

IN THE HIGH COURT OF ORISSA AT CUTTACK

RVWPET (RPC) No.25 of 2019

State of Odisha and Ors.

.... *Petitioners*
Mr. D.R. Mohapatra, SC
(for S & ME Deptt.)

-versus-

Sampadarani Acharya

.... *Opposite Party*
Mr. Laxmikanta Mohanty, Adv.

CORAM:

DR. JUSTICE S.K. PANIGRAHI

ORDER

13.09.2022

Order
No.

(RVWPET (RPC) Nos.25, 1, 2, 3, 5, 7, 8, 9, 10, 12, 13, 14, 17, 19, 23, 28 and 29 of 2019 with CONTC (CPC) Nos.268 of 2016, 308 of 2016, 309 of 2016 and 313 of 2016)

05. 1. All these matters are taken up through hybrid mode.
2. All the aforesaid RVWPETs(RPC) have been filed at the instance of the State to review the common order dated 28.09.2015 passed in O.A. 3682(C) of 2011 and batch of cases by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack (hereinafter referred to as “the Tribunal” for brevity) in the light of order dated 12.12.2018 passed by this Court in W.P.(C) No.23239 of 2017 and batch of cases.

3. Grievance of the Petitioners/ State is that the Tribunal heard the matter in the absence of their counter. Though the said fact was brought to the notice of the learned Tribunal, but it did not incline to grant further time and heard the matter and disposed of the said Original Applications (hereinafter referred to as "the O.As. for brevity) in the following manner. The operative part of the order of the learned Tribunal is quoted as follows:

"3. We have heard the counsel for both the sides and have also gone through the averments of the original application (O.A.) and so also the order of the Division Bench of this Tribunal passed in OA No.2025/1996 and 3514(C)/1999.

4. It is not at all disputed that these applicants were serving as Resource Teacher for imparting integrated education to disabled children under a scheme and after the abolition of the scheme they were deployed in different primary schools and were inducted into General Teacher cadre. For such redeployment and induction to General Teacher cadre, the Director of Elementary Education, Orissa, Bhubaneswar vide office order No.14857, dtd.06.11.1995 (Annexure-4) had fixed the service condition in which the Resource Teacher having B.Ed./C.T. qualification were allowed to draw the minimum in the pay scale of Rs.1080-1800/- per month along with D.A. as admissible under the Rules whereas Non-Trained Teachers were given scale of pay of Rs.950-1500/-. The Division Bench of the Tribunal in O.A. No.2025/1996 had passed the order as follows:

"However, the last pay he was getting as Resource Teacher may be protected in the scale of Rs.950-1500/- taking recourse to Rule 74(d) of the Orissa Service Code provided his last pay was not higher than Rs. 1500/- which is the maximum in that scale and in that case, he shall be entitled to get only Rs. 1500/-. Orders in this regard be passed within three months from the date of receipt of a copy of this order."

In this case the applicant Rama Krushna Purohit was an Un-Trained Teacher. It is stated That this order has already been complied with by the State Govt. vide order dtd.28.08.2001 in O.A.Nos.3514(C)/99, 3515(C)/99, 1817(C)/1999 and 17(C)/2001 following the ratio of O.A.No.2025/1996, similar order was passed giving pay protection of the last pay drawn as Resource Teacher while switching over to the General Teacher cadre. It is stated that the said order had been complied with by the State Govt. Thus, the present applicants, who stand in the same footing with the applicants of the above mentioned O.As. are also entitled for same pay protection. In other words, pay protection was granted on the condition that it was even the scale applicable for the posts in which the applicants' scale was adjusted. The Tribunal passed the aforesaid order taking into consideration the provisions of Rule-74(d) of Orissa Service Code. The order passed in the case of Mr.Purohit had not been challenged before any forum. Referring to the ratio one Ratnakar Das approached the Tribunal even without waiting for a counter.

5. In view of the position stated above, all the O.As, are allowed. The last pay drawn by these applicants as Resource Teacher while inducted into General Teacher cadre be protected in their respective scale of pay i.e. in the scale of Trained Teacher and Untrained Teacher taking into consideration the qualification of the applicants and this exercise should be completed within a period of one month from the date of receipt of a copy of this order. It is further directed that service benefits, if any, given to the applicants of O.A.No.2025/1996 and O.A.No.3514/1999 be extended to the present applicants.

Accordingly, all the O.As. are disposed of"

4. Being aggrieved by the said order dated 28.09.2015 passed by the Tribunal, The State of Odisha filed W.P.(C) No.23239 of 2017 and batch of cases before this Court. This Court disposed of the said Writ Petitions vide order dated 19.12.2018 by granting liberty to the State to file Review Petition before the Tribunal. In such view of the matter, the State has preferred these Review Petitions on the grounds that:-

- (i) The State was not given sufficient opportunity to file counter affidavit which leads to disposal of the O.As. being allowed. Despite the fact was brought to the notice of the Tribunal, the same was not given heed to.

- (ii) The present Opposite Parties/ Original Applicants (hereinafter referred to as “the Original Applicants” for brevity) who were initially engaged as Resource Teachers for disabled children unit under integrated education which is a central sponsored scheme sans any service condition.
- (iii) It was also stipulated that soon after abolition of the scheme, the engagement of the Resource Teachers like the Original Applicants shall also be abolished and they will have no claim for further engagement or regularisation of their posts. The service conditions of the Original Applicants were that no Resource Teacher shall claim any regular assignment and their services may be terminated without giving any reason thereof. Accordingly, after abolition of the said scheme, the services of the Original Applicants were terminated. Hence, no illegality is committed by the State. Further, the Original Applicants cannot claim regularisation of their services during the period of Resource Teacher.
- (iv) In the meantime, after the Resource Teachers were disengaged by following the abolition of the

scheme on 31.03.2009, the State took conscious policy decision to give appointment to dis-engaged Resource Teachers by bringing them to general cadre. With the introduction of the said policy, the Odisha Government was generous enough to consider the plight of the Original Applicants and thereby the Government regularized them under a new service governed under the new policy and service condition.

(v) Since the Original Applicants were engaged under a scheme which was purely temporary in nature, they cannot claim for their future service or regularisation of their past services. Hence, the past services of the Original Applicants cannot be counted. Therefore the Original Applicants cannot be considered under the Orissa Civil Services (Pension) Rules, 1992. Hence, the claim of the Original Applicants for grant of pension and pensionary benefits under the old Rules is not tenable.

(vi) Hon'ble Supreme Court has decided in several cases and the law is well settled in the case of **State of Orissa –vrs.- Dipti Paul**¹ and in the case

¹ Civil Appeal No.1499 of 1998

of **State of Karnataka –vrs.- Umadevi**². The Orissa Elementary Education (Method of Recruitment and Condition of Service of Teachers and Officers) Rules, 1997 postulates that the appointment of an Elementary Teacher shall be started with effect from Level-V to Level-I after entering into a cadre. Hence, any service benefit claimed by the teacher entered into the service shall be governed under the Orissa Elementary Education (Method of Recruitment and Condition of Service of Teachers and Officers) Rules, 1997. In the present cases, the Original Applicants were never governed under the Orissa Elementary Education (Method of Recruitment and Condition of Service of Teachers and Officers) Rules, 1997 during the period of serving as Resource Teacher which was purely under a scheme. Hence, they cannot claim any kind of regular benefit for the said period. The Original Applicants in O.A. No.3682(C) of 2011, entered into the cadre with effect from 28.08.2010 and his service period shall be reckoned from that date. The Tribunal has wrongly held that the Original Applicants were eligible to get regular

² AIR 2006 SC 1806

scale of pay as they were protected the scale of pay while they were under the scheme. It is to be borne in mind that the Original Applicants were allowed to receive Rs.1500/- under the same scheme and with the abolition of the scheme, the said scale ceased to operate. Since the Original Applicants were re-engaged on sympathetic consideration and were brought to the Elementary Cadre, their scale of pay is totally different from that of the schematic scale of pay. In such view of the matter, the claim of the Original Applicants for pay protection and service surety cannot be accepted.

5. In so far as the reliance of the Original Applicants on the judgments of the Supreme Court in the case of **N. Ashalata Reddy –vrs.- Anshu Kathuria and Ors.**³ wherein the Apex Court has held that the review jurisdiction is extremely limited, unless there is mistake apparent on the face of the record. In the present cases, mistake is clearly visible as the stand of the Petitioners/ State has not been given due care.

6. It is also stated that some of the similarly placed candidates have been allowed to receive the benefits as

³ 2014(I) OLR (SC) 364

prayed for by the present Original Applicants. If the said fact is true, the present Original Applicants cannot be deprived to take advantage because of certain wrong orders passed by the Government. But this Court is of the belief that mistake should not be perpetuated.

7. Learned counsel for the Opposite Parties/Original Applicants submitted that the scope of review in the present cases is very limited, as the Petitioners/ State has failed to show the mistake of fact apparent on the face of the record. Non-filing of counter cannot be construed as a matter of mistake of fact.

8. In a similar matter, this Court vide common judgment dated 22.04.2022 passed in WPC (OAC) No.696 of 2018 and batch of cases directed the Opposite Parties, the present review Petitioners/ State to extend the service benefits to ex-Resource Teachers by counting the entire period of service from the date of appointment as Resource Teacher and to enroll their names under O.C.S. Pension Rules, 1992. Hence, the present Original Applicants cannot be discriminated.

9. He further submitted that reliance placed by the Petitioners/ State on the case of **Dipti Paul** (supra) relates to the case of Sikshya Karmees who were appointed with consolidated pay of Rs.400/- per month, whereas the

present Original Applicants were appointed as Resource Teachers and were receiving the regular scale of pay as Primary School Teachers.

10. It is also submitted that the Tribunal relied on Rule-74(d) of the Orissa Service Code and had allowed the case of the Original Applicants and directed to grant pay protection to Resource Teachers as they were appointed with the scale of pay of regular Primary School prior to their termination from service. It is also submitted that the Tribunal relied upon its earlier decisions in similar matters which were confirmed by this Court and the Supreme Court and passed the said order. The similarly situated persons namely Sarojini Kar and Swarnalata Beberta Pattnaik whose cases were confirmed by both this Court and the Supreme Court have already been granted all the service and financial benefits by counting their entire period of service from the date of their initial appointment as Resource Teachers.

11. He further submitted that if a similar benefit has been given to an employee, such benefit should be extended to all similarly placed employees without any discrimination. To that effect, he placed reliance on the

decision of this Court in the case of **Smrutirekha Mishra –vrs.- State of Odisha and Ors.**⁴

12. Heard learned counsel for the Parties.

13. The Original Applicants have since been the employees under a scheme and receiving fixed remuneration for the work they were performing, they have been absorbed in different cadres. Hence, they are born into cadre on different dates of the year 2010. Their previous service cannot be included for the present service. Further, the policy of the Government to absorb them as benevolent employer which itself is a laudable and hence, the said policy cannot be reviewed under judicial review in view of the judgments of the Supreme Court in the cases of **Dr. Ashwani Kumar –vrs.- Union of India and Anr.**⁵, **State of Karnataka –vrs.- Dr. Praveen Bhai Togadia**⁶, **Oil and Natural Gas Corporation –vrs.- Krishan Gopal & Ors.**⁷ and **State of Maharashtra –vrs.- R.S. Bhonde**⁸ wherein the Apex Court has held that judicial review in policy issue is very limited. The prayer of the Original Applicants in the aforesaid O.As. was nothing but interfering with the Government policy issue

⁴ 2022(I)ILR-CUT-219

⁵ (2020) 13 SCC 581,

⁶ (2004) 4 SCC 684

⁷ (2020) SCC Online SC 150

⁸ 2005 (6) SCC 751

and it was not wise on the part of the learned Tribunal to interfere with the policy issue of the Government.

14. This Court is also not inclined to interfere with the policy issue of the Government. As per the law laid down by the Apex Court as well as by this Court, the Original Applicants are not entitled to get pay protection for the period when they were engaged under the scheme.

15. Applying the law laid down by the Apex Court and by this Court in the aforementioned decisions, direction issued by the Tribunal vide common order dated 28.09.2015 passed in O.A. 3682(C) of 2011 and batch of cases more particularly the directions that last pay drawn by these applicants as Resource Teacher while inducted into General Teacher cadre be protected in their respective scale of pay i.e. in the scale of Trained Teacher and Untrained Teacher taking into consideration the qualification of the applicants and this exercise should be completed within a period of one month from the date of receipt of a copy of this order are unsustainable and beyond the pale of judicial review. Accordingly, this Court is of the view that the Original Applicants are not entitled to the benefit of regularization of their past service when they were working under the schematic employment.

16. For the reason stated above, all the above Review Petitions are allowed. The common order dated 28.09.2015 passed in O.A. 3682(C) of 2011 and batch of cases by the Tribunal is set aside. There shall be no order as to costs.

17. Accordingly, all the above Review Petitions are disposed of.

B.Jhankar



(Dr. S.K. Panigrahi)
Judge