

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.3264 of 2017

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

.....

Rama Chandra Sahoo

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner

:M/s. J.K. Rath
Sr. Advocate

For Opp. Parties

:M/s. Biplab Mohanty
Standing Counsel

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 19.7.2022 and Date of Order: 17.8.2022

Biraja Prasanna Satapathy, J.

1. Heard Mr. Jayanta Kumar Rath, learned Senior counsel appearing for the petitioner and Mr. Biplab Mohanty, learned Standing Counsel appearing for the Opp. Parties.

2. The present writ petition has been filed by the petitioner challenging the order dated 10.5.2017 passed by the Government-Opp. Party No.1 under Annexure-27 and with a further prayer to extend the

benefit of the sale of pay as applicable to the post of Headmaster since December, 1991. It is submitted that the Petitioner with having qualification of trained graduate was initially appointed as Headmaster in Shri Pingaleswar Vidyapith on 10.11.1984 which was an unaided educational institution at the relevant point of time. It is submitted that even though the petitioner was duly appointed but when his services were terminated by the newly constituted Managing committee vide order dated 7.11.1986, the petitioner challenging the same approached the learned State Educational Tribunal. It is submitted that when learned Tribunal held the application as not maintainable as the institution was an unaided one, the petitioner challenging the said order of termination preferred an appeal before the Director, Secondary Education-Opp. Party No.2. It is submitted that when the said appeal was rejected by the Opp. Party No.2, the petitioner challenging the said order of termination as well as the order of Opp. Party No.2 approached this Court in OJC No.3490 of 1990. This Court vide its order dated 27.2.1991 under Annexure-1 held that the petitioner is to function as Headmaster of the School

and directed accordingly. It is submitted that challenging the said order passed by this Court on 27.2.1991, the Managing Committee of the School when filed an application for modification of the said order, the same was rejected by this Court vide its order dated 25.7.1991 under Annexure-2. It is further submitted that in spite of such order when the joining report of the petitioner was not accepted by the Managing Committee, the petitioner filed Original Criminal Misc. Case No.62 of 1991 and this Court in its order dated 17.1.1992 awarded imprisonment of seven days to the contemnor-Secretary of the Managing Committee under Annexure-3. It is submitted that the petitioner finally vide order dated 11.2.1992 under Annexure-4 was allowed to function as Headmaster of the School. But it is submitted that by the time the petitioner was allowed to function as Headmaster, the school was already notified to be an aided educational institution w.e.f 5.1.1990. Therefore, it is submitted that the petitioner became eligible to get the Headmaster's scale of pay w.e.f December, 1991 and moved the Opp. Party No.3 in that regard. As the said benefit was not extended, the petitioner approached

this Court in OJC No.6171 of 1992. This Court vide order dated 11.9.1992 disposed of the said Writ Petition with the following direction:

The petitioner claimed to be entitled to receive the Headmaster's scale of pay since December, 1991 as on that date he has completed seven years of teaching experience as a trained graduate teacher. The petitioner has moved the Inspector of Schools under Annexure-3 dated 20.2.1992, but has not received any communication from the Inspector. The Director of Secondary Education is the final authority in this regard, but the Inspector of Schools is supposed to hold an enquiry and make necessary recommendation. In the aforesaid premises, we dispose of this application by calling upon the Inspector of Schools, Cuttack-1 Circle (Opposite party No.2) to hold an enquiry into the service particulars of the petitioner and if he is satisfied that the petitioner has in fact completed seven years of teaching experience as a trained graduate teacher, then he may make the necessary recommendation to the Director within a period of two months from the date of receipt of our order. The Director may also pass final orders within a period of three months from the date of receipt of the recommendation from the Inspector.

*This application is disposed of accordingly.
Requisites for issuance of writ be filed by Monday."*

3. It is submitted that in the meantime, challenging the order passed by this Court on 27.2.1991 in OJC No.3490 of 1990 under Annexure-1, the Managing Committee of the School approached the Hon'ble Supreme Court in SLP(Civil) No.16215 of 1991 and the said SLP was dismissed by the Hon'ble Apex Court vide order dated 14.10.1992 under Annexure-5. It is accordingly submitted that in view of such dismissal of the matter by the Hon'ble Apex Court, the order passed by this Court on 25.7.1991 under

Annexure-1 attained finality. Mr. Rath, learned Senior counsel for the petitioner submitted that subsequently vide order dated 14.5.1993 under Annexure-6, the petitioner was allowed to draw the Headmaster's scale of pay w.e.f 10.11.1991. It is submitted that the said order under Annexure-6 was passed in terms of the order passed by this Court on 11.9.1992 under Annexure-4. Mr. Rath, learned Counsel for the petitioner submitted that while the petitioner was in receipt of the Headmaster's scale of pay in terms of order issued under Annexure-6, Opp. Party No.2 vide his letter dated 24.7.1993 under Annexure-7 directed Opp. Party No.2 not to release the Headmaster scale of pay in respect of those who are covered as per the circular issued by the Government. It is submitted that since in the letter under Annexure-7, the name of the petitioner was reflected at Sl. No.12, the petitioner challenged the same before this Court in OJC No.7188 of 1993. It is submitted that this Court vide order dated 17.11.1994 under Annexure-8 quashed the direction so far as it relates to the petitioner and directed that the petitioner shall be paid Headmaster's scale of pay. Order dated 17.11.1994 passed in OJC

No.7188 of 1993 under Annexure-8 is quoted herein

below :

The petitioner was appointed as Headmaster of the school on 10.11.84 while the school was an unaided school. The school became eligible to receive grant-in-aid with effect from 1.3.87 and as such became an aided educational institution within the meaning of Section 3(b) of the Orissa Education Act, with effect from that date. When the question of approval of the staff was considered by the Inspector the Inspector approved the petitioner's appointment as Headmaster-in-charge by order dated 19.2.1992. The petitioner had required seven years teaching experience which is necessary for being appointed as Headmaster in 1991. Being aggrieved by the order of approval of the Inspector, the petitioner had approached this Court in O.J.C. NO.6171 of 1992 claiming that he is entitled to get Headmaster's scale of pay. This Court while disposing of the aforesaid application by order dated 11.9.92 called upon the Inspector to hold an enquiry into the matter and decide the question of petitioner's entitlement to the Headmaster's scale of pay. Pursuant to the aforesaid direction of this Court, the Inspector-Opposite party NO.3 enquired into the matter and by order dated 17.5.93, the Director approved the petitioner's entitlement as Headmaster and directed that he should be allowed to draw Headmaster's scale of pay in accordance with the aforesaid order of the Director, annexed at Annexure-6, the Inspector of Schools passed the order on 28.5.93, annexed as Annexure-7, granting the Headmaster's scale of pay to the petitioner. The petitioner's pay was fixed by order dated 5.6.93 annexed as Annexure-8. While he was receiving pay for the month of June and July, 1993, the order of abeyance was passed under Annexure-10. The petitioner therefore has approached this Court. Mr. Rath for the petitioner contends that pursuant to the direction of this Court, the Inspector having enquired into the matter and having come to the conclusion that the petitioner is entitled to be approved as Headmaster of an aided education institution and is entitled to receive the scale of pay which is admissible to the Headmaster and the Director having passed the order allowing the petitioner to draw the Headmaster's scale of pay and that scale having been given to the petitioner, there was no reason to keep that order in abeyance.

Pursuant to the notice issued, a counter affidavit has been filed wherein it has been stated that in view of the decision of the Full Bench of this court, the Government had issued the order for keeping the similar orders in abeyance and that in why the earlier order giving Headmaster's scale of pay to the petitioner was kept in abeyance. That the petitioner had the required qualification for being appointed as Headmaster is not disputed. It is further not disputed that he has been

appointed as Headmaster by the Managing Committee when the school was an unaided educational institution. But on the date the petitioner's case for approval was considered, the petitioner had already acquired the minimum seven years' teaching experience as a Trained Graduate Teacher. Therefore, there was no embargo for approving his appointment as Headmaster. Be that as it may, the petitioner having approached this Court in OJC NO.6171 of 1992 and this Court having called upon the Inspector to hold an enquiry into the matter and pursuant to the aforesaid direction, the Inspector having enquired into the matter and on the basis of his recommendation, the Director having passed the final order granting the Headmaster's scale of pay to the petitioner, in our considered opinion the petitioner was entitled to be approved as the Headmaster of an aided educational institution and as such entitled to the Headmaster's scale of pay which was rightly granted to him by the Director as per Annexure-6.

We accordingly quash the impugned order under Annexure-10 and direct that the petitioner shall be paid Headmaster's scale of pay.

The writ application is disposed of."

4. It is submitted that the said order passed by this Court on 17.11.1994 was never challenged by the State-Opp. Parties and accordingly it attained finality in the eye of law and binding on all concerned. Mr. Rath, learned Senior Counsel further submitted that while the matter stood thus, the petitioner's school was taken over by the Government w.e.f 7.6.1994 vide notification dated 16.12.1994. It is submitted that after such taken over of the School, when the Headmaster's scale was not released in favour of the petitioner, the petitioner filed Original Crl. Misc. Case No.203 of 1995. It is submitted that in the said contempt proceeding, affidavit was filed indicating that

the petitioner shall be paid the Headmaster's scale of pay by 30.9.1995. The petitioner was accordingly released with his headmaster scale of pay. It is further submitted that after the school has taken over by the Government, 196 posts of Headmaster was created in the taken over school for grant of headmaster scale of pay and the petitioner's school being one amongst them, the petitioner was extended with the Headmaster scale of pay against one such post. It is also submitted that subsequently, the petitioner's scale of pay was revised in terms of ORSP Rules, 1998 and ORSP Rules, 2008. It is also submitted that in the meantime, the gradation list of senior SES Headmaster of Government (new) High School of the State was circulated by Opp. Party No.2 under Annexure-9 and in the said list, petitioner's name was indicated at Sl. No.1668 showing the petitioner to have been appointed/joined in the Senior SES Headmaster cadre w.e.f 10.11.1991. Mr. Rath, learned Senior counsel submitted that pursuant to the order passed by this Court under Annexure-8 when the petitioner was in receipt of the Headmaster's scale of pay w.e.f 10.11.1991 and was also allowed the revised scale of pay as provided under different ORSP

Rules, Hon'ble Apex Court in the case of **Pabitra Mohan Das & Others Vs. State of Orissa & Others** passed an order with regard to claim of Headmaster's scale of pay. It is submitted that although the said decision supports the claim of the present petitioner, but basing on the said order, the petitioner was reverted from the post of Headmaster vide order dated 15.7.2002 in terms of order dated 9.7.2002 passed by Opp. Party No.2 under Annexure-12 and the petitioner was posted as a Trained Graduate Teacher with the corresponding scale of pay. It is submitted that challenging such order of reversion dated 15.7.2002 under Annexure-12, the petitioner approached the learned Tribunal in OA No.1787 (C) of 2002. It is submitted that learned Tribunal vide a common order passed on 29.8.2002 when held the original application as not maintainable, the petitioner challenging the said order approached this Court in W.P.(C) No.1511 of 2002. It is submitted that while the said writ petition was pending before this Court, the State Govt. issued a Resolution on 22.1.2003 resolving to rehabilitate all the 854 reverted Headmasters including the petitioner in ex-cadre posts. It is submitted that the said order of

the Government was challenged by some aggrieved Trained Graduate Teachers. This Court observed that if any one is aggrieved by such order, they may approach the learned Tribunal. It is submitted that pursuant to the decision taken on 22.1.2003 the State Government vide order dtd. 31.5.2003 under Annexure-13 revoked the order of reversion and reinstated all the 854 reverted Headmasters with all benefit. But pursuant to the observation made by this Court some of the reverted Headmasters filed Original Applications before the learned Tribunal challenging the resolution dated 22.1.2003 and the order dated 31.5.2003 under Annexure-13. It is submitted that in one such case filed in O.A. No.232 of 2007, the petitioner was arrayed as Opp. Party No.7. It is submitted that learned Tribunal vide order dated 25.1.2007 disposed of the said O.A by quashing the resolution of the State Government dated 22.1.2003 and the order dated 31.5.2003 under Annexure-13. It is submitted that the said order of the learned Tribunal was challenged by the petitioner before this Court in W.P.(C) No.2441 of 2007. It is submitted that in the said Writ Petition, the petitioner took a specific stand

that his case is separate to the case of others and while admitting the same learned Tribunal has arbitrarily allowed the O.A. But it is submitted that this Court without proper appreciation of the petitioner's stand, dismissed all the said writ petitions vide a common judgment passed on 15.5.2012. Mr. Rath, learned Senior Counsel submitted that challenging such order of this Court passed on 15.5.2012, the petitioner approached the Hon'ble Apex Court in SLP(Civil) No.30117 of 2012. The said SLP was subsequently registered as Civil Appeal No.132 of 2017. It is submitted that Hon'ble Apex Court in its order dated 5.1.2017, directed the Opp. Party No.1 to examine the case of the petitioner within three months and with observation that the impugned order will not debar the authority from taking a decision afresh independently. Mr. Rath, learned Senior Counsel for the petitioner submitted that the order passed by the Hon'ble Apex Court was duly submitted before Opp. Party No.1 on 30.1.2017 under Annexure-25. It is submitted that Opp. Party No.1 without giving reasonable opportunity of hearing to the petitioner and without considering the documents in its proper

perspective, passed an order on 26.4.2017 under Annexur-26 by holding that the petitioner is not entitled to get the headmaster scale of pay. Mr. Rath, learned counsel for the petitioner in support of his stand taken in the writ petition submitted that the decision of the Hon'ble Apex Court in Pabitra Mohan Dash's case though supports the claim of the petitioner but Opp. Party No.1 by misinterpreting the said order passed the impugned order dated 10.5.2017 under Annexure-27. Mr. Rath accordingly prayed for interference of this Court in the said order.

5. Mr. Biplab Mohanty, learned Standing Counsel on the other hand made his submission basing on the stand taken in the counter affidavit. It is submitted that the case of the petitioner squarely falls as per the decision of the Hon'ble Apex Court rendered in the case of Pabitra Mohan Dash and since the petitioner does not fulfill the required seven years of teaching experience as a Trained Graduate Teacher after obtaining training qualification, he is not eligible and entitled to get the headmaster scale of pay and opp. Party No.1 has rightly rejected his claim. Mr. Mohanty learned Standing Counsel also brought to the notice of

this Court Regulation 17(2)(1) of the Board of Secondary Education and Rule 8(2) (b) of the Orissa Education (Recruitment and conditions of service of Teachers etc.) Rules, 1974. Mr. Mohanty submitted that since the petitioner does not possess the required experience in terms of the aforesaid Regulation of the Board and Rule 8(2)(b) of 1974 Rules, the claim of the petitioner has been rightly rejected and no interference is called for.

6. A rejoinder affidavit has been filed by the petitioner and Mr. Rath, learned Senior Counsel for the petitioner basing on the stand taken in the rejoinder affidavit submitted that since the petitioner's claim to get the Headmaster's scale of pay has attained finality in terms of the order passed by this Court on 17.11.1994 in OJC No.7188 of 1993 under Annexure-8, any subsequent action taken by the Government is not maintainable. It is submitted that the order of this Court passed under Annexure-8 since was never challenged by the State-Opp., parties, the said order is binding on all concerned. It is submitted that in view to the said order passed by this Court under Annexure-8, the extension of the headmaster's scale of pay in favour of the petitioner w.e.f 10.11.1991 vide Annexure-6 was

affirmed by this Court. Therefore, it is submitted that in view of such order passed by this Court, the petitioner's eligibility to get the Headmaster's scale of pay was not amenable to any further challenge. It is submitted that since the petitioner by the time he was initially appointed on 10.11.1984 was having the Trained Graduate qualification, the petitioner by the time he was allowed the headmaster's scale of pay w.e.f 10.11.1991, he had the requisites 7 years of teaching experience as a Trained Graduate Teacher. Mr. Rath, learned Senior Counsel further submitted that the ratio decided by the Hon'ble Apex Court in the case of Pabitra Mohan Dash also supports the claim of the petitioner as the petitioner had the required 7 years of teaching experience as a Trained Graduate Teacher, when he was allowed the Headmaster Scale of Pay w.e.f 10.11.1991. Mr. Rath, learned Senior Counsel accordingly prayed that Opp. party No.1 without following the order passed by this Court under Annexure-8 has passed the impugned order by holding the petitioner as not entitled to get the Headmaster's scale of pay vide the impugned order under Annexure-27.

7. Heard learned counsel for the parties at length. Perused the materials available on record.

8. This Court after going through the same finds that by the time the petitioner was initially appointed as a Headmaster on 10.11.1984 in an unaided school, the petitioner was having the required qualification of Trained Graduate. Therefore, the petitioner was rightly allowed the headmaster scale of pay w.e.f 10.11.1991 i.e. on completion of seven years of teaching experience vide order under Annexure-6. The said sanction of Headmaster scale of pay in favour of the petitioner w.e.f 10.11.1991 was affirmed by this Court in its order dated 17.11.1994 under Annexure-8. In the said order, this Court clearly held that petitioner had acquired 7 years of teaching experience which is necessary for being appointed as Headmaster in 1991. Since the petitioner had got the required 7years of teaching experience by the time he was allowed the Headmaster's scale of pay w.e.f 10.11.1991, ratio decided in the case of Pabitra Mohan Dash by the Hon'ble Apex Court supports the claim of the petitioner. But, Opp. party No.1 in the impugned order under Annexure-27 has rejected the petitioner's claim to get the benefit of the Headmaster's

scale of pay w.e.f 10.11.1991 by misinterpreting the decision rendered in the case of Pabitra Mohan Dash.

9. Therefore, this Court deems it fit and proper to quash the impugned order dated 10.5.2017 passed by Opp. party No.1 under Annexure-27. While quashing the same, this Court directs the opp. parties to sanction and disburse all service and financial benefit as due and admissible in favour of the petitioner w.e.f. 10.11.1991 till his superannuation. This Court further directs the opp. parties to revise the pension and pensionary benefits and release the said benefit also in favour of the petitioner. This Court directs the opp. parties to complete the entire exercise within a period of four months from the date of receipt of the said order.

10. With the aforesaid observation and direction, the Writ Petition is disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 17th of August, 2022/sangita