

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No. 2512 of 2013

Daitary Mallik

.....

Petitioner

Mr. S.B. Mohanty, Adv.

Vs.

State of Odisha and others

.....

Opposite Parties

*Mr. R.C. Pattnaik, Standing Counsel
School and Mass Education Deptt.*

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

11.08.2022

Order No.

01.

This matter is taken up through hybrid mode.

2. Heard Mr. S.B. Mohanty, learned counsel for the petitioner and Mr. R.C. Pattnaik, learned Standing Counsel for School and Mass Education Department.

3. The petitioner has filed this writ petition seeking to quash the order dated 21.12.2012 passed by the D.I. of Schools, Soro under Annexure-11, by which the claim of the petitioner to allow him to draw the scale of pay of Rs.5000-8000/- at par with similarly situated employees, those who have extended with such benefits in terms of the direction given by the tribunal has been denied; and to issue direction to the opposite parties to put him under Level-II post, i.e., under the 1997 Elementary Rules and the scale of pay of Rs.5000-8000/- be fixed against post, in view of the order dated 28.03.2008 passed by the tribunal in O.A. No. 3481 (C) of 2002.

4. Mr. S.B. Mohanty, learned counsel for the petitioner contended that the petitioner was retired as a Headmaster belonging to Level-III in the elementary cadre. It is contended that the D.I. of School, Soro, Balasore by order dated 10.08.2000

(Annexure-2) gave promotion to the petitioner along with seven others and out of the eight persons, seven have approached the tribunal by filing O.A.Nos.3476, 3480, 3481 and 3482 of 2002 and all these matters were heard together and disposed of in a common order on 28.03.2008, directing the Director, Elementary Education, to consider the proposal submitted by the D.I. of Schools, Soro to fix up the pay of the applicants in the scale of Rs.5000-8000/- in level-III per month within a period of three months. In compliance of the said order, the benefit has been extended to seven persons vide order dated 30.11.2010, excluding the petitioner, who had not approached the tribunal. Subsequently, the petitioner approached the tribunal by filing O.A. No. 393 of 2011, which was disposed of vide order dated 23.02.2011 with a direction to the authority that since similar benefit has already extended to the similarly situated persons, the same should be extended to the petitioner. In compliance of the said order, the grievance of the petitioner has been considered and rejected by the authority on the ground of point No.(ii) and (iii) of the Govt. Letter No.11527/SME dated 20.04.1995. Therefore, the petitioner has approached this Court by filing the present writ petition

5. Mr. R.C. Pattnaik, learned Standing Counsel for School and Mass Education Department contended that in view of the resolution dated 20.04.1995 issued by the School and Mass Education Department, the petitioner is not entitled to get such benefit, which has been annexed as Annexure-A/3 to the counter affidavit.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that admittedly eight persons

were appointed as headmasters pursuant to letter dated 10.08.2000 under Annexure-2 and out of them seven were approached the tribunal and pursuant to the order passed by the tribunal the benefit of scale of pay of Rs.5000-8000/- has already been extended to the said persons. As the petitioner could not approach the tribunal along with other seven persons, he had filed separate original application and the tribunal disposed of the said original application directing the authority to extend the benefit in terms of the order dated 30.11.2010, by which the order dated 28.03.2008 has been implemented in connected original applications. But the same was denied in the case of the petitioner, which shows that the authority has not applied its mind in proper perspective. If by one order, eight persons were appointed and the benefit already extended to seven persons, there is no valid and justifiable reason to exclude the petitioner by denying the benefit admissible to the similarly situated seven employees who have already received such benefits. More so, the reliance placed on the letter dated 20.04.1995, on which basis the claim of the petitioner has been denied, that has no application to the present case, as because the same relates to transfer and promotion of Assistant Teachers of taken over U.P. (M.E.) Schools. As such, by wrong interpreting the letter dated 20.04.1995, the order impugned has been passed.

7. In the above view of the matter, the order dated 21.12.2012 passed by the D.I. of Schools, Soro, Balasore under Annexure-11, cannot sustain in the eye of law and the same is liable to be quashed and is hereby quashed. The opposite parties are directed to extend the benefit to the petitioner in terms of the order dated 30.11.2010 under Annexure-7, by which the benefit has been

extended to the similarly situated employees, within a period of three months from the date of production of certified copy of this order.

8. The writ petition is accordingly disposed of.
Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

Ashok

