

**HIGH COURT OF ORISSA: CUTTACK**

**WPC (OAC) No.4678 OF 2016**

*In the matter of an application under Section 19 of the Administrative Tribunals Act, 1985.*

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**Pramod Kumar Dash**

...

**Petitioner**

**- Versus -**

**State of Odisha and Others**

...

**Opposite parties**

For Petitioner

... Mr. S.P. Sahoo, Advocate

For Opposite Parties

... Mr. N.N. Satapathy,  
Standing Counsel appearing  
for the Mass Education Dept.

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**CORAM:**

**THE HONOURABLE SHRI JUSTICE BIRAJA PRASANNA SATAPATHY**

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Date of hearing: 13.09.2022

Date of Order : 20.10.2022

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***Biraja Prasanna Satapathy, J.***

1. I have heard Mr. S.P. Sahoo, learned counsel appearing for the Petitioner and Mr. N.N. Satapathy, learned Standing Counsel appearing for the School & Mass Education Department.

2. The present writ petition has been filed by the Petitioner challenging the order dated 20.07.2015 passed by the Joint Secretary to Government, Government of Odisha, Department of School & Mass Education under Annexure-6(A) to the writ petition and consequential order passed by the Opposite Party No.3-District Education Officer, Jajpur on 24.7.2015 under Annexure-6(B) to the writ petition.

3. It is submitted by Mr. S.P. Sahoo, learned counsel appearing for the Petitioner that the Petitioner was initially appointed as a Music Teacher in Mugpal High School, Mugpal in the district of Jajpur on ad hoc basis vide order of the Secretary of the then Managing Committee dated 14.03.1980. It is further submitted that subsequent to such appointment of the Petitioner as a Music Teacher, Opposite Party No.2-Director of Secondary Education, Odisha, Bhubaneswar vide his order dated 31.05.1983 created the post of a part time Music Teacher in the school in question carrying fixed pay of Rs.255/- per month. It is further submitted that after such creation of post in question, Opposite Party No.3-District Education Officer, Jajpur vide his letter dated 13.09.1983 requested the Opposite Party

No.2 for sanction and placement of fund for payment of salary to the Petitioner as part time Music Teacher. It is also submitted that subsequently vide order dated 14.09.1983, the services of the Petitioner as part time Music Teacher in Mugpal High School has approved by the Opposite Party No.3. It is also submitted that even though the Petitioner was appointed as part time Music Teacher in school in question, but taking account his nature of duty of a full time teacher not only the Headmaster of the school but also the Opposite Party No.3 moved the Opposite Party No.2 vide his letter dated 8.1.1988 recommending the appointment of the Petitioner as a full time Music Teacher. It is also submitted that the Headmaster of the School in question also vide his letter dated 20.03.1989 requested the Opposite Party No.1 for creation of post of full time Music Teacher in Mugpal High School and regularize the Petitioner as against the said post. It is further submitted that in the meantime when the school in question was taken by the Government w.e.f. 1.6.1994, similarly situated part time Music Teachers claiming regularization of their services approached before the Orissa Administrative Tribunal, Bhubanesar in Original Application

No.789 of 1994. It is further submitted that learned Tribunal vide its order dated 25.4.1995 under Annexure-1 to the writ petition disposed of the said Original Application with the following directions:-

*“In that view of the matter, I direct the Director of Secondary Education, Orissa, Bhubaneswar (Opposite Party No.4) to take steps to regularize the services of the petitioners who satisfied the criteria laid down by the State Government within four months from the date of receipt of a copy of this order. It goes without saying that on regularization of services of petitioners, they will get their scale of pay.”*

4. It is submitted by Mr. Sahoo, learned counsel appearing for the Petitioner that relying on the order passed by the learned Tribunal under Annexure-1 to the writ petition, another part time Music Teacher, namely, Purna Chandra Patra also approached before the learned Tribunal in O.A. No.1304 of 2004. It is also submitted that the learned Tribunal vide its order dated 20.09.2010 disposed of the said Original Application basing on the order passed in Original Application No.789 of 1994. It is also submitted that basing on the order passed by the learned Tribunal in the case of Purna Chandra Patra, Government of Odisha vide its communication dated 23.8.2013 under Annexure-3(A) to the writ petition created an ad hoc

temporary post of Music Teacher in Government Girls' High School, Dharpur and basing on such creation of the post, the Petitioner therein was extended with the financial benefit vide order dated 26.9.2013 of the Opposite Party No.3 under Annexure-3(B) to the writ petition. It is also submitted that the Petitioner had also earlier approached before the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.3459(C) of 1999 with a prayer to regularize his services as a full time Music Teacher. The said O.A. was also disposed of by the learned Tribunal vide its order dated 13.02.2014 under Annexure-5 to the writ petition with the following direction:-

*“Keeping the above observation and facts in view and in accordance with the earlier decisions of this Tribunal, I am of the opinion that the benefits of regularization should be extended to the present applicant, subject to compliance with the norms, envisaged by the State Government and on the basis of benefits as extended to the 15 part time music teachers earlier.”*

5. It is submitted by Mr. Sahoo, learned counsel appearing for the Petitioner that basing on the order passed under Annexure-5 to the writ petition though as like the Petitioner in O.A. No.1304 of 2004, Government created an ad hoc temporary post of Music Teacher in Mugpal High School vide its order dated 20.07.2015, but while creating such post, illegally held

that the Petitioner will not be entitled to any arrear financial benefit and his pay only to be fixed notionally from the date of creation till his retirement, i.e., from 25.04.1995 to 30.09.2013.

6. The Petitioner is, therefore, aggrieved by the said order issued by the Government on 20.07.2015 under Annexure-6(A) to the writ petition as the Petitioner though similarly situated as like the Petitioner in O.A. No.1304 of 2004, was denied the financial benefit and his pay was only fixed notionally. It is submitted that basing on the said impugned order passed by the Government on 20.7.2015 under Annexure-6(A) to the writ petition, the Opposite Party No.3 passed the consequential order on 24.7.2015 under Annexure-6(B) to the writ petition by fixing the pay of the Petitioner notionally for the entire period and thereby denying the financial benefit in favour of the Petitioner.

7. It is submitted that since persons similarly situated in O.A. No.1304 of 2004 was extended with the financial benefit on creation of ad-hoc temporary post of Music Teacher, the Petitioner being similarly situated, he is also eligible and entitled to get the said benefit. Accordingly, it is submitted that necessary order be passed by this Court directing the Opposite

Parties to extend the financial benefit in favour of the Petitioner for the period from 25.04.1995 to 30.09.2013.

8. Mr. N.N. Satapathy, learned Standing Counsel appearing for the School & Mass Education Department, on the other hand, made his submission basing on the stand taken in the counter affidavit. It is submitted that since by the time, the post was created by the Government vide its order dated 20.7.2015 under Annexure-6(A) to the writ petition, the Petitioner had already retired from service w.e.f. 30.09.2013, the Petitioner is not entitled to get the financial benefit of the said period and no illegality has been committed by directing for notional fixation of his pay.

9. A rejoinder affidavit is filed by the Petitioner disputing the stand taken by the Opposite Party No.3 in his counter affidavit.

10. It is submitted that the Petitioner in O.A. No.1304 of 2004 also retired from his service in the year 2006 and the order of creation of the post was passed only on 23.8.2013. But he was extended with the financial benefit even though he had retired much earlier. Accordingly, it is submitted that since similar benefit has been extended in favour of similarly situated teacher

with creation of similar post in question, the Petitioner is also entitled to get the financial benefit.

11. Having heard the learned counsel for the parties and after going through the materials available on record, this Court finds that the Petitioner in O.A. No.1304 of 2004 is similarly situated as like the Petitioner. The post of Music Teacher on ad hoc basis was also created in the case of the Petitioner in O.A. No.1304 of 2004 much after his retirement and he was extended with the financial benefit as reflected in the communication of the Opposite Party No.3 under Annexure-3(B) to the writ petition. Since the Petitioner is similarly situated and similar post was also created vide order dated 20.7.2015 under Annexure-6(A) to the writ petition, the denial of the financial benefit in favour of the Petitioner as per considered view of this Court is not just and proper and the same amounts to violation of Article 14 of the Constitution of India.

12. Therefore, this Court, while interfering with the said order, is inclined to quash the orders at Annexures-6(A) & 6(B) to the writ petition. While quashing the same, this Court directs the Opposite Parties to extend the financial benefit as due and

admissible in favour of the Petitioner for the period from 25.4.1995 to 30.9.2013 and with a further direction on the Opposite Parties to sanction and disburse the said financial benefit within a period of three months from the date of receipt of this order. The Petitioner is directed to provide a copy of this order before the Opposite Party No.3-District Education Officer, Jajpur within a period of seven days from the date of receipt of this order.

13. With the aforesaid observations and directions, this writ petition stands disposed of.

**(Biraja Prasanna Satapathy)**  
**Judge**

Orissa High Court, Cuttack  
The 20<sup>th</sup> October, 2022/D. Aech, PA.