

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No.1811 of 2016

Satyapriya Dalai

....

Petitioner

Mr. B. Routray, Sr. Advocate

Mr. P.K. Mohapatra, Advocate

-versus-

State of Odisha and others

....

Opp. Parties

Mr. R.C. Pattnaik,

Standing Counsel for the S&M.E. Deptt.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

25.11.2022

Order No.

08.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).

2. A memorandum in favour of Sri Budhadev Routray, learned Senior Advocate is filed by the learned counsel for the Petitioner to plead for the Petitioner, which be kept on record.

3. Heard Mr. B. Routray, learned Senior Advocate with Mr. P.K. Mohapatra, appearing for the Petitioner and Mr. R.C. Pattnaik, learned Standing Counsel appearing for the School & Mass Education Department. Perused the pleadings of the respective parties.

4. Initially the Petitioner had approached the State Administrative Tribunal, Cuttack Bench, Cuttack by filing O.A. No.1811(C) of 2016 with a prayer to quash the corrigendum of the merit list dated 19.03.2016 prepared for physically handicapped category under Annexure-6 and further prayer to direct the Opposite Parties to consider his candidature and issue engagement order in his favour on the basis of the physically handicapped certificate

submitted by him at the time of engagement which was issued in his favour on 11.06.2015. However, in the meantime, State Administrative Tribunal has been abolished and the O.A. has been transferred to this Court and it has been reregistered as WPC (OAC) NO.1811 of 2016.

5. At the outset, Mr. Routray, learned Senior Advocate appearing for the Petitioner submits that the facts of the present case is identical to the facts of the case in ***Kamalakanta Sahu v. State of Odisha & Others*** (WPC (OAC) No.1810 of 2016) which was disposed of on 15.03.2022 with the following directions:-

10. In the case of Union of India and others v. Miss. Pritilata Nanda, reported in (2010) 11 SCC 674, the Apex Court held that once the candidature of a person is accepted by the concerned authorities and he/she is allowed to participate in the process of selection, it is open to them to turn around and question his or her entitlement to be considered for engagement. The case at hand stands on an even better footing inasmuch as not only was the candidature of the Petitioner considered but also he was engaged and allowed to work for some months. The action of the authorities, therefore, cannot be countenanced in law as this Court finds that the Petitioner cannot be deprived of his right to be engaged as a TGT(CBZ) Contract Teacher as a PH candidate.

11. In the result, the Writ Petition succeeds and is, therefore, allowed. The impugned merit list under Annexure-8 in so far as it relates to the Petitioner is hereby quashed. The Opposite Party-authorities are directed to issue necessary orders for engagement of the Petitioner in the post in question. It is, however, made clear that Petitioner shall not be entitled to any back wages for the period of disengagement on the principle of 'no work' 'no pay'.

6. Learned Standing Counsel appearing for the School & Mass Education Department, on instruction, submits that the facts of the present case is identical to the facts of the case of ***Kamalakanta Sahu***

(supra) and, therefore, the decision in *Kamalakanta Sahu* (supra) is also applicable to the facts of the present case.

7. In such view of the matter, this Court thinks it proper to dispose of the writ petition by directing the Opposite Parties to work out the relief sought for by the Petitioner in terms of the order passed in *Kamalakanta Sahu* (supra) and, accordingly, the impugned merit list under Annexure-6, so far it relates to the Petitioner, is hereby quashed. However, the Opposite Parties are directed to issue engagement order in favour of the Petitioner in respect to the post in question in this application. Further, it is made clear that the Petitioner would not claim and be entitled to back wages for the period of disengagement applying the principle of no work no pay. Let the direction be carried out within a period of two months from the date of production of certified copy of this order.

8. With the aforesaid observation and direction, this writ petition is disposed of.

(*A.K. Mohapatra*)
Judge