

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OA) Nos.3178, 3108, 3109, 3110, 3111, 3112, 3113, 3114, 3115, 3116, 3117, 3118, 3119, 3120, 3121, 3122, 3123, 3124, 3125, 3126, 3127, 3128, 3129, 3130, 3131, 3132, 3133, 3134, 3135, 3136, 3137, 3138, 3139, 3140, 3141, 3142, 3143, 3144, 3145, 3146, 3147, 3148, 3149, 3150, 3151, 3152, 313, 3154, 3155, 3156, 3157, 3158, 3159, 3160, 3161, 3162, 3163, 3164, 3165, 3166, 3167, 3168, 3169, 3170, 3171, 3172, 3173, 3174, 3175, 3176, 3177, 3178, 3179, 3180, 3181, 3182, 3183, 3194, 3195, 3196, 3197, 3198, 3199, 3201, 3202, 3203, 3204, 3205, 3206, 3207, 3208, 3209, 3210, 3211, 3212, 3213, 3214, 3215, 3216, 3217, 3218, 3219, 3220, 3221, 3222, 3223, 3290, 3295, 3296, 3297 & 3347 of 2013

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

Santosh Kumar Sahu

Petitioner

-versus-

State of Odisha & Ors.

Opposite Parties

For Petitioner : M/s. Sameer Kumar Das and
Mr. S.K. Mishra

For Opp. Parties : Mr. R.N. Mishra
Addl. Govt. Advocate
Mr. M.K. Balabantaray
Standing counsel

PRESENT:

THE HON'BLE JUSTICE BIRAJA PRASANNA SATAPATHY

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Date of Hearing: 06.07.2022 and Date of Order: 28.07.2022

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Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Since the challenge in all the writ Petitions are identical, all the matters are heard analogously and disposed of vide the present common order.
3. Heard Mr. S.K. Das, learned counsel for the Petitioner and Mr. R.N. Mishra, learned AGA along with Mr. M.K. Balabantaray, learned Standing Counsel appearing for the State-Opp. Parties.
4. All these writ Petitions have been filed challenging the notification issued by the Govt. of Odisha ST & SC Development Department on 29.10.2013 under Annexure-3. It is submitted that vide the said notification Govt. in the said department permitted all Collectors for engagement of 2226 nos. of TGT Sikshya Sahayakas in different districts of the State.
5. Mr. Das, learned counsel for the Petitioner submitted that since all the Petitioners were initially engaged as against Trained Matric post, as per the provision contained under Rule 5 of the Odisha Subordinate Tribal Welfare Education (Recruitment and Condition of Service) Rules, 1993, 50% of the total vacancies in the post of Trained Graduate (both Arts & Science) Sanskrit & Hindi teachers posts arising in a year shall be filled up by direct recruitment and 50% of the vacancies in the posts of Trained Graduate (Arts & Science) Sanskrit & Hindi teachers in a year shall be filled up by promotion by way of selection from the eligible categories of lower posts who have acquired B.Sc., B. Ed., and B.A., B. Ed. Qualification, i.e.

(i) Matric C.T. Teachers/Mistress

(ii) *Intermediate in Arts/Intermediate in Science/+2 Arts/Science/C.T. Teachers/ Mistresses.*

(iii) *Sanskrit Teachers/Mistress*

(iv) *Hindi Teachers/Mistresses*

(v) *Tailoring Teachers/Mistresses*

(vi) *Agriculture Teachers*

(vii) *Sevaks/Savikas*

6. It is submitted that since the Petitioners were initially appointed as matric CT teachers and they also possess B. Ed qualification, they are eligible for promotion as against Trained Graduate post in both Science & Arts stream as per the aforesaid Rule 5 of the 1993 rules.

7. Since the notification issued under Anneure-3 on 29.10.2013 permitted all the Collectors to fill up total 2226 nos. of posts of TGT Sikshya Sahayakas by direct recruitment, the Petitioners apprehending that they will be ignored from the purview of promotion to the said TGT post, approached the learned Tribunal in different original applications.

8. Learned Tribunal vide order dtd.12.11.2013 while issuing notice of the matter, restrained the Opp. Parties from filling up 50% of the said 2226 nos. of Trained Graduate posts.

9. Mr. Das, learned counsel for the Petitioner submitted that since the Petitioners were engaged as against matric CT post and they possess B. Ed qualification, some of the Petitioners prior to their appointment and some of Petitioners during continuance as against Matric CT post, as provided under Rule 5 of the 1993 Rules, they are eligible for their promotion to the Trained Graduate post. It is accordingly submitted that without considering the claim for promotion to the Trained Graduate post, the action of the Opp. Parties in filling up all the 2226 nos. of posts of the Trained Graduate Teacher by

recruiting Sikshya Sahayakas is illegal and liable to be interfered with by this Court.

10. Mr. Mishra, learned AGA along with Mr. Balabantaray, learned SC made their submissions relying on the stand taken in the counter affidavit filed by O.P. No. 1 and the additional counter affidavit filed by the said O.P. No. 1 pursuant to the order passed by this Court 11.05.2022. It is submitted that even though vide the impugned notification dtd.29.10.2013, all the Collectors were advised to fill up 2226 nos. of TGT Sikshya Sahayakas, but no such TGT Sikshya Sahayakas were neither selected nor appointed in any of the districts. In Para 4 of the additional counter affidavit, it was pleaded as under:-

“In the instant case, the Sikhsya Sahayakas who would be engaged will be regularized as MCT Assistant teachers in SSD Department in future subject to approval of Finance Department and thereafter their services will be regulated under the relevant provisions of Odisha Subordinate Tribal Welfare Education (OSTWE) Rules, 1993 of SSD Department. However, if the services of the Sikhsya Sahayaks are regularized, these new regular posts will add up to the existing posts & in no case will encroach the promotional avenue of Sevaks/Sevikas/MCT teacher. As such they will be placed junior to the petitioner in the guture gradation list after regularization and it will not affect the seniority of the petitioner. It is worthwhile to mention here that the GA Department Resolution issued on 17.09.2013 is meant for regularization of contractual Group ‘C’ & ‘D’ posts and not for Sikhsya Sahayakas.”

11. Accordingly, Mr. Mishra as well as Mr. Balabantaray submitted that since no Sikshya Sahayaka has been engaged as against the TGT posts and all of them have been appointed as against Trained Matric posts, the apprehension of the Petitioners in the writ Petitions is premature and be held as such by this Court.

12. Mr. Das on the other hand submitted that since in the notification under Annexure-3, the direction was to fill up all the 2226 nos. of posts by recruiting Trained Graduate Sikshya Sahayakas, the Petitioners apprehending denial of promotion to the TGT posts have approached this Court

13. In view of the stand taken by the Opp. Parties in Para 4 of the additional counter affidavit that no Sikshya Sahayaka has been engaged as against the Trained Graduate posts in any district of the State and all of them have been engaged as against Trained Matric posts, this Court is of the view that the apprehension of the Petitioners regarding encroachment over their right of promotion is not well founded.

14. Since as per the admission made by the Opp. Parties all these Sikshya Sahayakas have been engaged as against Trained Matric posts, those Sikshya Sahayakas can only be regularized after completion of the statutory period as against Trained Matric posts. Since all the Petitioners are already continuing as against Trained Matric posts, those Sikshya Sahayakas, who are engaged as against Trained Matric Posts can only be regularized as against Trained Matric posts and be placed below the Petitioners, if at all any step is taken to give promotion to such eligible Trained Matric Teacher as against Trained Graduate posts.

15. Therefore, this Court held that the apprehension of the Petitioners that their promotion prospect will be hampered in view of the notification issued under Annexure-3 is not justified.

16. However, this Court observes that as and when the State-Opp. Parties will fill up any Trained Graduate Post, the seniority in the rank of Trained Matric posts will be maintained. The Petitioners since are continuing as against Trained Matric Posts, the Sikshya Sahayakas appointed as against Trained Matric Posts cannot be placed above the Petitioners at any point of time.

Hence, in view of the matter, the apprehension of the Petitioners that the newly recruited Sikshya Sahayakas will encroach on their future promotional prospect is not justified and this Court is accordingly not inclined to entertain such prayer.

17. However, it is observed that, if any point of time, the State-Opp. Parties decides to fill up those Trained Graduate posts, the seniority of the teachers continuing as against Trained Matric posts will be followed.

18. With the aforesaid observation and directions all the writ Petitions are disposed of.

19. Photo copy of the said order be placed in the above connected cases.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 28th of July, 2022/Sneha

