the Petitioner was allowed to sent for inservice C.T. training from 10.8.1984 to 31.7.1986. After completion of the inservice CT. training she was again posted to Krushnapur Fathamik Chatasali from 10.7.1986 to 23.7.1986. Thereafter, the Petitioner was posted as Non-formal Instructor in Nimapara S.T. School from 25.2.1992 to 6.3.1992 and as such in Nuagaon Bhuasahi Prathamik Chatasali from 24.7.92 to 3.3.1993. Lastly, the Petitioner was working as Non-formal Facilitator in Asijanga Non-formal Centre w.e.f.23.11.1996. Though the Petitioner had acquired C.T. training and as such she was to be regularized as against the permanent post of Primary school teacher since all other similarly placed persons like the Petitioner had already been regularized facing selection process for appointment of regular primary school teacher.

5. It is contended that though person similarly situated was appointed as a regular primary school teacher vide order dtd.09.09.1991 under Annexure-13, but the Petitioner was never regularized as a primary school teacher and she was allowed to

continue as a Non-formal Instructor. The Petitioner claiming her regularization as a primary school teacher approached the learned Tribunal in 717(C) of 1998. Learned Tribunal vide order dtd.26.08.2013 disposed of the matter with the following observation:-

“However, since presently the scheme for engagement of the Non-Formal Supervisor/Instructor has already abolished and a new scheme for engagement in the post of Sikshya Sahayak has already been introduced, the applicant is at liberty to apply for such post, as and when any advertisement is made inviting applications for the post of Sikshya Sahayak subject to fulfilling the terms and conditions of such advertisement in such a case the applicant's application shall be considered along with other similarly placed applicants. If the applicant is entitled for any Preference for the past service then that shall also be extended in her favour, as per Rules/ Govt. guide lines.”

6. It is contended that pursuant to the said order the Petitioner when made an application, she was adjusted as a Sikshya Sahayak w.e.f.26.08.2008 and regularized as a primary school teacher w.e.f.26.08.2014 vide order dtd.26.09.2017 under Annexure-10.

7. It is submitted that because of such illegality committed by the Authority the Petitioner when retired from her service on 30.06.2022, she deprived to get the benefit of pension and other pensionary benefits. Accordingly, it is contended that necessary direction be issued to the Opp. Parties to reconsider the claim of the

Petitioner for her absorption as a regular primary school teacher from the date similarly situated N.F.S. Instructions were so absorbed.

8. Mr. Satapathy, learned Standing Counsel on the other hand submitted that pursuant to the order passed in O.A. No. 717(C) of 1998, the Petitioner made her application for engagement as a Sikhsya Sahayak and in consideration of that, the Petitioner was adjusted as a Sikhsya Sahayak w.e.f.26.08.2008 and regularized w.e.f.26.08.2014 vide order dtd.26.09.2017 passed by the O.P. No. 3 under Annexure-10. Hence the Petitioner cannot claim for her regularization as a primary school teacher as has been extended vide order under Annexure-13.

9. Having heard learned counsel for the Parties and taking into account the materials available on record, this Court finds that the Petitioner though is claiming the benefit as has been extended in favour of one Soudamini Dei vide order under Annexure-13 to the present writ petition, but learned Tribunal while disposing the matter vide order under Annexure-B/3 did not express any view on the same.

10. Therefore, it is the view of this Court that the matter requires reconsideration at the level of O.P. No. 1. Accordingly, this Court permits the Petitioner to make a fresh grievance before the O.P. No.

1. It is observed that if any such grievance is raised by the Petitioner in shape of a representation within a period of 3(Three) weeks from today, O.P. No. 1 shall take a lawful decision on the same within a period of three (3) months from the date of receipt of the representation. It is observed that while taking such decision the benefit extended in favour of similarly situated person vide order under Annexure-13 shall be taken into consideration. The entire exercise shall be completed within a period of three (3) months from the date of receipt of this order.

11. The writ petition is disposed of with the aforesaid observation and direction.

(Biraja Prasanna Satapathy)
Judge

Sneha