

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(TAC) No.50 of 2014

In the matter of an application under Section 19 of the
Administrative Tribunal Act, 1985.

.....

Panchanan Das

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s.S.N.Sahoo & B.K.Nayak.

For Opp. Parties : Standing Counsel
Mr. B.A.Prusty.

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing:12.09.2022 and Date of Judgment:30.09.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. M.K.Rath, learned counsel appearing on behalf of Mr. B.K.Nayak, learned counsel for the Petitioner and Mr. Prusty, learned Standing counsel for the State-Opposite Parties.
3. The present Writ Petition has been filed by the Petitioner challenging the order dated 15.02.1993 passed by the Opposite Party No.3, wherein the prayer of the Petitioner to allow Headmaster scale of pay in his favour w.e.f. 9.9.1974 was rejected.

4. Learned counsel for the Petitioner submitted that the Petitioner was initially appointed as an Asst. Teacher (T.G) in Chintamani Bidyapitha, Narayangarh on 03.08.1965 and continued in the said school till 31.12.1972 as against a Trained Graduate Post.

5. It is submitted that during his continuance in the said school, the Petitioner completed his B.Ed degree from Regional College of Education, Bhubaneswar on 05.11.1971.

6. It is further submitted that the Petitioner subsequently was appointed as a Trained Graduate Teacher in Nagapur High School w.e.f. 1.1.1973 where he continued till 8.9.1974. The Petitioner subsequently was appointed as Headmaster in Panchayat High School, Benapanjari vide order of appointment issued on 26.08.1974 under Annexure-1.

7. Mr. Rath, learned counsel for the Petitioner submitted that the Petitioner pursuant to the said order under Annexure-1 joined as a Headmaster in Panchayat High School, Benapanjari on 9.9.1974.

8. It is also submitted that the services of the Petitioner vide officer order dated 29.07.1976 under Annexure-2, though was approved as against the post of Headmaster, but the scale of pay as due and admissible when was not extended, the Petitioner approached the Opposite Parties time and again seeking extension of the Headmaster scale of pay w.e.f.9.9.1974.

9. Mr. Rath, learned counsel for the Petitioner submitted that the claim of the Petitioner to get the Headmaster scale of pay when was allowed w.e.f. 20.10.1982, the Petitioner

again represented the Opposite Parties to extend the said benefit w.e.f 9.9.1974 i.e. date of his appointment as against the post of Headmaster.

10. It is submitted that the Opposite Party No.3 vide his letter dated 05.04.1991 under Annexure-5 when recommended the case of the Petitioner for grant of Headmaster scale of pay w.e.f. 9.9.1974 in place of 20.10.1982, the Opposite Party No.2 vide his letter dated 19.06.1991 requested the Opposite Party No.3 to submit various documents for consideration of the Petitioner's claim.

11. It is submitted that subsequently the Petitioner was communicated with the impugned order dated 15.02.1993 under Annexure-7, wherein his prayer to extend the Headmaster scale of pay w.e.f. 9.9.1974 was rejected basing on the order passed by the Government.

12. It is submitted that since the Petitioner continued as against a Trained Graduate Post w.e.f 03.08.1965 to 31.12.1972 and from 01.01.1973 to 08.09.1974 and completed the B.Ed. degree on 05.11.1971, the Petitioner because of his appointment and joining as Headmaster on 9.9.1974, became eligible to get the Headmaster scale of pay from the said date.

13. It is submitted that the Petitioner being an appointee prior to coming into effect of the Board's Regulation which came into effect from 29.4.1977, the Petitioner is entitled to get the benefit of the Headmaster scale of pay w.e.f. 9.9.1974. But it is submitted that the Opposite Party No.3 basing on the order passed by the Government illegally rejected the said claim by holding that the Petitioner is not

entitled to get the said scale of pay w.e.f.9.9.1974 and the same has been rightly extended in his favour from 20.10.1982.

14. Mr. Rath, learned counsel for the Petitioner in support of his submission relied on the decision of the Hon'ble Apex Court in the case of **Pabitra Mohan Das & others vs. State of Orissa & Others** reported in **(2001) 2 SCC-480**.

15. It is submitted that the Hon'ble Apex Court in the said reported judgment upheld the decision of the Special Bench of this Court. Hon'ble Apex Court in Para-7 of the said judgment held as follows-

“7. Having examined the rival contentions and on a thorough scrutiny of two earlier Full Bench decisions as well as the impugned judgment of the Special Bench we are of the considered opinion that the Special Bench rightly thought it appropriate to reconsider the entire matter afresh and re-determine the issues involved in the light of the relevant provisions of the Act, Rules and Regulations after hearing at length on all issues and there was no infirmity on that score even though the point of reference was of a limited nature. Courts exist to interpret the law and while examining the provisions of any Act, Rule or Regulation, if it is felt that the earlier decision on the question is not clear on any particular issue or has created confusion in resolving the disputes or has caused hardship to a group of people, it would be the duty of the court to re-examine the matter after giving opportunity to all parties concerned and by such process question of taking away anybody's vested right does not arise. In the case in hand it is not a particular writ or order that had been issued in favour of any individual is sought to be nullified by the subsequent Special Bench decision. On the other hand the erroneous conclusion of the relevant provisions of the Act, Regulation and Rules are sought to be corrected and we see no infirmity in this approach of the Special Bench. That apart, though point of reference may be of a limited nature but in answering the same if the Court feels that it would be in the interest of justice to constitute a larger Bench and examine the correctness of any earlier conclusion which might have been made on an erroneous interpretation of any provision, then there would be no fetter for adopting that procedure. In this view of the matter we see no infirmity with the approach of the Special Bench in re-examining the issues afresh in the

light of the relevant provisions of the Act, Rules and Regulations. We have also carefully examined the conclusions of the impugned judgment of the Special Bench and we are unable to persuade ourselves to agree with the submission of Mr. Ranjit Kumar that the said conclusions are either erroneous on interpretation of relevant provisions or in any way intended to take away the rights of any persons who have got the benefit of the earlier Full Bench decision. It is not disputed that with effect from 29.5.1977 Regulation 17 in the Board of Secondary Education has been brought into force which makes it obligatory for every institution to have a Headmaster who must be a trained graduate and must have 7 years of teaching experience as a trained graduate teacher. If subsequent to 29.5.1977 any appointment has been made to the post of Head Master contrary to the aforesaid provisions of the Regulation then the said appointment would be invalid appointment and would not confer any right on the appointee. The expression 'approval' used in the second direction in Golakh Chandra Mohanty's case is referable to the approval contemplated under Rule 8(2)(b) of the Recruitment Rule and, therefore, if there has been an approval by the Director then in such a case the appointment made after the prior approval would not be invalidated. In our considered opinion the conclusion of the Special Bench that an approval of the Inspector is no approval in the eye of law is the correct position, and as such, does not require any interference by this Court. We would further make it clear that a person who has been appointed as Headmaster in charge cannot claim any right on the basis of that appointment even if the same might have been approved by any Competent Educational Authority. The In charge Headmaster is not the same as the Headmaster of the school and it merely entitles a person to remain in charge and discharge the duties of a Headmaster. In this view of the matter where the appointment itself has been to the post of Headmaster as in-charge, and such appointment had been approved, obviously the said appointee cannot claim to be continued as Headmaster or to be entitled to get the scale of pay attached to the post of Headmaster. The Special Bench in the impugned judgment has correctly analysed the different provisions of the Rules and Regulations and have rightly come to the finding on the directions 2, 3, 4 and 5 of the earlier Full Bench decision in Golakh Chandra Mohanty's case".

16. Mr. Rath, relying on the aforesaid decision submitted that since the Petitioner was appointed prior to coming into force of the Boards Regulation, the Petitioner is eligible and entitled to get the Headmaster scale of pay w.e.f. 9.9.1974.

17. Mr. Prusty, learned Standing Counsel for the State on the other hand made his submission basing on the stand taken in the counter affidavit.

18. Mr. Prusty, learned Standing Counsel for the State also relying on the aforesaid decision in the case of **Pabitra Mohan Das & others vs. State of Orissa & Others** submitted that since by the time the Petitioner was appointed as Headmaster vide order under Annexure-1, he was not having 7 years of teaching experience as a Trained Graduate Teacher, the Petitioner is not eligible to get the benefit of Headmaster scale of pay w.e.f 9.9.1974 and he has been rightly allowed the same.

19. Heard learned counsel for the Parties.

20. Perused the materials available on record. This Court after going through the materials available on record vis-à-vis the ratio decided by the Hon'ble Apex Court in the aforesaid case found that the Petitioner prior to coming into force of the Board Regulation on 29.04.1977 was already appointed as against the Post of Headmaster vide order under Annexure-1, where he joined on 09.09.1974. The Petitioner prior to such appointment as Headmaster was working as against a Trained Graduate Post in two different schools from 3.8.1965 to 31.12.1972 and from 1.1.1973 and 8.9.1974. Therefore, basing on the decision in the case of **Pabitra Mohan Das & others vs. State of Orissa & Others**, the Petitioner is entitled to get the benefit of Headmaster scale of pay w.e.f. 09.09.1974. Therefore, this Court is of the opinion that the claim of the Petitioner has not been considered properly while rejecting the same vide order at Annexure-7.

21. Therefore, this Court is inclined to quash the said order under Annexure-7 and while quashing the same directs the Opposite Parties to extend the benefit of Headmaster scale of pay in favour of the Petitioner w.e.f. 09.09.1974. Since the Petitioner has already retired since long, the Opposite Parties are directed to fix the scale of pay of the Petitioner on such sanction of the Headmaster scale of pay and release the differential salary as well as differential pension with due calculation of the same within a period of four months from the date of receipt of this order.

22. With the aforesaid observations and directions, the WPC(TAC) stands disposed of. There shall be no order as to costs.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 30th of September, 2022/Subrat