

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.1932 of 2014

Sashi Kanta Maharana

Petitioner

....
Mr.K.K.Swain, Advocate

-versus-

State of Odisha and others

.... ***Opposite Parties***

*Mr.R.C.Patnaik, Standing Counsel
For S & ME*

**CORAM:
JUSTICE A.K.MOHAPATRA**

**ORDER
03.11.2022**

Order No.

04. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard Mr.K.K.Swain, learned counsel for the Petitioner and the learned Standing Counsel for School & Mass Education.
4. This writ application has been reregistered on transfer as O.A.No.1932(C) of 2014 from the Orissa Administrative Tribunal after abolition of the Tribunal. In the present original application the Petitioner has prayed for quashing of the impugned order dated 03.11.2011 under Annexure-18 and has further prayed for issuance of necessary direction to the Opposite Parties to approve the appointment of the applicant against Additional Section Teacher in Class VIII B and to release monthly salary in the Trained Graduate scale with effect from 07.06.1994.
5. Learned counsel for the Petitioner submits that the Petitioner initially approached the Orissa Administrative Tribunal by filing O.A.No.2212© of 2000. The Orissa Administrative Tribunal took up

the hearing of the case of the present Petitioner along with many similar other cases and decided the case vide order dated 17.03.2003 and finally disposed of the Original Application by directing to appoint the Petitioner and similarly other situated persons as Additional Section Teacher in their respective Schools and further directed that the applicants who possess B.Ed qualification at the time of their appointment their appointment should be approved with effect from 07.06.1994 and those who acquired B.Ed. qualification from the date on which they acquired the said qualification and the salary of the applicants those who had possessed the B.Ed qualification at the time of their appointment should be given to them in TGT scale from 07.06.1994 and the rest should get same PGT scale from the date they acquired B.Ed qualification. Further it was directed that those who are out of service despite interim order directed to assign duties.

6. The order passed by the learned Tribunal was assailed by the State before this Court by filing a writ application bearing W.P.(C) No.14895 of 2004. A Division Bench of this Court after hearing the learned counsel for the respective parties vide order dated 17.11.2005 while confirming the decision of the learned Tribunal directed that since the judgment and orders were passed by the Tribunal in the year 2003, the Petitioner should make compliance of the same and make available the consequential benefits to the Opposite parties including the interveners within a period of three months . Further it was observed that those Opposite Parties including the intervener the Opposite Parties who were appointed without training qualification and have already achieved the said qualification (B.Ed) in the meantime, should be categorized as Trained Graduate Teacher from the date of acquiring the said training and should be provided with all benefits attached to that post.

7. After the judgment in the aforesaid W.P.(C) 5864 of 2004 the Petitioner approached this Court by filing W.P.(C) No.1120 of 2006. This Court vide order dated 31.01.2006 disposed of the writ application filed by the Petitioner directing in the facts and circumstances of the case order dated 24.02.32003 passed in the aforesaid W.P.(C) No.5864 of 2004 and W.P.(C) No.14895 of 2004 shall be applicable to the facts of the present writ application.

8. After disposal of the W.P.(C) No.1120 of 2006 the Petitioner approached the authority. However, the benefit was not extended to the Petitioner as directed by this Court. Therefore, the Petitioner was compelled to file CONTC No.747 of 2006. It is further submitted by the learned counsel for the Petitioner that the B.Ed certificate of the Petitioner was not readily available, therefore he could not produce the same before the authority pursuant to the direction in CONTC No.747 of 2006. Accordingly the aforesaid CONTC was dropped with the observation that since the Petitioner was unable to produce the B.Ed certificate his case could not be considered as TT Teacher and accordingly the CONTC was dropped.

9. Later on the B.Ed certificate could be traced out which is filed as Annexure-15 to the writ application and on perusal of the said certificate, it appears that the Petitioner has acquired the B.Ed qualification in May, 1990 and the said certificate appears to have been issued by Utkal University. A copy of the said certificate has been annexed to the writ application. Thereafter the Petitioner approached the authority for approval of his appointment as Trained Graduate Teacher pursuant to the judgment of the Orissa Administrative Tribunal as confirmed by this Court. However, the Opposite Party No.1 vide Memo No. 21211 dated 03.11.2011 rejected the claim of the Petitioner on the ground that the applicant was appointed by the Managing

Committee against a non-sanctioned post without prior approval. Challenging the order dated 03.11.2011 under Annexure-18, the present writ application has been filed with a prayer to quash the order under Annexure-18. It is submitted by the learned counsel for the Petitioner that the grounds on which the claim of the Petitioner has been rejected has already been adjudicated and decided by the learned Tribunal in O.A.No.22121(C) of 2000 filed by the Petitioner. Therefore, the same is no more open to be considered by the Opposite Party No.1. He further submits that the Opposite Party No.1 should have considered the case of the Petitioner keeping in view the direction issued by the Tribunal as well as this Court that too only by taking into consideration of the acquisition of the B.Ed qualification by the Petitioner. Accordingly the Petitioner should have been extended the benefit attached to a TGT post. However, the authorities arbitrarily and without application of mind rejected the Petitioner's claim vide impugned order under Annexure-18.

10. Learned Standing Counsel for School & Mass Education Department submits that the Petitioner could not produce the B.Ed certificate at the relevant point of time. Therefore, his case was not considered by the authority. He further submits that although the Petitioner filed a contempt application the same was dropped on the ground that the Petitioner was unable to produce the B.Ed certificate and accordingly his case could not be considered for appointment as TGT Teacher in the School where he was working. Further, learned Standing Counsel for School & Mass Education department submits that in the event the Petitioner approaches the Opposite Party No.1 his case shall be considered by Opposite Party No.1 in the light of judgment passed by the learned Tribunal which was affirmed by this Court within a stipulated period of time. He further submits that in the event the Petitioner is covered by the judgment passed by the learned

Tribunal as well as by this Court then he will be definitely extended the benefit which has been extended in favour of other similarly satiated persons.

11. Having heard learned counsel for the respective parties and upon careful consideration of the facts and circumstances as well as the materials placed before this Court, this Court is of the considered view that the rejection order under Annexure-18 dated 03.11.2011 has been passed by a non-speaking order without clarifying as to how the Petitioner was not covered by the order passed by the learned Tribunal as well as by his Court and as such the same is not sustainable in the eye of law. Accordingly the order dated 03.11.2011 under Annexure-18 is hereby set aside. Further the matter is remanded back to the Opposite Party No.1 to consider the case afresh in the light of the order passed by the learned Tribunal in O.A.No.2212(C) of 2000 dated 17.07.2003 which was confirmed by this Court in W.P.(C) No.5864 of 2004 vide order dated 17.11.2005 and order passed in W.P.(C) No.1120 of 2006 disposed of on 31.01.2006. In such view of the matter, the Petitioner is directed to approach the Opposite Party No.1 within a period of three weeks from today along with certified copy of this order and the copy of the order referred to herein above. In the event the Petitioner approaches the Opposite Party No.1, as directed hereinabove, the Opposite Party No.1 shall do well to consider the case of the Petitioner in the light of the judgment passed by the learned Tribunal as well as this Court and shall take a decision within a period of eight weeks from the date the Petitioner approaches the Opposite Party No.1. Further, it is directed that in the event it is found that the Petitioner is entitled to the benefit of TFT scale then the same may be calculated and sanctioned in favour of the Petitioner and others within a period of two months from the date of taking such decision.

12. With the aforesaid observation the writ application stands disposed of.

13. Issue urgent certified copy of the order as per Rules.

(A.K. Mohapatra)
Judge

RKS

