

IN THE HIGH COURT OF ORISSA AT CUTTACK
WPC (OAC) No.176 of 2013

Rajendra Singh

....

Petitioner

None

-versus-

State of Orissa & Others

....

Opposite Parties

Mr. D.R. Mohapatra, SC (S&ME)

CORAM:
JUSTICE M.S. RAMAN

ORDER

03.03.2022

Order No.

- 01.**
1. This matter is taken up by virtual/physical mode.
 2. The Original Application No.176 (C) of 2013 was filed before the State Administrative Tribunal, Cuttack Bench, Cuttack. After its abolition, the same has been transferred to this Court which is renumbered as WPC (OAC) No.176 of 2013.
 3. None appears for the Petitioner at the time of call.
 4. Heard Mr. D.R. Mohapatra, learned Standing Counsel appearing for School & Mass Education.
 5. The Petitioner assails the order of reversion dated 23.11.2012 issued by the District Inspector of School, Nilgiri (now redesignated as BEO) (Annexure-4), whereby the Petitioner was reverted to the post of Asst. Teacher (level-V) from Headmaster level-IV.

P.T.O.

6. Mr. Mohapatra, learned Standing Counsel referring to para-5 of the counter submits that in consultation with Law of Department, the School & Mass Education Department vide letter No. 29653-II-SME/CP-35/2000, dtd. 06.11.2000, addressed to the Director, Elementary Education, Odisha had clarified that, as per Rule-15 of the Elementary Cadre Rules, 1997, the gradation list is required to be prepared strictly on the basis of seniority. Therefore, under Rule 15 of the Odisha Elementary Education (Method of Recruitment and Conditions of Services of Teachers and Officers) Rules, 1997, the date of declaration or the date of taken over may not be taken as the guiding factor. It is submitted that it would be just and proper to take the service seniority or length of service as criteria of both category of teachers as the basis for determining seniority and preparing gradation list under the Orissa Elementary Education (Method of Recruitment and Conditions of Service of Teachers and Officers) Rules, 1997. Relevant portion of said letter dated 06.11.2000 enclosed as Annexure-A/3 to the counter affidavit reads as follows:-

“ Sub- principle on preparation of gradation list of Level-V of Services of Orissa Elementary Education (Method of Recruitment and conditions of Service of Teachers and Officers) Rules, 1997.

xx xx xx xx

As per Rule-15 of Elementary Cadre Rules, 1997, the gradation list shall be prepared strictly on the basis of seniority. Thus under Rule-15 of O.E.E., Rules 1997 the date of declaration or the date of taken over may not be taken as the guiding factor. In all fitness of things it would be just and proper to take the service seniority or length of Service as criteria of both

category of Teachers as the basis for determining seniority and preparing gradation list under the Orissa Education (Method of Recruitment and conditions of Services of Teachers and Officers) rules, 1997. But it is clarified that the private period of service shall not be treated as Government service for any other purpose.

This has been concurred in by Law Department vide their U.O.R No. 1278/L dtd. 21.8.2000.”

It is also submitted that the School & Mass Education in consultation with G.A. Department had issued further clarification vide letter No. 14523 dtd. 10.09.2009 to fix up inter-se-seniority of taken over primary schools teachers and UP/ME Schools w.e.f. the date of taken over as they became Govt. servant i.e. the date of appointment as Govt. Primary and UP/ME School teachers as defined in Explanation-1 of Rule 15 of Orissa Elementary Education (Method of Recruitment and Conditions of Service of Teachers and Officers) Rules, 1997.

7. Mr. Mohapatra, learned Standing Counsel further relies on the decision of this Court in “State of Odisha vrs. All Odisha Lower Secondary Teachers’ Association & Others”; WP(C) No. 14979 of 2010 vide judgment dated 23.12.2011.

In para-32 of the said judgment, this Court came to hold as follows:-

“32. On a thread bare scrutiny of the impugned order of the learned Tribunal, we are of the opinion that the learned Tribunal was not justified in reaching the conclusion that the teacher who were declared as Government servants on 5.9.1989 cannot be included in the Elementary Cadre Rules, especially when Explanation-1 of Sub-Rule 5 of Rule 15 of the Orissa

Elementary Education Rules, 1997 unequivocally speaks that all persons working as regular Assistant Teachers of Government Primary and Upper Primary Schools are treated as the members of Level-V of the service from the date of commencement of the Rules whose seniority shall be determined with reference to the date of their appointment as such. Nowhere it has been provided that the seniority is to be counted with reference to any particular date. The notification is also silent if the seniority of the teachers would be counted from the date when they were stated as Government servant and it is something unimaginable that the teachers who were declared as Government servants have to forgo their past service for all purpose. The Government in their wisdom being alive to the plight of the teachers took a decision that seniority of the teachers of the taken over schools would be decided with reference to their initial date of respective appointment.”

Aggrieved by the said judgment, One Basant Kumar Jena and another approached the Hon'ble Supreme Court in SLP (Civil) CC 9054 of 2012. The said SLP has come to be dismissed on 2.7.2012 with the following observation:-

“The petitioners have questioned the correctness of order dated 23.12.2011 passed by the Division Bench of the Orissa High Court whereby a batch of writ petitions filed against the order of the Orissa Administrative Tribunal were allowed and directions were given to the State Government to fix the inter se seniority of certain categories of teachers.

We have heard learned counsel for the petitioners and perused the record.

In our view, the reasons assigned by the High Court for quashing the order passed by the Tribunal and the direction given for fixation of the inter se seniority of the teachers are legally correct and the impugned

order does not require interference under Article 136 of the Constitution.

The special leave petition is accordingly dismissed”

8. Consequent upon the aforesaid judgment and order, School & Mass Education in the Govt. of Orissa vide letter No. 28668 / II-SME/C-34/2012 dated 17.11.2012 under Annexure-E/3 proceeded to implement the said order. The substance of said letter is extracted hereunder:-

“xx xx xx xx xx

This has reference to your letter No. 34 dated 16.10.2012 on the subject cited above. The Hon’ble High Court in WP(C)No. 14979 of 2010 has passed orders that “we make it clear that if any promotion has been effected in the meanwhile basing on the seniority list so prepared as per the later instruction of the Government, the same shall be treated as nonest.”

In order to comply the above orders of Hon’ble High Court, promotion in respect of Elementary Teachers shall be carried out with the following principles.

1. The teachers, who have been promoted in accordance with the later instructions after 6.11.2000 are to be reverted.
2. Gradation List is to be finalized accordingly.
3. There would be no recovery from the reverted teachers in respect of pay and allowances in the Headmasters’ Scale of Pay, which they might have been received.”

Consequent upon aforesaid circumstances, office order No. 2423; dtd.23.11.2012 (Anexure-4) appears to have been issued reverting the Headmasters in Level-IV to Asst. Teachers (Level-V).

Said office order is subject-matter of challenge in the present petition.

9. In view of the above, by efflux of time, no cause of action appears to have been survived.

10. Accordingly, the writ petition is dismissed, with liberty to the Petitioner to revive the petition within a period of ninety days from today, if cause of action still survives.

Issue urgent certified copy as per rules.

(M.S. Raman)
Judge

Aks

