

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.C. (OA) No.157 of 2016

Smt. Pratima Khandai

.... ***Petitioner***

Mr. R.K. Bisoi, Advocate

-versus-

State of Odisha & Others

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

Mr. Nilambar Jena, Standing
Counsel for S&ME

CORAM:

JUSTICE M.S. RAMAN

ORDER

15.07.2022

Order No.

04. 1. This matter is taken up through virtual/physical mode.
2. The Original Application No. 157 of 2016 was filed before the State Administrative Tribunal, Bhubaneswar. After its abolition, the same has been transferred to this Court which is renumbered as WPC (OA) No. 157 of 2016.
3. The Petitioner challenging the notice dated 22nd July, 2015 issued by Block Education Officer, Pattamundai inviting show cause reply has come up in the writ petition. The show cause issued by the Block Education officer runs as follows:

“1. That, the post of Hindi Teacher in M.E. School was non-existent, after the Hindi subject was non examinable subject as per G.O. No. 39375/EYS dated 12.09.1980 or erstwhile Education and Youth Service Department.

2. That, the then management of the erstwhile Aided M.E. School has been restricted not to appoint any Hindi Teacher. As per the said G.O., condition laid down for reconsider for the two classes of M.E. School, there should a trained Graduate Headmaster and one Trained Matriculate

Teacher. No other Teaching and Non Teaching staff should be entertained. All the appointments of Hindi Teachers by the Managing Committees of erstwhile Aided M.E., Schools was against non sanctioned / on-approved/ non-existence post, after 1980 are abinitio illegal, void and non est. in the eye of law. Hence, the alleged appointment of the applicant by the then M.C. of the Schools is illegal and abinitio void.

3. *That, the Hon'ble Court, Odisha in case of Smt. Bindulata Mohanta Vrs. State of Orissa, in order No.6 dated 01.02.1994, in OJC No. 2568/1993 held that the Managing Committee is not entitled to appoint sectional teacher by creating posts themselves and pass on the financial burden on the educational authority. That apart on the date the petitioner was appointed by the Managing Committee, the statutory rule governing the service condition of the employees of the aided educational institutions had already come into force and the Petitioner's appointment was not made in accordance with the statutory Rules and consequently the Petitioner is not entitled to claim the relief sought for in this writ application.*
4. *That the Hon'ble Tribunal, in a similar case of Gita Sahoo, applicant in O.A. No. 37 (C)/1994, while declining to entertain the application have held that,*
 - a. *"The appointment of the applicant by the then Secretary of the School is completely against the Govt. Order No. 39375/EYS dated 12.09.1980, imposing restriction on appointment of Hindi Teachers, the applicant cannot be said to be validly appointment by the then Secretary of the School and as such she cannot claim any equity on the basis of the subsequent Resolution of the Govt. For adjustment of Hindi Teacher like the applicant as against the newly created post of 3rd Teacher."*
5. *That, the case of Hindi Teacher of M.E. School was finally decided on 02.12.1996 by the Hon'ble Supreme Court in Civil Appeal No. 15712 of 1996, State of Orissa Vrs. Sukanti Devi. The Supreme*

Court had upheld the Govt. Letter No. 13409 dated 17th March, 1992, where it was directed that Hindi being a non examinable subject in M.E. Schools, there is no need to allow the existing Hindi Teachers in M.E. Schools to continue further. Therefore, it has decided that Hindi Teachers who are in M. E. School will be adjusted against the 3rd Post of Teachers in M.E. Schools provided they possessed Matric C.T. qualification. The aforesaid Govt. Letter was applicable to the Hindi Teachers, who were appointed prior to revised yearstick 1980 came into force and appointed against the sanctioned post of Hindi Teachers. The so called appointment of the applicant on 30.01.1989 was against non sanctioned /unapproved/non-existent post. Hence the appointment of the applicant is ab initio illegal and void. Govt. had withdrawn the G.O. 31360 dated 29.09.1995 of the Department vide G.O. No. 26767 dated 05.09.1997 and decided to defend the cases pending before the Hon'ble High Court/OAT.

6. That, the Hon'ble Supreme Court, in case of State of Orissa and another Vrs Mamata Mohanty in C.A. No. 1272 of 2011 and batch, in judgement dated 09.02.2011 in Para-20 had held the following: सत्यमेव जयते

a. “20. It is settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not law full at its inception, for the reason that the illegality strikes at the root of the order. It would beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent there to will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin xxx”

7. *That, the matter of illegal adjustment of Ex-Hindi Teachers of erstwhile Aided U.P. (M.E.) Schools, engaged by the Management against the Level-V series of the elementary cadre was further examined by the Govt., pursuant to the direction of the Hon'ble Tribunal, Cuttack Bench, Cuttack. In order dated 23.09.2013 in O.A. No. 3800© of 2012 and found that the letter No. 10555 dated 07.07.2009 of School and Mass Education Department, addressed to Director, Elementary Education, Orissa to adjust 137 nos. of Ex-Hindi Teachers and Assistant Teachers was issued by the officials, suppressing the fact that the earlier Govt. Letter No. 31360 dated 29.01.1995, which was withdrawn by the Govt. vide letter No. 26765 dated 05.09.1998. Hence, your alleged against the vacant post of Level-V is found illegal and contrary to Elementary Cadre Rules.*
8. *Hence you are hereby called up to show cause, why your appointment by way of adjustment against the level-V post of Elementary Cadre on the strength of the Ex-Hindi Teachers of the erstwhile Aided M.E. Schools shall not be terminated.*
9. *That, your show cause reply should reach the undersigned by dated within 7 days falling which it shall be presumed that you have no show cause and action to be as deemed proper shall be taken against you."*
4. Vide Order dated 27th January, 2016, learned Administrative Tribunal has issued notice and as an interim measure passed the following order:

"xxx So far as prayer for interim relief is concerned, no action pursuant to Annexure-18 be taken without giving him an opportunity to submit his show cause and considering the same under its proper prospective."
5. At the time of hearing today, Mr. R.K. Bisoi, Counsel for the Petitioner submitted that he has no instruction in this matter.

6. However, Mr. Nilambar Jena, Standing Counsel for the School and Mass Education placed reliance on the Judgment of Hon'ble Supreme Court dated 20th April, 2022 rendered in *Civil Appeal Nos. 3036-3064 of 2022* in the matter of *State of Odisha & Others Vrs. Sulekh Chandra Pradhan etc.* [2022 LiveLaw (SC) 393 = 2022 SCC OnLine SC 476]. He also submitted that pursuant to show cause *vide* Annexure-18 the notice for termination of the Hindi Teachers is justified.
7. Perusal of show cause at Annexure-18 reveals that the present Petitioner along with Sulekh Chandra Pradhan & Others was required to submit reply explaining as to why appointment by way of adjustment against the Level-V post of Elementary Cadre on the strength of Ex-Hindi Teachers of erstwhile aided M.E. Schools would not be terminated. *Qua* Hindi Teachers *vis-à-vis* appointment by way of adjustment against Level-V post of elementary cadre, the Hon'ble Supreme Court in the aforesaid case categorically laid down that appointments made in contravention of the statutory provisions are *void ab initio* and since the applicants/teachers were appointed in the posts, which were not on grant-in-aid basis, the provisions of the Odisha Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 are not applicable. The Hon'ble Supreme Court of India in the aforesaid case has been pleased to observe as follows:

“27. *Perusal of the sub-rule (1) of Rule 5 of the said Rules would show that the Secretary of the Managing Committee or the Governing Body, as the case may be, of an Aided Educational Institution, is required to apply to the Selection*

Board on or before the thirty-first day of August every year with copy of each application to the concerned Inspector of Schools and Director of Higher Education. The Inspector of Schools and the Director of Higher Education are required to process the applications so received and transmit the same to the Selection Board by thirtieth day of September every year with certificate of genuineness of the vacancy/vacancies. Perusal of sub-rule (2) of Rule 5 of the said Rules would show that the Selection Board shall recommend a list of candidates in order of merit strictly according to the number of vacancies to the concerned Directors, who shall thereupon allot candidates to the concerned institutions strictly in order of merit as per vacancy.

28. *Perusal of sub-rule (6) of Rule 5 of the said Rules would reveal that if the Management defaults in making appointment of candidates allotted by the Director, he shall be competent to withhold the individual teacher's cost of the grant-in-aid to be paid to the institution concerned. He is also entitled to take steps to supersede the Managing Committee or the Governing Body, as the case may be. Under sub-rule (8) of Rule 5 of the said Rules, the relaxation is granted for filling up the vacancies for a period of six months or till the date of receipt of the list as referred to in sub-rule (2) of Rule 5 of the said Rules. However, the same has to be with the prior approval of the Inspector in respect of an institution other than a College and of the Director in respect of a College."*

8. In view of the above, the writ petition is disposed of in terms of the Judgment dated 20th April, 2022 rendered by the Hon'ble Apex Court as referred to *supra*. Interim order passed by the learned Odisha Administrative Tribunal stands vacated.

(M.S. RAMAN)
JUDGE