

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C)(OAC) No.4135 of 2012

Rabinarayan Behera

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

18.10.2022

Order No

02.

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

2. Heard Mr. A.K. Mohanty, learned counsel for the Petitioner and Mr. N.N. Satapathy, learned Standing Counsel appearing for the Opp. Parties.

3. The present writ Petition has been filed with the following prayer:-

“(i) That in view of the facts and circumstances of the case the impugned order of the respondent No.1 dt.14.3.12 under Annexure-11 may be quashed and the respondent No 1 & 2 be directed to absorb the applicant against Asst. teacher in ME Schools like 137 Hindi teachers who were absorbed against Asst, teachers within a time to be stipulated by this Hon'ble Tribunal;

(ii) Pass any other order or orders as would deem fit and proper and allow the original application.”

4. It is submitted that even though the Petitioner was appointed as Hindi Teacher in Jayanta Narayan M.E. School, but his claim for

absorption as an Asst. Teacher in the said school was rejected vide the impugned order dtd.14.03.2012 under Annexure-11.

5. Mr. Mohanty, learned counsel for the Petitioner submitted that even though the claim of the Petitioner was rejected on the ground that the Petitioner was appointed in spite of the restriction imposed by the Govt. issued vide order No. 39375/EYS dated 12.09.1980, but person similarly situated and appointed on the face of such restriction were absorbed basing on the decision of this Court in the case of ***Kantilal Sarangi Vs. State of Odisha***. It is also submitted that similar view has been taken by the Hon'ble Apex Court in the case of ***Sukanti Dei Vs. State of Odisha***.

6. Mr. Mohanty further submitted that even though a counter affidavit has been filed by the Opp. Parties, but the stand taken by the Petitioner in Para 6.7 of the writ Petition regarding applicability of the above said two decisions, has not been replied. Accordingly, it is submitted that in view of the decision of this Court as well as of the Hon'ble Apex Court as cited (supra), the Petitioner is eligible for his absorption in the School as a Hindi Teacher.

7. Mr. Satapathy, learned Standing Counsel on the other hand though made his submission basing on the stand taken in the counter affidavit. It is submitted that since the Petitioner was appointed as a Hindi Teacher during subsistence of the restriction imposed by the Govt., his services cannot be approached and no illegality has been committed in rejecting his claim. But this Court finds that no reply whatsoever has been given with regard to the stand taken by the Petitioner in Para 6.7 of the writ Petition.

8. Having heard learned counsel for the Parties and after going through the materials available on record, this Court finds that the impugned order has been passed without following the order passed by this Court as well as the Hon'ble Apex Court in the above noted two cases. Therefore, this Court is inclined to quash the order dtd.14.03.2012 passed by the Opp. Party No. 1 under Annexure-11. While quashing the same, this Court directs the Opp. Party No. 1 to take a fresh decision on the Petitioner's claim and while taking a fresh decision the decision relied on by the learned counsel for the Petitioner and the stand taken by the Petitioner in Para 6.7 of the writ Petition be taken into consideration. It is also observed that the order passed under Annexure-9 be taken into consideration by the said Opp. Party. The entire exercise shall be completed within a period of three (3) months from the date of receipt of this order.

9. Petitioner is directed to file a copy of this order along with the order passed in the case of *Kantilal Sarangi Vs. State of Odisha & Sukanti Dei Vs. State of Odisha* before the O.P. No. 1 within a period of ten (10) days from the date of receipt of this order for compliance.

10. The writ Petition is disposed of with the aforesaid observation and direction.

(Biraja Prasanna Satapathy)
Judge

Sneha