

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OA) No.217 of 2015

***Umesh Chandra Joshi and
others***

....

Petitioners

Mr. P.K. Jena, Advocate

-versus-

State of Odisha & others

....

Opp.parties

Mr. B. Mohanty, Standing Counsel for the
School and Mass Education Department

**CORAM:
JUSTICE S. TALAPATRA
JUSTICE M.S.SAHOO**

ORDER

Order No.

12.09.2022

- 3.** **1.** This matter is taken up through hybrid mode.
- 2.** Mr. B. Mohanty, learned Standing Counsel for the School and Mass Education Department has produced before us the notification dated 08.03.2019 whereby the Odisha Elementary Education (Method of Recruitment and Conditions of Service of Teachers and Officers) Rules, 1997 has been substantially amended.
- 3.** Mr. Mohanty, learned Standing Counsel for the School and Mass Education Department has categorically stated that sub-rule (2) of Rule-9 of the Odisha Elementary Education (Method of Recruitment and Conditions of Service of Teachers and Officers) Rules, 1997 as amended by the Odisha Elementary Education (Method of Recruitment and Conditions of Service of Teachers and Officers) Rules, 2014, has been challenged in the writ petition.

4. The petitioners have averred while ventilating their grievance in para-6 as follows :

“6.15. That it is relevant to mention here that the aforesaid letter under Annexure-6 has been communicated to all D.E.Os and B.E.Os vide Memo No.11821, dated 18.07.2014 for information and necessary action. On such communication, the promotion proposal which was finalized in respect of the applicants block for promotion from Level-IV to III in respect of CT category teachers including applicants, has been stalled and not been allowed to be given effect to as because in the said letter, the Director has already directed to prepare a fresh select list in accordance with Orissa Elementary Education Amendment Rule, 2014. Therefore, the applicants and many of them, who are at the verge of retirement have been highly prejudiced and thereby have been arbitrarily going to be deprived of to get their entitled promotion from Level-IV to III. Therefore judging all of the above angles, the impugned notification more particularly its impugned clause under Rule-9(2) is liable to be declared ultra-virus and unconstitutional.”

(Emphasis added)

5. The reference to the Rules as made above, is to the Rules called Odisha Elementary Education (Method of Recruitment and Conditions of Service of Teachers and Officers) Amendment Rules, 2014. The provision by which the petitioners claimed to have prejudicially affected, has been reproduced above. According to the petitioners, the said Amendment Rules which they have challenged by way of this writ petition, is ultra vires and intends to take away their vested right to promotion to the next level i.e. now level IV to Level III.

In that perspective, they have asked this Court to strike down the said sub-rule (2) of Rule-9 of the above Rules as amended by the Amendment Rules, 2014. Mr. Mohanty, learned Standing Counsel has submitted a copy of the notification dated 8.3.2019 by which the Rules called the Odisha Elementary Education (Method of Recruitment and Conditions of Service of Teachers and Officers) Amendment Rules, 2019 has been published. The said amendment has come into force from the date of their publication in the Odisha Gazette. By the said amendment Rules of 2019, the said rule 9(2) has again been amended.

6. The following amendments in rule 9 has been brought.

“(a) for sub-rule (1), the following sub-rule shall be substituted, namely:-

“(1) The committee within their respective power shall draw up lists of all eligible candidates for promotion, as the case may be, from Level-V(A) to Level-V(B), Level-V(B) to Level-IV, Level-IV to Level-III, Level-III to Level-II, Level-II to Level-I and Level-1 to Level-1 (Senior) of the service.”

(b) for sub-rule (5), for the following sub-rule shall be substituted, namely:-

“(5) After its approval by the Director, Elementary Education for promotion from Level-V(A) to Level-V(B), Level-V(B) to Level-IV and Level-IV to Level-III of the service, the District Education Officer shall make necessary allotment to the Senior Block Education Officer or Block Education Officer and for issue of appointment orders”

7. Rule 11 of the unamended Rules have been substantially amended by incorporating various eligibility conditions and method of recruitments, inter alia, sub-rule 3(i) which has been incorporated by way of substitution. It reads as under :

“(3)(i) In order to be eligible for promotion to the post of Senior Headmaster in Govt. Primary School in Level-III of the service, a candidate must have passed High School Certificate or Higher Secondary (+2) Examination or Bachelor Degree in any discipline with Secondary Teachers’ Training or Certified Teachers Course or Diploma in Elementary Education or Bachelor in Education or an equivalent examination and must have served for a continuous period of two years in the post of Headmaster of Government Primary School belonging to Level-IV of the service.”

8. Mr. Mohanty, learned Standing Counsel has submitted that the amendment as carried out by the said Amendment Rules, 2019 meets the reliefs as claimed by the petitioners in this writ petition. Therefore, the writ petition should be disposed of as infructuous. Mr. Mohanty, learned Standing Counsel has further submitted that because of the amendment as carried out by the Amendment Rules, 2019, the embargo that the petitioners faced for operation of the Amendment Rules, 2014, has been totally removed.

9. In view of the said substantive change as occurred after filing of the writ petition, this writ petition stands disposed of as infructuous. If the

petitioners stand aggrieved by any action of the opposite parties in respect of their promotion from Level IV to Level III in the category of teachers to which the petitioners belong, they will be at liberty to approach this Court afresh. There will be no order as to costs.

(S. Talapatra)
Judge

(M.S. Sahoo)
Judge

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