

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C)(OAC) No.399 of 2016

Rajashree Mishra

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

29.11.2022

Order No

- 11.** 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. The present writ petition has been filed by the Petitioner challenging the order dtd.16.01.2016 passed by the District Education Officer (D.E.O.), Kendrapara-O.P. No. 3, wherein the prayer of the Petitioner to allow her the benefit of trained Intermediate scale of pay w.e.f.10.07.1987 till she was allowed the Trained Graduate scale of pay w.e.f.01.01.2006 was rejected by the O.P. No. 3.
3. The Petitioner's case is that vide order dtd.21.01.1987 under Annexure-1, the Petitioner with having qualification of B.A.B.Ed. was appointed as an Assistant Teacher in J.N. Bidyapitha, Choudakulat on adhoc basis for a period of 89 days in the scale pay of Rs.840/- to Rs.1240/-.
4. Pursuant to the said order issued under Annexure-1 the Petitioner joined as an Assistant Teacher on 11.02.1987. The Petitioner while so continuing as an adhoc Asst. Teacher, L.S.E.S. (T.M.) in Jagannath Bidyapitha, Choudakulat, she was transferred vice Sri.

Goutam Charan Swain (L.S.E.S.) Asst. Teacher, Govt. Girls' High School, Kendrapara vide order dtd.07.07.1992 under Annexure-2 in her own scale of pay. While continuing as such the Petitioner seeking regularization of her services as a Trained Graduate Teacher, approached the learned Tribunal in O.A. No. 246 of 1996. The said Original Application along with four other Original Applications were disposed of vide order dtd.07.04.1999 under Annexure-3. Vide the said order learned Tribunal directed the concerned Inspector of Schools to disburse the salary to the applicants of all the Original Applications in the scale of pay applicable to the regular Trained Graduate teachers for the period they were actually appointed as Junior S.E.S. teachers.

5. In terms of the order passed by the learned Tribunal on 07.04.1999 under Annexure-3 though the applicant Basanti Ray in O.A. No. 245 of 1996 was allowed the Trained Graduate scale of pay w.e.f. her initial date of joining vide order dtd.11.10.1999 of the O.P. No. 3 under Annexure-8 series, but the Petitioner was not extended with the said benefit. The Petitioner accordingly once again approached the learned Tribunal in O.A. No. 753(C) of 2012 with a prayer to allow her trained intermediate scale of pay from the date of her joining i.e.11.02.1987 and for disbursement of the differential arrear salary from 11.02.1987 to 31.12.2005, as in the meantime w.e.f.01.01.2006 the Petitioner was allowed to draw the Trained Graduate scale of pay.

Learned Tribunal vide order dtd.30.03.2012 when refused to entertain the prayer as made in O.A. No. 753(C) of 2012, the Petitioner challenging the said order approached this Court in W.P.(C) No. 11120 of 2012. This Court vide order dtd.12.12.2015

disposed of the writ petition by permitting the Petitioner to make a fresh representation before the O.P. No. 3 ventilating her grievances. This Court further directs the O.P. No. 3 to pass appropriate order on the claim of the Petitioner within a period of three (3) months from the date of receipt of this order.

Pursuant to the order passed by this Court on 12.12.2015 the Petitioner made a representation before the O.P. No. 3 through the Headmaster of the School. But O.P. No. 3 vide his order dtd.16.01.2016 rejected the said prayer. Hence the present writ petition.

6. It is the main contention of the learned counsel appearing for the Petitioner that since the Petitioner in O.A. No. 245 of 1996 is similarly situated and their claim along with other matters were disposed of by the learned Tribunal vide order dtd.07.04.1999 under Annexure-3 and the applicant Basanti Ray in O.A. No. 245 of 1996 was allowed the benefit of T.G. scale of pay vide order dtd.11.10.1999 under Annexure-8 series, the Petitioner being similarly situated she is also entitled to get the benefit of Trained Intermediate scale of pay w.e.f. her initial date of joining till she was allowed the Trained Graduate scale of pay w.e.f.01.01.2006. It is also contended that the Petitioner though was appointed vide order under Annexure-1 as against a Trained Matric post in Jagannath Bidyapitha, Choudakulat but vide order dtd.07.07.1992 under Annexure-2, she was transferred vice Sri Goutam Charan Swain, who was working as against a Trained Intermediate post.

7. Therefore, in view of the transfer and posting of the Petitioner as against a Trained Intermediate Post in terms of the order passed under Annexure-2, the Petitioner is entitled to get the benefit of

Trained Intermediate scale of pay from the date of her initial joining till 31.12.2005. It is also contended that since in terms of a common order passed under Annexure-3 the applicant Basanti Ray was extended with the benefit of T.G. scale of pay from her initial date of joining, the rejection of the Petitioner's claim vide the impugned order is not sustainable in the eye of law.

8. In support of his submission that Sri Goutam Charan Swain against whom the Petitioner was transferred vide order under Annexure-2 was serving as against a Trained Intermediate post, Mr. Mohanty brought to the notice of this Court the information obtained under the RTI Act vide Annexure-7. In the said information it has been indicated that Sri Goutam Charan Swain, ex-assistant teacher of Govt. Girls High School, Kendrapara was serving as against an IACT post. Accordingly, it is contended that in view of her continuance as against the IACT Post the Petitioner was transferred vice Sri Goutam Charan Swain vide order under Annexure-2. Therefore, the Petitioner is entitled to get the benefit of Trained Intermediate scale of pay from her initial date of joining till she was allowed the benefit of Trained Graduate scale of pay w.e.f.01.01.2006. But O.P. No. 3 without proper appreciation of the Petitioner's claim and the benefit extended in favour of Basanti Ray, rejected the claim vide the impugned order under Annexure-6.

9. Mr. N.N. Satapathy, learned Standing Counsel on the other hand made his submission basing on the stand taken in the counter affidavit. It is contended that after passing of the order under Annexure-3 the applicant Basanti Ray in O.A. No. 245 of 1996 was allowed the Trained Graduate scale of pay vide order dtd.11.10.1999 as Smt. Basanti Ray was continuing all through as

against a Trained Graduate Post and the said fact is clearly reflected in Office order dtd.11.10.1999. It is also contended that considering the claim of the Petitioner she was allowed the Trained Graduate scale of pay w.e.f.01.01.2006 even though the services of the Petitioner was regularized w.e.f.11.02.1987 vide Order dtd.03.06.2005 under Annexure-4.

10. Even though the learned Tribunal vide its order under Annexure-3 disposed of the claim of the Petitioner as well as of Smt. Basanti Ray, but the Petitioner never made any further claim till she approached the learned Tribunal once again in O.A. No. 753(C) of 2012. The said O.A. when was rejected vide order dtd.30.03.2012 under Annexure-B/3 by holding the same as a stale claim, the Petitioner thereafter approached this Court in W.P.(C) No. 11120 of 2012 and pursuant to the liberty granted by this Court, the Petitioner made a fresh representation, which was duly considered and rejected vide the impugned order under Annexure-6. It is also contended that the factum of dismissal of her claim in O.A. No. 753(C) of 2012 was never disclosed by the Petitioner.

11. However, it is contended that since the Petitioner at no point of time was continuing as against the Trained Graduate Post, she is not eligible to get the TGT scale of pay. But the Petitioner vide order under Annexure-2 was transferred and posted vice Sri Goutam Charan Swain in Government Girls' High School, Kendrapara and the said Goutam Charan Swain was working as against a Trained Intermediate Post. It is also contended that the scale of pay indicated in the order of appointment issued in favour of the Petitioner under Annexure-1 was meant for Trained Matric post.

Hence it is contended that the Petitioner is not entitled to get the benefit of Trained Intermediate scale of pay w.e.f.11.02.1987.

12. I have heard Mr. B.B. Mohanty on behalf of Mr. Manoranjan Nayak, learned counsel appearing for the Petitioner and Mr. N.N. Satapathy, learned Standing Counsel appearing for the Opp. Parties. With the consent of the learned counsel appearing for the Parties, the matter was heard finally and disposed of at the stage of admission.

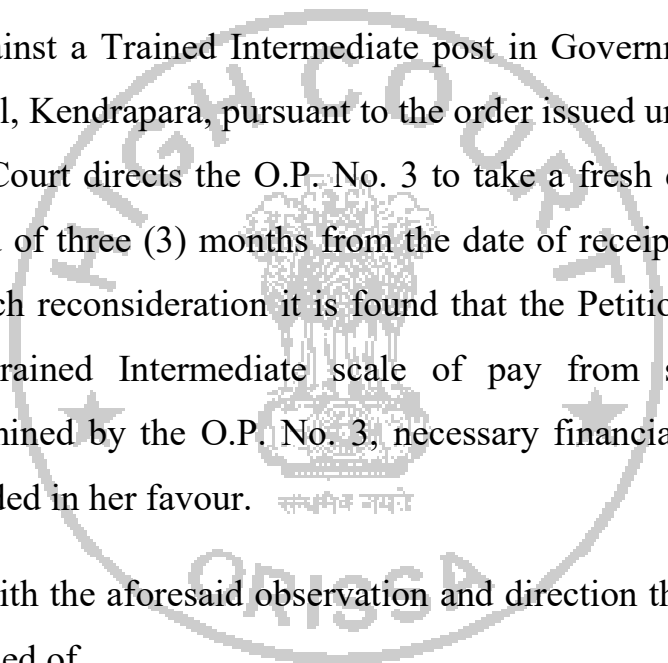
13. As available in the case record the Petitioner admittedly was appointed as an Asst. Teacher vide order under Annexure-1 in the scale pay of Rs.840/- to Rs.1240/- and in the said order of appointment nothing was indicated as to against which post the Petitioner was so appointed.

14. However, taking into account the order passed under Annexure-2 on 07.07.1992, wherein the Petitioner was transferred vice Sri Goutam Charan Swain and the information provided vide Annexure-7 series to the effect that Sri Goutam Charan Swain was serving as against a Trained Intermediate Post, the claim of the Petitioner to get the Trained Intermediate scale w.e.f. her joining in the said post can at best be taken into consideration.

15. In view of the information provided under Annexure-7 series it can only be considered that the Petitioner since was allowed to continue as against a Trained Intermediate scale vide order dtd.07.07.1992 under Annexure-2, she may be entitled to get the benefit of Trained Intermediate scale of pay from the date she joined in the said post. But the said fact has not been taken into

consideration by the O.P. No. 3 while passing the impugned order under Annexure-6.

16. Therefore, this Court is inclined to quash the order dtd.16.01.2016 under Annexure-6. While quashing the same this Court remits the matter to the O.P. No. 3 to take a fresh decision on the Petitioners' claim with regard to availing the benefit of Trained Intermediate scale of pay.

17. However, it is observed that while taking such a decision O.P. No. 3 shall take into consideration the continuance of the Petitioner as against a Trained Intermediate post in Government Girls' High School, Kendrapara, pursuant to the order issued under Annexure-2. This Court directs the O.P. No. 3 to take a fresh decision within a period of three (3) months from the date of receipt of this order. If on such reconsideration it is found that the Petitioner is entitled to get Trained Intermediate scale of pay from such date as is determined by the O.P. No. 3, necessary financial benefit be also extended in her favour. 

18. With the aforesaid observation and direction the writ petition is disposed of.

(Biraja Prasanna Satapathy)
Judge

Sneha