

IN THE HIGH COURT OF ORISSA AT CUTTACK
WPC(OA) No.84 of 2014

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

.....

Sasmirekha Das

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner :Mr. Manas Pati, Advocate

For Opp. Parties :Mr. R.K. Samal,
Standing Counsel
(for School & Mass Education Deptt.)

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 27.07.2022 and Date of Order: 06.09.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. Manas Pati, learned counsel for the petitioner and Mr. R.K. Samal, learned Standing Counsel appearing for the State-Opp. Parties.
3. This matter was originally filed in the Cuttack Bench of learned State Administrative Tribunal in O.A. No.753(C) of 1998 and subsequently on its

transfer to the Principal Bench , the case was renumbered as O.A. No.84 of 2014. After abolition of the learned Tribunal, the matter on transfer has been re-registered as W.P.C(OA) No.84 of 2014.

4. Originally, the matter in O.A. No.753 (C) of 1998 was filed by the petitioner with the following prayer.

“ To direct the respondent to accept the applicant as a member of non-teaching staff (Librarian) of Nalini Devi Women’s College of Education in 1st April, 1990 and commanding them to absorb her in Govt. Service inconsonance with Section 7 of Orissa Act, 24 of 1991 to maintain the inter se seniority of the applicant and direct to pay all the service benefits which she is otherwise entitled to with effect from the date of her appointment.”

5. It is submitted that learned Tribunal taking into account the fact that the claim made by the petitioner is similar to the direction issued in O.A. No.3283 (C) of 1998 (Pabani Behera Vs. State of Odisha & Others), disposed of the Original Application vide order dated 25.8.2016 with the following direction:

“Thus in view of the above discussion, we do not find any material to deny the claim of the applicant or to take a view other than the view already taken in the case of similarly situated persons and therefore, we hold that the applicant was an employee of Nalini Devi Women’s College of Education Bhubaneswar as on 1.4.1990 and hence he should be treated as government employee. Accordingly, the respondents are directed to treat the applicant to be in the employment of the college as on 1.4.1990 and a government

employee and extend all service and financial benefits as due and admissible. However, she will not be entitled to backwage for the period she was out of employment, but shall only be entitled to such benefit notionally. The order be complied with as expeditiously as possible, but within a period of three months from the date of receipt of a copy of this order.”

6. It is submitted that the said direction of the learned Tribunal was challenged before this Court by the State-Opp. Parties in W.P.(C) No.21284 of 2017 and this Court vide order dated 12.1.2018 while setting aside the said order, remanded the matter to the learned Tribunal. It is submitted that this Court basing on the order passed on 12.1.2018 in W.P.(C) No.19028 of 2017, set aside the order passed by the learned Tribunal for its fresh adjudication. It is submitted that in W.P.(C) No.19028 of 2017, the order passed by the learned Tribunal on 25.8.2016 in O.A. No.85 of 2014/O.A. NO.1146(C) of 1998 was assailed by the State-Opp. Parties and this Court also while setting aside the order passed by the learned Tribunal remitted the matter with the following observation/direction:-

In view of the inventory made in the institution to take charge of it and no acquittacne roll was found in such inventory, which has not been considered by the Tribunal while passing the impugned order and as the

genuineness of such acquittance roll which was produced by the applicant is in question this Court sets aside the impugned order and remits the matter back to the Tribunal for re-consideration of the Original Application filed by the applicant giving liberty of hearing to the parties. It is open to the petitioners to file those materials before the Tribunal, which shall be considered in accordance with law, at the time of hearing of the Original Application.

7. It is submitted that since this Court while remitting the matter for fresh determination by the learned Tribunal observed that the petitioner is at liberty to file those materials in support of his continuance as on 1.4.1990.

8. It is submitted that on such remand of the matter, the Opp. Parties not only filed a detailed counter but also the petitioner filed a rejoinder affidavit inclosing therein various documents showing his continuance as on 1.4.1990 under Annexures-R/1 to R/4. It is submitted that basing on those documents those are filed vide Annexures-R/1 to R/4 similarly situated employees like Bimbadhar Senapati and Ajodhya Narayan Mohanty were allowed benefit as prayed for by the petitioner in the present writ petition. It is contended that one similarly situated employee, namely, Bimbadhar Senapati had approached the

Orissa Administrative Tribunal by filing O.A. No. 578 of 2005, which was disposed of vide order dated 14.12.2012, directing the opposite parties to treat the petitioner therein, namely, Bimbadhar Senapati, as an employee of Nalinidevi Women's College of Education, Bhubaneswar as on 01.04.1990 and allow him to work in the college as a government servant. The tribunal further directed the opposite parties to grant all the benefits of a government servant, which are available to other employees absorbed in that college after its taken over by the government. The very same judgment was challenged by the opposite parties-State before this Court in W.P.(C) No.24850 of 2013 and this Court, vide order dated 15.01.2014, was not inclined to interfere with the order passed by the tribunal and accordingly dismissed the said writ petition. Challenging the order dated 15.01.2014 passed in W.P.(C) No.24850 of 2013, State preferred SLP before the Hon'ble apex Court and the same was also dismissed. As a consequence thereof, Bimbadhar Senapati, petitioner in O.A. No. 578 of 2005, was granted with the benefits as due and admissible to him. It is further contended that another similarly situated employee, namely, Ajodhya Narayan

Mohanty, approached the learned Tribunal by filing O.A. No. 417 of 2016 and in turn learned Tribunal allowed the same vide order dated 13.2.2007. The said direction though was implemented by providing appointment, but when financial benefit as due and admissible was not released, he approached learned Tribunal in O.A. No.141 of 2013. Learned Tribunal when vide order dated 19.6.2015 directed for grant of notional benefit, said A.N. Mohanty challenging the same approached this Court in W.P.(C) No.16247 of 2016. State also filed W.P.(C) No.7012 of 2016 challenging the order dated 19.6.2015.

9. It is submitted that this Court vide order dated 7.12.2016 while allowed the claim of the petitioner therein to extend the financial benefit, dismissed the writ petition filed by the State, Challenging the said order even though State preferred SLP Nos. 14514-14515 of 2018, but the same were also dismissed. Thus, it is contended that the petitioner having been placed in the same footing, the benefit be extended to him within a stipulated time.

10. It is further submitted that after confirmation of the order passed in the case of Bimbadhar Senapati and Ajodhya Narayan Mohanty, the opp. Parties have already extended the benefit vide different orders passed by the opp. parties on 24.10.2019 in the case of Ajodhya Narayan Mohanty and order dated 7.11.2017 in the case of Bimbadhar Senapati. It is also submitted that the benefit in respect of Pabani Behera has also been extended vide order dated 17.4.2017. Making all such submissions, Mr. Pati, learned Counsel for the petitioner submitted that since persons similarly situated have already been extended with the benefit as prayed for by the petitioner, the petitioner being similarly situated is also eligible and entitled to get the same.

11. Mr. R.K. Samal, learned Standing Counsel for School and Mass Education Department does not dispute the above position and, as such, it is contended that the petitioner stands on the similar footing with the petitioners of those cases referred to above.

12. Having heard learned counsel for the parties and after going through the records, this Court is of the

considered view that since the petitioner stands on the similar footing with Bimbadhar Senapati and Ajodhya Narayan Mohanty, mentioned supra and, as such, the benefit has already been extended to them pursuant to the orders passed by the tribunal, which were confirmed by this Court as well the apex Court, the petitioner cannot be discriminated, otherwise same would be violative of Article 14 of the Constitution of India.

13. In the above view of the matter, this writ petition stands disposed of directing the opposite parties to treat the Petitioner as an employee (Librarian) in Nalini Devi Women's College as on 01.04.1990 & grant all the benefits to the petitioner as due and admissible including the back wages, in consonance with the direction given by the learned tribunal in respect of Bimbadhar Senapati and Ajodhya Narayan Mohanty as well as Pabani Behera mentioned above, as expeditiously as possible, preferably within a period of four months from the date of production of certified copy of this order.

14. The Writ Petition is accordingly disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 6th of September, 2022/sangita

