

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.C (OAC) NO.468 OF 2017

(An application under Section 21 of the Administrative Tribunals Act)

Bairagi Charan Sahoo ... Petitioner

-versus-

State of Odisha & others ... Opposite Parties

Advocates appeared in the case through hybrid mode:

For Petitioner : Shri Bansidhar Satpathy,
Advocate

-versus-

For Opposite Parties : Shri R.N.Acharya,
Standing Counsel,
School & Mass Education
Department

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

13.9.2022.

Sashikanta Mishra,J. The Petitioner was appointed as Science Attendant (Peon) in Kanika High School, Ayatana in the district of Kendrapara vide

order dated 2nd January, 1991 of the Secretary of the Managing Committee of the School. The School was an Aided Institution within the meaning of Section 3(b) of the Odisha Education Act, 1969. The School was taken over by the Government w.e.f. 7th June, 1994. Since the Petitioner's appointment was not approved, he approached this Court in O.J.C No.6859/1995. Pursuant to direction of this Court, his appointment was approved vide order dated 8th February, 1996 of the erstwhile Inspector of Schools, Kendrapara w.e.f. 4th January, 1991. Subsequently, his salary was stopped from the month of March, 1996 for which he approached the erstwhile Odisha Administrative Tribunal in O.A. No.3953(C)/1997, which was disposed of with a direction to the authorities to pay of his salary. Subsequently, the Inspector of Schools by order dated 27th February, 2003 directed the Headmaster of the School to discontinue the services of the Petitioner for which he approached the Tribunal again in O.A. No.1118(C)/2003, inter alia, contending that his case is squarely covered by the ratio of the case of *State of Odisha and others v. Rajendra Kumar Das and another*; reported in (2003) 10 SCC 411. The Tribunal disposed of the said O.A. directing the Commissioner-cum-Secretary, School and Mass Education

Department (Opposite Party No.1) to consider the original application along with its annexures as representation and to pass appropriate orders. The Opposite Party No.1 however, by order dated 13th December, 2010 rejected the claim of the Petitioner. The said order (Annexure-1) is impugned herein. The Petitioner originally approached the Tribunal in O.A. No.468(C)/2017 seeking the following relief:-

“In view of the facts stated in the paragraph-6 above, the humble applicant fervently prays this Hon’ble Tribunal to be graciously pleased to issue notice to the Respondents, call for relevant records and after hearing the counsel of the parties, issue a direction directing to the Respondents particularly to the Commissioner-cum-Secretary, School and Mass Education Department, Odisha, the Respondent No.1 to approve the adjustment of the applicant in the post of Peon and release his arrear and current salary in terms of the decision of the Hon’ble Supreme Court in the case of State of Orissa and others vrs. Rajendra Kumar Das and another reported in 2004(1) OLR (SC) 517 within a stipulated period and/or pass such other order or direction as deems fit and proper in the interest of justice.”

The above O.A. has since been transferred to this Court and registered as the instant Writ Petition.

3. A counter affidavit has been filed by the District Education Officer, Kendrapara (Opposite Party No.3). It is admitted that the

Petitioner's appointment was approved as Science Attendant w.e.f. 4th January, 1991 in the scale of pay of Rs.750-940/-. The impugned order is, however, sought to be justified by stating that three peons senior to the Petitioner were getting their salary as per Government Rules and he being the junior most in the non-sanctioned post, his case was not considered. It is further stated that his post was not created in the new staffing pattern. It is also stated in the counter that one Bansidhar Bark was previously working in the School as a Night Watchman-cum-Sweeper from 2nd January, 1992 to 2nd August, 1978 duly appointed by the Managing Committee, but was removed from service because the School faced acute financial stringency. Subsequently, in obedience to order dated 19th July, 1993 of this Court in O.J.C. No.4892/1992, Sri Barik was reappointed. Since the post of 4th Peon was not created in Government Resolution dated 12th April, 1994, there is no scope to accommodate the Petitioner in the 4th Peon post and moreover he was engaged by the erstwhile management against non-sectioned posts without any approval and beyond the yardstick.

The Petitioner has filed a rejoinder to the said counter reiterating the averments of the Writ Petition and by stating that

he was never appointed as 4th Peon rather he was appointed as a Science Attendant and such appointment was approved by order dated 8th February, 1996 w.e.f. 4th January, 1991. Therefore, the Petitioner being appointed prior to appointment of Bansidhar Barik, he should not be treated as the junior most Peon.

4. Heard Shri B. Satpathy, learned counsel for the Petitioner, and Shri R.N.Acharya, learned Standing Counsel appearing for the School and Mass Education Department.

5. It is contended by Shri Satpathy that the Petitioner having been duly appointed on 2nd January, 1991 as Science Attendant as per the 1981 yardstick and his appointment being duly approved by the then Inspector of Schools, Kendrapara, he cannot be treated as the so called 4th Peon and denied the benefit of approval of his appointment and for release of his arrear and current salary in terms of the decision of the Supreme Court in the case of *Rajendra Kumar Das* (supra). It is further argued that the appointment of Bansidhar Barik was a fresh appointment and made as per Resolution dated 7th October, 1993. As such, said Bansidhar Barik cannot be treated as senior to the Petitioner. Since the services of Bansidhar Barik have been approved ignoring the case of the

present Petitioner, the same amounts to gross discrimination and illegality.

6. Per contra, Shri R.N. Acharya argues that the post of 4th peon is not available in the standard yardstick and, therefore, the Petitioner's appointment cannot be validated. Moreover, he was appointed by the private management against a non-sanctioned post. As per yardstick, three posts of Peon have been sanctioned and they are getting salary. Therefore, there is no infirmity or illegality in the order passed by the Opposite Party No.1.

7. The facts of the case are not disputed. The Petitioner was admittedly appointed on 2nd January, 1991 and his services were approved w.e.f. 4th January, 1991 after the School was taken over by the Management. According to the Petitioner, as per the 1981 yardstick, apart from three peons a post of Daftary is also admissible which being a promotional post, is to be filled up from amongst the three peons having regard to their inter-se seniority. The 1981 yardstick also permits engagement of a Science Attendant, the post in which the Petitioner was appointed and his services were approved. Learned counsel for the Petitioner has laid

much emphasis on the ratio decided in the case of *Rajendra Kumar Das* (supra); wherein it was held as follows:-

“11. It is to be noted that the post of “daftary” carries higher scale of pay and is a promotional post for Class-IV employees. That being the position, the High Court was not justified in directing approval of the writ petitioners’ services as “fourth peon.” But one significant aspect cannot be lost sight of. If the school was entitled to have a “daftary”, certainly the appointment was to be made by promoting one of the three persons i.e. office peon, office attendant and night watcher-cum-sweeper, there being no other Class-IV post in the institution. It is for the Managing Committee of the institution to decide who is to be promoted and thereafter seek approval of the authorities concerned. That way the claims of the writ petitioners could have been considered by the authorities, on being appropriately moved by the management. It is undisputed that the writ petitioners were appointed by the Managing Committee, may be, under a misreading of the relevant Government orders.

12. We, therefore, while allowing these appeals direct that the management of the institution concerned shall move the authorities concerned for approval to the promotional appointment of a Class-IV employees, as “daftary”. Simultaneously, it can also recommend for appointment to Class-IV post, in case approval is accorded to the recommendation for appointment of “daftary” on promotion. The decision on both motions shall be taken within three months from the date of submission of the recommendation in accordance with law, keeping in view the operative yardsticks in force at the time the appointments were made. Even if there has been refusal earlier, the matter shall be reconsidered in the light of what has been stated above.”

There is no dispute that for applicability of the aforementioned yardstick of 1981, the roll strength of the School must be 100. There is no specific averment in this regard by the Petitioner either in the Writ Petition or in the rejoinder. The law as it stands after the case of *Rajendra Kumar Das* (supra) is that the senior most among the three Class-IV employees can be promoted as Daftary and the consequential vacancy can be filled by adjusting the so called 4th Peon. This depends on the roll strength of the School. If the roll strength meets the criteria laid down in the 1981 yardstick obviously, the claim of the Petitioner cannot be denied. But as already stated, no information is forthcoming in this regard either from the Petitioner or from the State authorities in their counter. As regards the further argument that the Petitioner has to be treated as senior to the said Bansidhar Barik, who was reappointed in the year 1993, the same is a matter that cannot be adjudicated in the present Writ Petition as he is not a party. It is for the management to take a call in this regard.

8. Be that as it may, this Court reiterates that if the School is found to have met the criteria relating to roll strength as per the 1981 yardstick, the ratio in the case of *Rajendra Kumar Das* (supra) would apply in full force. Consequently, one of the three

Class-III employees could be given promotion as Daftary and the vacancy so created, can be adjusted by the so called 4th Peon and his service can be duly approved. A perusal of the impugned order reveals that Opposite Party No.1 has simply held that the post of 4th Peon is not available in the standard yardstick without rendering a specific finding as to if the 1981 yardstick was applicable or not. Moreover, no effort seems to have been made by Opposite Party No.1 to examine the applicability of the ratio decided in the case of *Rajendra Kumar Das* (supra) to the facts of the case.

9. For the foregoing reasons, therefore, the impugned order cannot be sustained in the eye of law and is therefore, quashed. The matter is remitted to the Opposite Party No.1 to consider the representation of the Petitioner as directed by the Tribunal in O.A. No.1118(C)/2003 afresh after granting due opportunity of hearing to the Petitioner and by rendering a specific finding supported by reasons as regards applicability of the decision of the Supreme Court in the case of *Rajendra Kumar Das* (supra). The above exercise shall be completed within a period of two months from the date of communication of this order or on production of the certified copy thereof by the Petitioner.

10. If the Opposite Party No.1 finds the Petitioner's case to be covered by the ratio of *Rajendra Kumar Das* (supra), appropriate orders shall be passed conferring all admissible service and financial benefits on him. The entire exercise should be completed within a period of three months.

11. The Writ Petition is disposed of accordingly.

Ashok Kumar Behera



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Sashikanta Mishra,
Judge



