

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.34237 OF 2020

**(WPC Nos.34237 of 2020, 34240 of 2020, 34243 of 2020 &
34247 of 2020)**

(Applications under Articles 226 and 227 of the Constitution of India)

WPC No.34237 of 2020

Sri Akshaya Kumar Mohanty ***Petitioner***

WPC No.34240 of 2020

Binapani Padhy ***Petitioner***

WPC No.34243 of 2020

Prajna Paramita Panda ***Petitioner***

WPC No.34247 of 2020

Anita Behera ***Petitioner***

-versus-

State of Odisha and others ***Opposite Parties***

Appeared in these cases:

For Petitioners : Mr. Ashutosh Mishra,
Advocate

For Opposite Parties : Mr. Nihar Kanta Praharaj,
Additional Government Advocate
for School & Mass Education
Department

CORAM:
JUSTICE SASHIKANTA MISHRA

JUDGMENT

Date of Hearing : 22.07.2022 | Date of Judgment:27.07.2022

SASHIKANTA MISHRA, J.

1. All these writ petitions involve common facts and points of law. For convenience, they were heard together and have been disposed of by this common judgment.

2. Pursuant to the advertisement issued by the Director, TE and SCERT (Opposite Party No.3) for the post of Teacher Educators for 13 old DIETs (District Institute of Education and Training) on contractual basis, The Petitioners submitted their applications and after having gone through the process of competitive examination, they were selected on a consolidated remuneration of Rs.9,300/- per month. It is stated that Petitioner in W.P.(C) No.34237/2020 was posted in DIET, Khurda, Odisha, Petitioner in W.P.(C) No.34240/2020 was posted in DIET, Khurda, Odisha, Petitioner in W.P.(C) No.34243/2020 was posted in DIET, Remuna, Odisha and Petitioner in W.P.(C) No.34247/2020 was posted in DIET, Dolipur, Odisha. Such appointment was for a period of one year to be renewed from time to time. While the matter stood thus, the Orissa Group-B Post (Contractual Appointment) Rules, 2013 (in short 'the Rules, 2013') was framed. Rule 9(a) of the said Rules provides that a person appointed in a contractual post shall continue as such for a period of six years and Rule 16(a) provides that on the date of

satisfactory completion of six years of contractual service, he shall be deemed to be regularly appointed. The Petitioners were also granted Grade Pay as provided under Rule 10 of the said Rules. By order dated 19.7.2017, the Government in G.A. Department clarified that Rules, 2013 would also be applicable to the recruitments for which advertisement was issued prior to commencement of the said Rules. Petitioners in W.P.(C) Nos.34237/2020, 34240/2020, 34243/2020 and 34247/2020 completed six years of their continuous service on 19.04.2018, 19.06.2018, 19.04.2018 and 03.04.2018 respectively. As such, they claim to be regularized in service.

3. It is further stated that the Teacher Educators appointed in the year 2015 were given regular appointments, whereas Petitioners having been appointed since 2012 were not regularized. Petitioners submitted several representations to the Authorities but to no avail. They, therefore, approached the erstwhile Orissa Administrative Tribunal, Principal Bench, Bhubaneswar in O.A. No.2116/2019. Vide order dated 17.7.2019, the Tribunal directed the Opposite Parties-Authorities to consider the grievance of the Petitioners within a period of two months. Pursuant to such direction, Opposite Party No.3 vide letter dated 28.10.2019 submitted a favourable proposal to the Secretary to Government in School and Mass Education Department (Opposite Party No.2), which was not considered. The Petitioner, therefore filed a contempt petition vide CONTC No.1167/2020 before this Court after the abolition of the Tribunal. This Court took up the matter and vide order dated 18.8.2020, directed the Opposite

Party No.2 to act as per the direction of the Tribunal within a period of 15 days. Such order was also not complied, for which, the Petitioner filed another contempt application being CONTC No.4053/2020, which was again disposed of granting 15 days time to Opposite Party No.2 to comply with the order with intimation to the Registry so that on failure to comply the orders of this Court, the Registry shall issue suo-motu contempt proceeding against the Opposite Party No.2. Pursuant to this order, the Opposite Party No.2 vide Office Order dated 11.11.2020 (Annexure-11 to the writ petition) rejected the case of the Petitioner. Being aggrieved by such rejection, Petitioners have approached this Court seeking the following relief:

“In the above stated circumstances, the Petitioner humbly prays that your Lordships shall be graciously pleased to admit the Writ petition & quash the Order No-16100/Dtd.11.11.2020 issued by Opp. party No-2 & may direct the Opp. parties more specifically Opp. party No.-2 to regularize the service of the Petitioner w.e.f. 19.04.2018 i.e. the date petitioner has completed 6 years of Contractual Service with all service and financial benefits within a fixed time as directed by this Hon’ble Court.

AND

For which act of your Lordships kindness, the Petitioner shall ever pray as in duty bound.”

4. Counter Affidavit has been filed by Opposite Party No.2 wherein, referring to sub-rule 3 of rule 3 of the Rules, 2013, it is stated that the Petitioners having been appointed under a Temporary Plan Scheme are not eligible to be regularized as per

the said rules.

5. The Petitioner has filed a rejoinder affidavit refuting the contention in the counter affidavit by stating that the very fact that the Petitioners have been working since 29.03.2012 shows that there is requirement of work. It is further stated that as per the information obtained by the Petitioner under the RTI Act (enclosed as Annexure-15 to the writ petition), the post of Contractual Teacher Educators belong to CSP Scheme during 2012-13 and 2013-14 and State Plan w.e.f. 2014-15. Further, Opposite Party No.3 has clarified that the post of Teacher Educators (Contractual) are regular in nature and the salaries of all the teacher faculties are covered under Centrally Sponsored Scheme of Teacher Education as Central and State share in the ratio of 60:40. It is a Continuous Plan Scheme.

6. Heard Mr.Ashutosh Mishra, learned counsel for the Petitioner and Mr.N.K.Praharaj, learned Additional Government Advocate for School and Mass Education Department.

7. It is argued by Mr. Mishra that the rejection of the claim of the Petitioner for regularization as per Rules, 2013 on the ground that the said rules did not apply to the Petitioners as they have been appointed under Temporary Plan Scheme is not only factually erroneous but also illegal. Petitioners have been rendering satisfactory service to the State for the last 10 years and similarly placed Teacher Educators engaged much after them, have been given regular appointments. It according to Mr. Mishra amounts to gross discrimination. That apart, Opposite Party No.2

has himself clarified that the Petitioners are appointed against Continuous Plan Scheme and therefore cannot be equated with those appointed under Temporary Plan Scheme.

8. Per contra, Mr. N.K. Praharaj, learned Additional Government Advocate for School and Mass Education Department has argued that the Petitioners claim regularization as per the provision of Rules, 2013. Admittedly, Petitioners were appointed under a Centrally Sponsored Scheme of Restructuring and Reorganization of Teacher Education by Government of India and their appointments were co-terminus with the said scheme. Therefore, as per sub-rule (3) of rule 3 of the Rules, 2013, the said rules cannot be made applicable to the Petitioners and therefore, Opposite Party no.2 has rightly rejected their claims.

9. There is no dispute that the Petitioners were appointed in pursuance to advertisement issued in the year 2011 for engagement of Teacher Educators on contractual basis on monthly remuneration of Rs.9,300/-. As per the terms of such engagement, once the Petitioner executed a contract/agreement with the Govt., the same shall be extended for subsequent period by a fresh contract. In the advertisement it is mentioned under the tenure of engagement as under:

5. Tenure of Engagement:

The tenure of engagement for Teacher Educators on contractual basis will be for an initial period of one year or up to the last day of the month of February in coming year whichever is earlier. The contractual engagement is extendable on year to year basis subject to satisfactory performance. The engagement will be coterminous with the

Centrally Sponsored Scheme of Restructuring and Reorganization of Teacher Education by Government of India. The Teacher Educator, thus engaged, shall not claim for permanent absorption either in DIET or any other Government institution on termination. The engagement can also be terminated at any time without assigning any reason thereof.

10. The Petitioners were engaged in the year 2012 and as such, they have completed six years of service in the year 2018. The claim for regularization of the Petitioners has been rejected as already stated by invoking rule 3(3) of the Rules, 2013 published vide notification dated 17.01.2014, which runs as follows:

3. Applicability:

(1) These rules shall apply to direct recruitment to such Group 'B' Posts as the Government may decide by notification from time to time.

Provided that the State Government may by notification exclude any post from the purview of these rules.

(2) They shall also apply to the categories of Contractual Appointments made under rule 4 from the date of contractual appointment, if any, made under rule 5.

(3) These rules shall not apply to following categories of Contractual Appointments, namely:-

(a) Temporary Plan Schemes (including those under Centrally Sponsored Plan Scheme, Externally Aided Projects);

(b) Temporary Establishments; and

(c) Tenure Based Posts;

Provided that persons appointed on contractual basis under these schemes prior to the commencement of these rules, who are below 45 years shall be allowed to participate in the recruitment process under rule 5 for any Group-B Posts. If they satisfy all other eligibility criteria for such post as laid down in the relevant recruitment rules

and shall be allowed relaxation of upper age limit for entry into Government service.

NOTE: Persons appointed under sub-rule (2) and proviso to sub-rule (3) shall get the benefit of these rules only after they were recruited and appointed to any post under rule 5.

11. The question is/can appointment/engagement of the Petitioners be treated as being made under Temporary Plan Scheme. The Government in School and Mass Education Department in its letter dated 24.08.2020 sought for clarification from the Opposite Party No.3 as to whether the contractual appointment in the DIET of the State belongs to Temporary Plan Scheme or is a Continuous Plan Scheme? In response, Opposite Party No.2 vide its letter dated 08.09.2020 inter alia stated as follows :

“In inviting a reference to the Government letter on the subject cited above, I am to inform you that the following Teacher Educators were appeared on contractual basis in the year, 2012 against sanctioned post of Teacher Educators in 13 old DIETs as per the direction in Government letter No.SME-XII-S&ME-Trg.57/2010-10174/SME dated 17.06.2010 (copy enclosed)

1. Ms. Prajna Paramita Panda, Teacher Educator (Contractual), DIET, Balasore at Remuna.
2. Ms. Binapani Padhy, Teacher Educator (Contractual) DIET, Khurda.
3. Ms. Anita Behera, Teacher Educator (Contractual), DIET, Dollpur.
4. Shri Akshaya Kumar Mohanty, Teacher Educator (Contractual), DIET, Khurda.

The said posts of Teacher Educators

(Contractual) are regular in nature not Temporary Plan Scheme and the salaries of all teaching faculties of DIETs and BIETs cover under the Centrally Sponsored Scheme of Samagra Shiksha (Teacher Education) as Central and State Share is 60:40 which is a Continuance Plan Scheme. Those Teacher Educators were posted against the sanctioned post and working since 2012.

In view of the above, I would like to request Government to kindly consider the prayer of the above named Teacher Educators along with other 02 similarly footed Teacher Educators, namely, Ms.Ayesha Tanwir, Teacher Educator (Contractual), DIET, Khurda and Ms. Tapaswini Nayak, Teacher Educator (Contractual) DIET, Dollpur. The representation of both the Contractual Teacher Educators have already been communicated to Government this Directorate letter No.6241 dated 29.10.2019 for regularization of their services as per GA Department Notification No.1147/Gen dated 17.01.2014 so as to enable this Directorate to redress their genuine grievance as well as to comply the orders of the Hon'ble Court.

Surprisingly, in the counter affidavit, however, Opposite Party No.2 has again referred to rule 3(3) of the Rules, 2013 to contend that the Petitioners come under the Temporary Plan Scheme.

12. Considering the rival contentions of the parties and the relevant materials on record, this Court is of the considered view that mere nomenclature cannot be a determinating factor as regards the true nature of a particular job. Admittedly, the Petitioners were engaged under the Centrally Sponsored Scheme and such engagement is said to be co-terminus with the said

scheme. The scheme as such appears to have been continued for 10 years and there is nothing on record to suggest that it shall be discontinued at any time in the near future. Even otherwise, as per the resolution dated 30.11.1990 laying down the personnel policy of DIETs, there was no provision for engagement of Contractual Teacher Educators for DIETs. In spite of the same, Petitioners were engaged on contractual basis.

13. Be that as it may, as per the information obtained by the Petitioners, the Opposite Party No.2 has categorically stated that the post of Contractual Teacher Educators belongs to Centrally Sponsored Scheme during 2012-13 and 2013-14 and State plan is continued even in 2014-15. All these facts cumulatively suggest that the work rendered by the Petitioners (Teacher Educators) is permanent in nature and not a temporary engagement. In any case, 'temporary scheme' is one which remains in operation for a limited period as the word "Temporary" would suggest and would therefore, not apply to engagements, that have continued for 10 years and more. There is another aspect of the matter, the Government after coming into force of the 2013 rules has appointed 103 Teacher Educators in different DIETs in terms of G.A. Department Notification dated 17.1.2014. Undoubtedly, the said Teacher Educators would be performing exactly the same work as the Petitioners. But there is huge disparity in the remuneration, inasmuch as, the said Teachers are being given basic pay of Rs.9,300-34,800 + Grade Pay of Rs.4,200/-, whereas the Petitioners are being paid consolidated remuneration of Rs.9,300/- + Grade Pay of Rs.4,200/-. This obviously amounts to

gross discrimination between the similarly placed employees.

14. For the foregoing reasons, therefore this Court has no hesitation in holding that the Rules, 2013 are applicable to the case of the Petitioners. Further, the Petitioners having rendered 6 years of contractual service without any blemish, are entitled for regularization in service.

15. In the result, all the writ applications are allowed. The impugned order No.16100 dtd.11.11.2020 passed by the Opposite Party No.2 is hereby quashed. The Opposite Party No.2 is directed to issue necessary orders to regularize the services of the Petitioners as per rules with effect from the date of their completion of 6 years of contractual service with all service and financial benefits within a period of four months from the date of communication of this order or on submission of certified copy thereof by the Petitioners.

(Sashikanta Mishra)
Judge

Orissa High Court, Cuttack.
The 27th July, 2022/U.K. Sahoo, Secretary