

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.4786 of 2016

Deepak Kumar Sahoo .. Petitioner

-versus-

State of Odisha & others .. Opp. Parties

For Petitioner Mr. S.S. Das, R.K. Sahoo,
K.C. Mohapatra and B.B.
Mohanty.

For Opposite Parties : Mr. S. Jena,
Standing Counsel for School
and Mass Education
Department.

CORAM:

JUSTICE A.K. MOHAPATRA

Date of hearing : 03.12.2021 | Date of Judgment:27.01.2022

A.K. Mohapatra, J. : संवैधिक न्याये

1. Initially, the Petitioner as an applicant filed Original Application bearing No.4786(C) of 2016 before Orissa Administrative Tribunal, Cuttack Bench, Cuttack seeking for a direction to declare that the cutoff date of passing of B.Ed. has no nexus with the advertisement for the post of contract teacher and he has prayed for further direction to the Respondents-Opposite Parties to consider the candidature of the application-Petitioner for the post of Contract Teacher in Hindi. After abolition of Odisha Administrative Tribunal, the above noted Original Application has been transferred to this Court and reregistered as WPC(OAC) No.4786 of 2016.

2. The factual backdrop of the case, in short, is that the Petitioner is a graduate with B.Ed. training in Hindi from a recognized university and was aspiring to be appointed as Contract Teacher in Hindi under the Director, Secondary Education, Odisha. The Petitioner in his application has stated that he satisfies all the eligibility criteria for being considered to be appointed to the post of contract teacher Hindi.

3. The case of the Petitioner is that in the year 2014, the Government of Odisha in its School and Mass Education Department vide Notification No.23404 dated 27.10.2014 issued a resolution regarding recruitment procedure to be followed for selection and recruitment of teaching staff in Government Secondary School. In the said resolution while laying down eligibility criteria, the authorities have reduced the upper age limit of the candidates to 32 years from 42 years which was upper age limit for previous years selections. While reducing the upper age limit, the age relaxation for S.C. /S.T. and SEBC candidate have been retained.

4. Heard Mr. B. B. Mohanty, learned counsel appearing for the Petitioner and Mr. S. Jena, learned Standing Counsel appearing for the School and Mass Education Department.

5. It was argued by the learned counsel for the Petitioner that the resolution in question was under challenge before Odisha Administrative Tribunal in a batch of cases. While disposing of such cases vide a common judgment dated 17.12.2015 in O.A. No.3589(C) of 2014 and a batch of other cases, the Tribunal was pleased to hold that the reduction of upper age limit from 42 to 32

years is unsustainable in the eye of law and further direction was given by the Tribunal to the Respondents-Opposite Parties in those cases to issue a corrigendum regarding upper age limit for recruitment for the year 2014-15 while inviting application from the eligible candidates. Pursuant to such direction of the Tribunal, the Respondents-Opposite Parties vide corrigendum dated 06.01.2016 modified upper age limit from 32 years to 42 years and confined the said modification of upper age limit to the selection of candidates against the advertisement of the year 2014-15 only. The other terms and conditions in the Resolution No23404 dated 27.10.2014 remained unchanged.

6. Pursuant to the resolution dated 27.10.2014 and the corrigendum dated 02.07.2016, the Petitioner offered his candidature for appoint to the post of contract teacher through online application and his name was reflected against Sl. No.23 in the draft list of candidates. To the utter surprise of the Petitioner, his name did not find place in the final list of candidates. Later on he came to learn that his candidature has been rejected on the ground that he has acquired B. Ed qualification for Hindi after 06.04.2015. The Petitioner submitted his objection to such illegal rejection of his candidature by the authorities.

7. It is further stated by the Petitioner that although no such cutoff date was prescribed either in the Original resolution or in the corrigendum, the authorities have acted in a highly illegal and arbitrary manner and have rejected the application of the Petitioner on the ground that he has passed B.Ed in Hindi after 06.04.2015. It is submitted by learned counsel for the petitioner

that while no cutoff date was fixed and not communicated to the Petitioner, the Opposite Party No.2 on his own has fixed such a cutoff date behind back of the candidates including the Petitioner with an ill intention and to deprive the persons like the Petitioner of an opportunity to be appointed as contract teacher in Hindi.

8. It has been further stated on behalf of the Petitioner that in the district of Balasore a total number of 112 posts of Hindi teachers were advertised, out of which 56 posts belong to UR category, ST 25, SC 18, OBC/SEBC 13. Since a large number of posts were lying vacant, as such the Petitioner had a very good opportunity of getting the job. It is only due to the illegal and arbitrary conduct of the Opposite Parties, the Petitioner although having requisite qualification was deprived of the opportunity of getting such appointment.

9. It is further submitted by the learned counsel for the Petitioner that similarly situated persons have been considered and given appointments to the post of contract teachers. Whereas the Petitioner despite having requisite qualification and although a large number of posts are lying vacant, the Opp. Parties have acted in an illegal and arbitrary conduct manner by not considering the candidature of the Petitioner. It is further submitted that challenging such illegal action of the authorities, many similarly placed employees had earlier approached the Odisha Administrative Tribunal and after the abolition of the Odisha Administrative Tribunal, such matters were transferred to this Court. This Court in **WPC(OAC) No. 902 of 2016** (*Satyabrata Nayk and others vrs. State of Odisha and others*)

along with a batch of similar other matters, which were taken up for hearing analogously, by a judgment dated 15.09.2021 allowed such applications with the following observations:-

“In view of the factual and legal analysis, as discussed above, this Court is of the considered view that the draft reject list, so far as present petitioners are concerned, cannot sustain in the eye of law and the same is liable to be quashed and is hereby quashed. The opposite parties are directed to take into consideration the applications filed by the petitioners in the above mentioned writ petitions, allow them to participate in the process of selection, consider their case for engagement as Contract Teacher (Hindi) by re-drawing the select list and extend them all the benefits in accordance with law, as expeditiously as possible, preferably within a period of three months from the date of communication of this judgment.”

10. On a careful reading of the judgment delivered by a coordinate bench of this Court on 15.09.2021 in **WPC (OAC) No.902 of 2016** in the case of *Satyabarata Nayak and others* (supra), this Court, in the present case, is of the considered view that the factual background involved in the said case is identical to facts of the present case since the petitioners are similarly situated with the Petitioners in WPC (OAC) No.902 of 2016 and a batch of other cases, the benefits given to the Petitioners in WPC (OAC) No.902 of 2016 and a batch of other matters be also extended to the present Petitioner. The Petitioner having been placed in similar footing with the Petitioners in WPC (OAC) No.902 of 2016 cannot be discriminated against and be deprived of the opportunity to be considered for appointment to the post of Contract Teacher Hindi if they are otherwise eligible to be

appointed as such. In my considered view, the present case is squarely covered by the judgment of this Court in the case of *Satyabrata Nayak and others* (supra).

11. Learned counsel appearing for the School and Mass Education Department vehemently opposed the prayer made in this writ petition by the Petitioner. He further submits that the Petitioners were not found to be eligible by the concerned authorities and therefore, the case cannot be considered again. He further submits that it is not material as to whether the case of the Petitioner is covered by the judgment of this Court dated 15.09.2021 rendered in WPC(OAC) No.902 of 2016 and a batch of other cases, what is important is that it is too late in the day to consider the case of the petitioner for appointment as against the advertisement of the year 2014-15 and by now, fresh recruitment must have taken place in the meantime.

12. The argument advanced by the learned Standing Counsel for the SME Dept. is unsustainable in law. On scrutiny of the record, this court found that the petitioner is not at fault. The petitioner had approached the OAT in the year 2016 initially like the petitioner in WPC(OAC) No.902 of 2016. It is not the fault of the petitioner that his case was not taken up along with other similar matters by the OAT. Moreover, the authorities are permitted under the law to act in an arbitrary and discriminatory manner in as much as the benefits given to similarly situated employees cannot be denied to the petitioner if they are otherwise eligible to get such benefit. Once a benefit or relaxation is given to a person similarly situated with the petitioner, the petitioner is

also entitled to get such benefit under the law. Mere pendency of a proceeding cannot deprive the petitioner of the opportunity of being considered for such appointment.

12. Having heard learned counsel for the parties, this Court is of the considered view that the case of the present Petitioner is squarely covered by the judgment dated 15.09.2021 by this Court in WPC (OAC) No.902 of 2016 in the case of **Satyabrata Nayak and others** (supra). As such the judgment rendered by a coordinate Bench of this court is applicable to the facts of the present case. In such view of the matter, the present writ petition deserves to be allowed and accordingly the same is allowed hereby. Further, the Opposite Parties are directed to consider the case of the petitioner and if is found otherwise eligible, he may be given appointment to the post of Contract Teacher Hindi by making necessary corrections in the select list within a period three months from today.

13. With the aforesaid observation, the writ petition stands disposed. However, there shall be no order as to cost.

(A.K. Mohapatra)
Judge

Jagabandhu Behera, P.A.