

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C)(OA) No.1277 of 2017

Prasana Kumar Malika

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

**CORAM:
JUSTICE BIRAJA PRASANNA SATAPATHY**

**ORDER
14.10.2022**

Order No

02.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.

2. Heard Mr. Pati, learned counsel on behalf of Mr. T.B. Jena, learned counsel for the petitioner and Mr. N.N. Satapathy, learned Standing Counsel.

3. The Writ petition has been filed with the following prayer:-

“The Hon’ble Tribunal may be pleased to quash the order of rejection dtd.26.7.2016 vide Annexure-5.

The Hon’ble Tribunal may graciously be pleased to direct the Respondent No.2 to antedate the promotion of applicant to the post of TGT (Jr. SES) from the date his private respondent no.4 and 5 were promoted i.e. w.e.f 11.2.2010 and fix his scale of pay in Jr. SES cadre w.e.f 11.2.2010 and pay the differential salary in the cadre of Jr. SES from 11.2.2010 till 12.10.2010 on the date the applicant joined in the post.”

4. It is submitted that only on the ground of non-availability of C.C.R when the petitioner was not given promotion from L.S.E.S

cadre to Jr. S.E.S cadre, he approached the learned Tribunal in O.A. No.637 of 2014. Learned Tribunal disposed of the said O.A vide order dated 18.3.2014 with a direction on Opp. Party No.1 & 2 to consider the case of the petitioner as made in his representation dated 21.3.2012 and 26.9.2013. It is submitted that without considering his claim in its proper perspective, Opp. Party No.2 vide the impugned office order dated 16.06.2017 under Annexure-5 rejected his claim.

5. Mr. Pati submitted that as reflected in para 6 of the impugned order, claim for promotion of 18 teachers of Ganjam district could not be considered by the DPC held on 6.1.2009 due to non-availability of C.C.Rs. Some out of the 18 teachers approached the learned Tribunal in different Original Applications and basing on the direction issued by the learned Tribunal, all those petitioners therein were given promotion notionally w.e.f 11.2.2010 vide order dated 3.3.2014 under Annexure-8. But instead of extending of similar benefit, the application of the petitioner was rejected vide Annexure-5 without any justifiable reason.

6. Mr. Pati, learned counsel for the petitioner further submitted that subsequently, the case of the petitioner after being recommended in the subsequent D.P.C, the petitioner was given such promotion vide order dated 12.10.2010 under Annexure-3. However, it is submitted that since persons similarly situated whose cases could not be considered due to non-availability of C.C.Rs were given promotion w.e.f.11.2.2010 notionally, the petitioner is also eligible and entitled to get similar benefit.

7. Even though notice of the matter was issued on 09.08.2017, but no counter has been filed by the opp. Parties. However, Mr.

Satapathy, learned Standing appearing for the Deptt. submitted that since specific direction was there in the orders passed by the learned Tribunal in respect of similarly situated other teachers, their cases were considered and they were given promotion notionally w.e.f 11.2.2010. But in the case of the petitioner direction was there for consideration only.

8. Having heard learned counsel for the parties and after going through the materials available on record, this Court finds that similarly situated teachers whose cases could not be considered due to non-availability of C.C.Rs, were given such promotion notionally w.e.f 11.2.2010 vide order dated 3.3.2014 under Annexure-8. Therefore, this Court finds that petitioner has been discriminated and his claim has been illegally rejected by Opp. Party No.2 vide order dated 16.06.2017 under Annexure-5. As per the considered view of this Court, Petitioner is similarly situated as like the teachers, who were given notional promotion vide order under Annexure-8. Therefore, this Court has got no hesitation in quashing the order dated 16.06.2017. While quashing the same, this Court directs opp. Party No.2 to give promotion to the petitioner notionally from L.S.E.S cadre to Jr. S.E.S cadre w.e.f 11.2.2010 i.e. the date from which persons similarly situated were given such benefit. Opp. Party no.2 is directed to complete the entire exercise within a period of three months from the date of receipt of this order.

9. The Writ Petition is disposed of with the aforesaid observation and direction.

(Biraja Prasanna Satapathy)
Judge

Sneha

