

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.C (OAC) NO.3476 OF 2016

(An application under Section 19 of the Administrative Tribunal's Act)

Rohit Behera & Others

...

Petitioners

-versus-

State of Odisha & others

...

Opposite Parties

Advocates appeared in the case through hybrid mode:

For Petitioners

: Shri L.K. Mohanty &
B.K. Jena,

-versus-

For Opposite Parties

: Shri R.N.Acharya,
Standing Counsel,
School & Mass
Education
Department

CORAM:

JUSTICE SASHIKANTA MISHRA

J U D G M E N T

30.06.2022.

Sashikanta Mishra, J. The petitioners are aggrieved by the rejection of their request for being reverted to the secondary grade as per option exercised by them.

2. The petitioners were appointed as Assistant Teachers under the LSES cadre against vacancies of Government High Schools. The names of the petitioners were sponsored by the employment exchanges and as such, 41 candidates including the present petitioners were selected for appointment. Out of the said 41 candidates some were posted in Govt. High Schools and some in Government M.E. Schools. The present petitioners were posted in Government M.E. schools on 01.11.1997. In the meantime, on 12.08.1997, the Odisha Elementary Education (Method of Recruitment and Conditions of Service of Teachers and Officers) Rules, 1997 (for short, Rules, 1997) came into force and as per the said Rules, the Inspector of Schools of Sambalpur Circle by his letter dated 11.04.1998 asked all the District Inspectors of Schools of Sambalpur Circle to invite option from the teachers, who were selected in the Secondary Cadre but posted in Government M.E schools as to whether they want to continue in the Elementary Cadre or to come over to Secondary Cadre. Pursuant to such letter, the petitioners gave their option to be reverted to the Secondary Cadre. The District Inspector of Schools,

Bargarh prepared a list of such candidates including that of the petitioners and forwarded the same to the Inspector of Schools, Sambalpur Circle for necessary action. While the matter relating to the decision on the option so exercised was pending some of the Assistant Teachers out of the 41 candidates, namely, Minaketan Pradhan, Mahima Sahoo and Anil Kumar Mishra etc. were reverted to the secondary cadre, whereas no decision was taken in respect of the petitioners. The petitioners thereafter approached the erstwhile Odisha Administrative Tribunal in O.A. No. 352 of 2008 and O.A No. 2730(C) of 2009. The said O.As. were disposed of on 22.12.2010 by directing the concerned authority to take a final decision on the option so exercised by the applicants within a period of 6 weeks from the date of communication of the order keeping in view that similar benefit had been extended to similarly placed persons. Since the order was not complied with the applicants filed contempt petitions before the Tribunal. During pendency of the said contempt petitions, the Inspector of Schools, Sambalpur Circle by letter dated 26.04.2011 sought for clarification from the Director of Secondary Education,

Odisha with regard to the orders passed by the Tribunal. The Director of Secondary Education, Odisha by his order dated 23.07.2016 rejected the request of the petitioners on the ground that there is no provision in the Rules, 1997 to ask for option from Assistant Teachers working in Elementary Schools or LSES Teachers of Secondary Schools, who do not belong to Odisha Subordinate Education Service. Being aggrieved by such rejection, the petitioners approached the erstwhile Odisha Administrative Tribunal in O.A. No. 3476(C) of 2016 with prayer to quash order dated 23.07.2016 passed by the District Education Officer, Sambalpur and to direct the opposite parties to revert the petitioners to their secondary cadre with seniority and consequential service benefits. The said O.A. has since been transferred to this Court and registered as the present Writ Petition.

3. A counter has been filed by opposite party no. 4 to the Writ Petition. In the counter, the impugned order has been sought to be justified by stating that there is no provision in Odisha Elementary Education (Method of Recruitment and Conditions of Service of Teachers and Officers) Rules,

1997 to obtain option from Assistant Teachers working in Elementary Schools as the Assistant Teachers or LSES Teachers of Secondary Schools do not belong to Odisha Subordinate Education Service.

4. The petitioners have filed a rejoinder to the counter filed by opposite party no. 4. It is stated that Odisha Subordinate Education Service Rules, 1972 was amended in the year 1993. As per the said amended rules, there exists three cadres, namely, Lower Subordinate Education Service (LSES), Junior Subordinate Education Service (Jr. SES) and Senior Subordinate Education Service (Sr.SES). It is further stated that the petitioners were selected for High Schools but they were posted in ME Schools despite coming into force of the Rules, 1997. There is no LSES Cadre in the Rules, 1997. The petitioners had exercised their option to come over to Secondary Cadre in High Schools. It is further submitted that after notification of Rules, 1997 on 12.08.1997 there was no scope for the Circle Inspector of Schools to issue appointment/posting order of LSES Teachers in ME Schools. That apart, similarly placed persons like Minaketan Pradhan have

already been brought over to Secondary Cadre and posted in Government High School. This, therefore, amounts to discrimination. It is also stated that the petitioners were selected for the post of LSES Cadre in High Schools by the Circle Level Selection Committee headed by Inspector of schools, Sambalpur circle and therefore there was no scope for their posting in ME Schools after 12.8.1997, especially when juniors in the select list were posted in high schools.

5. Heard Mr. L.K. Mohanty, learned counsel for the petitioners and Mr. R.N. Acharya, learned Standing Counsel appearing for the School and Mass Education Department.

6. Mr. Mohanty contends that the grounds on which the prayer of the petitioners for being reverted to the secondary cadre was rejected are legally and factually untenable. He further argues that the petitioners having been appointed pursuant to the decision taken by the Government, they were appointed as Assistant Teachers and some of them were posted in Government High Schools, while others, including the petitioners, were posted in Government M.E. Schools. However, in the meantime, the Rules, 1997 came

into force as per which all Assistant Teachers of Government Primary and Upper Primary Schools were to be treated as member of Level-V of the service and all other persons were to be asked to exercise option to come over to the Elementary Cadre. According to Sri Mohanty, the District Education Officer, while rejecting the option exercised by the petitioners as per the impugned order under Annexure-14, has not considered the provisions of the Rules, 1997 in the proper perspective.

7. Per contra, Mr. Acharya, has argued that the provision relating to exercise of option in the Rules, 1997 applies only to persons belonging to Odisha Sub-ordinate Education Service and therefore, does not apply to the petitioners who do not belong to the said service.

8. As it appears, the option exercised by the petitioners to come over to the Secondary Cadre was rejected on two grounds, namely, (i) a person working as Assistant Teacher in Primary/Upper Primary Schools on 12.08.1997 shall be treated as a member of Level-V of Orissa Elementary Cadre, and (ii) there is no provision in Rules, 1997 to obtain option from Assistant Teachers working in

Elementary Schools or LSES Teachers in Secondary Schools as they do not belong to Odisha Subordinate Education Service. In this respect, it is to be noted that Rule 2(e) of Odisha Subordinate Education (Method of Recruitment and Conditions of Service) Rules, 1993, which came into force on 18.12.1993 provides that Lower Subordinate Education Service (LSES) shall include such posts as the Government may determine from time to time. Further, Rule 3 provides that the service shall comprise of two grades, namely, Junior Grade and Senior Grade. Sub-rule 2 of Rule 3 provides that the Junior Grade of the service shall consist of the following categories of posts, namely, (a) Headmasters/Headmistress of Government Upper Primary Schools (b) Assistant Teachers of High Schools (c) Sub-Inspector of Schools (d) such other posts as Government may, from time to time, determine. Rule 15 provides for promotion to the Junior Grade of service, if a candidate has served in the LSES cadre for at least a continuous period of three years. Further, promotion to the Senior Grade is to be made from the persons in the Junior Grade. Recruitment to the LSES is governed by a

Resolution of the Government in School and Mass Education Department issued on 27.09.1993, which provides that the same shall be done by a Circle Selection Committee. Paragraph 8 (1) of the said Resolution provides that appointment of successful candidates shall be made in Government High Schools and Government M.E. Schools. Accordingly, by letter dated 07.04.1997 of the Government, it was decided that recruitment of Assistant Teachers under LSES Cadre of Government High Schools shall be made according to the said Resolution dated 27.09.1993. In pursuance of such decision, the Director of Secondary Education, Odisha vide letter dated 08.05.1997 (Annexure-3) directed all Inspectors of Schools to fill up the vacant LSES posts in taken over High Schools. As already stated, the names of 41 candidates including the petitioners were sponsored by the employment exchange and after the process of selection conducted by the Circle Level Selection Committee, all of them were appointed to different Schools including Government High Schools and Government M.E. Schools.

9. The Odisha Elementary Education (Method of Recruitment and Conditions of Service and Teachers and Officers), Rules, 1997 was notified on 11.08.1997. The said Rules is applicable to different teaching and non-teaching posts in the Primary and Upper Primary Schools. Rule 15 (6)(I) of the Rules, 1997 provides that all persons who were working as regular Assistant Teachers of Government Primary and Upper Primary Schools shall be treated as member of Level-V of the service from the date of commencement of the said Rules. Obviously, this provision has been referred to by the Director of Secondary Education to hold that the petitioners being appointed as Assistant Teachers in Government M.E. Schools are to be treated as members of Level -V of the Odisha Elementary Education Service. Be it noted here that the petitioners were appointed after coming into force of Rules, 1997 but, pursuant to the process initiated on 07.04.1997, that is, prior to coming into force of the said Rules. They were direct recruits. Their appointment letters were issued by the Inspector of Schools of the concerned circle. The

question is, can the petitioners be equated with members of Level-V of the Elementary Education Service.

10. Reference to Rule 6(1) of the Rules, 1997 makes it clear that vacancies in the posts belonging to Level-V of the service shall be filled up by way of direct recruitment. Rule 5 relates to the selection committee and Sub-rule 3(a) provides that there shall be District Level Committee in each Education district and Clause-(b) provides that this committee shall select candidates to the posts belonging to Level-V. Thus, it is clear that the method of recruitment of Level-V posts in the Rules, 1997 is entirely different from that of the persons appointed under the LSES Cadre. In short, while Rules, 1997 provides for selection by District Level Selection Committee, the Resolution of the Government dated 27.09.1993 provides for selection by a Circle Level Selection Committee. Such being the position, the petitioners having been selected by the Circle Level Selection Committee cannot be equated with the Assistant Teachers belonging to Level-V recruited by the District Level Selection Committee. Therefore, the provision under Rule 15 (6)(I) cannot be made applicable to the petitioners.

11. The other ground on which the option was rejected by the Director of Secondary Education is that the petitioners do not belong to the Odisha Subordinate Education Service. Admittedly, there is no Rule as such governing the method of recruitment and conditions of service of persons belonging to the LSES save and except the Government Resolution dated 27.09.1993 referred to hereinbefore. Further, as already stated, the 1993 Rules speaks of LSES to include such posts as the Government may determine from time to time. A person from LSES Cadre can be promoted to the Junior Grade of the Odisha Subordinate Education Service. Therefore, to hold that the persons belonging to LSES do not belong to the OSES would be fallacious. A similar matter came up a consideration before a Division Bench of this Court in the case of the ***State of Odisha and others vs. Dolly Priyabadini Tripathy and others (WPC No. 5313 of 2016 and batch)***. This Court, after interpreting the provision under Rule-15 Explanation-III (a) (b) (c) of Rules, 1997 held as under: -

“.....We, after taking into consideration the fact that the authorities have not taken any decision, are

not inclined to interfere with the order passed by the Tribunal and dispose of the cases with a direction to the authorities to consider the option of the applicant which they have exercised under Rule 15 of the Rules, 1997 and if the authority will find the applicants entitled to be given the cadre according to their option in terms of the provision of Rule 15 of the Rules, 1997, the same shall be allowed by taking a decision in accordance with law within reasonable period, preferable within six weeks from the date of receipt of copy of this order and accordingly extend the consequential benefit, if they are entitled to.”

Thus, there can be no manner of doubt that the decision to treat the petitioners as not belonging to the Odisha Subordinate Education Service is incorrect.

12. It is further observed that the Rule relating to the exercise of option, that is, Rule 15(6)(III)(b) has been misquoted in the impugned order. The said Rule reads as follows:

“(b) Persons who belong to the Orissa Sub-ordinate Education Service and now working against various categories of posts of the service under Directorate of Elementary Education shall be called upon to exercise their option to come over to Elementary Cadre and they shall be fitted into respective levels of the cadre.”

In contrast, the aforesaid rule has been quoted as:-

“(ii) persons who belong to the Orissa Subordinate Education Service and now are

working against various categories of posts of the service under Directorate of Elementary cadre and they shall be filled into respective of the cadre”

On such basis, it is stated in the impugned order as follows:-

“So in the 1997 Rules there was no provision to obtain option from Assistant Teacher working in elementary schools as the assistant teachers of elementary schools or LSES teachers of Secondary Schools do not belong to Orissa Subordinate Education Service.”

The specific provision requiring exercise of option has been omitted for reasons best known to the author. Be that as it may, there is, in fact a provision to obtain option from the concerned teachers. While it is correct to say that Assistant teachers of elementary schools (Primary and Upper Primary) do not belong to Odisha Subordinate Service, yet the same cannot be said of the Assistant Teachers of LSES cadre like the present petitioners. As already stated, LSES is included in the Odisha Subordinate Education Service. In fact, it is a sort of feeder cadre for appointment to the Junior Grade of OSES. So, by no stretch of imagination can the LSES teachers be equated with teachers of the Elementary Service Cadre.

13. From a conspectus of the analysis of the relevant statutory provisions made in the backdrop of contentions raised before this Court, it is clear that the petitioners do not belong to the Elementary Cadre as per Rules, 1997, particularly, in view of the fact that their initial appointment was for posts in taken over High Schools. It is a different matter that they were posted in M.E. Schools, apparently because of absence of vacancies in the High Schools. It is also evident that persons identically placed as the petitioners, namely, Minaketan Pradhan, Mahima Sahu and Anil Kumar Mishra have already been allowed to exercise their option to come over to the Secondary Cadre and in fact, said Minaketan Pradhan has also been promoted to the Jr. SES Cadre in the meantime as stated at the Bar. Such being the factual and legal position, there is no way by which the petitioners can be deprived of such relief as the same would tantamount to gross discrimination being hit by Article 14 of the Constitution of India.

14. For the foregoing reasons, therefore, this Court has no hesitation in holding that the impugned order under

Annexure-14 cannot be sustained in the eye of law and is hence, quashed. The opposite parties-authorities are directed to allow the option exercised by the petitioners in terms of Rule 15 of 1997 Rules in accordance with law and to bring them over to the Secondary Cadre as per their eligibility maintaining inter-se seniority within a period of two months from the date of receipt of a copy of this order and to extend the consequential benefits, if any, to them.

15. The writ petition is disposed of accordingly.

.....
Sashikanta Mishra,
Judge

Orissa High Court, Cuttack
The 30th June, 2022/B.C. Tudu