

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No. 3742 of 2013

Sailabala Mishra

.....

Petitioner

Mr. G. Behera, Advocate

Vs.

State of Odisha and others

.....

Opposite parties

Mr. B. Prusty,
Standing Counsel S&ME

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

23.02.2022

Order No.

08

This matter is taken up by hybrid mode.

2. Heard Mr. G. Behera, learned counsel for the petitioner and Mr. B. Prusty, learned Standing Counsel for School and Mass Education Department.

3. The petitioner has filed this writ petition seeking direction to the opposite parties to give her promotion from Level-V to Level-IV and subsequently give her promotion to Level-III along with all consequential service and financial benefits admissible to the post, within a stipulated time.

4. In compliance of the order dated 29.10.2021, the petitioner has filed an affidavit on 14.11.2021 claiming the benefit of promotion w.e.f. 01.02.2013 and, as such, in the said affidavit it has been categorically stated that the Selection Committee of Banki Education District was held on 29.11.2012 and vide Annexure-3 settled the procedure for promotion of Level-V and Level-IV teacher to the post of Level-IV and Level-III. It was decided therein that 60% of the vacancies shall be filled up by the candidates having C.T. qualification and 40% of the vacancy shall be filled up by the candidates having B.Ed. qualification. Thereafter, a

separate gradation list for B.Ed. qualification candidates was prepared by the authority wherein the name of the petitioner was found placed at sl.no.35 vide Annexure-2. As such, vide office order dated 30.11.2012 under Annexure-4, promotion was given to both C.T. and B.Ed. candidates according to their quota and so far as B.Ed. candidates are concerned, promotion was given up to sl.no.34 of the B.Ed. gradation list. Since the petitioner's name was found placed at sl.no.35, she claims that the benefit of promotion should have been extended to her immediately, when one Kulamani Pradhan was retired on 31.01.2013. The same having not done, the petitioner approached the authority by way of filing representation on 21.01.2013 to give her promotion, but the same was not acceded to.

5. In view of the aforesaid affidavit, opposite party no.5 also filed additional counter affidavit wherein it has been categorically stated that since the promotion has been given on the basis of the selection conducted by the committee up to sl.no.34 and the petitioner, being positioned at sl.no.35 of the gradation list, the benefit was not extended to her. As such, the claim made, that because of retirement of one Kulamani Pradhan, she is entitled to get such benefit, cannot sustain in the eye of law, in view of the fact that any vacancy arises subsequently that has also to be considered taking into account the total vacancies occurred subsequently in accordance with law. Thereby, the claim made by the petitioner to give her promotion cannot sustain in the eye of law.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that a promotion

list was prepared for promotion to 131 nos.of posts, of which 60% posts were reserved for C.T. qualified candidates and 40% was for B.Ed. qualified candidates. Therefore, total no.of posts vacant for B.Ed. qualified candidates were 52 out of 131. Further, out of 52 nos. of posts for B.Ed. qualified teachers, 12 posts are reserved for ST candidates and 8 nos. of posts were reserved for SC candidates and, as such, 32 posts were meant for general category teachers. The petitioner comes under the general category. Promotion order as per decision of the selection committee was passed by the District Inspector of Schools, Banki, vide order dated 30.11.2017, in which as per gradation list for B.Ed. qualified teachers promotion was made up to sl.no.34 and the petitioner's name found place at sl.no.35 and, as such, the gradation list was valid for one year, as per the decision of the selection committee and thereby, the petitioner could not have been adjusted, as there was no vacancy available in the general category. Even though a person was retired and vacancy was caused, the benefit cannot be automatically extended to the petitioner granting her promotion. Therefore, the claim of the petitioner to extend the benefit of promotion because of vacancy caused due to retirement of a person, cannot sustain in the eye of law. As such, relief sought by the petitioner cannot be granted.

7. In the above view of the matter, the writ petition merits no consideration and the same accordingly dismissed.