

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.39682 of 2021

Namita Panda

....

Petitioner

*Mr. S. Patra,
Advocate*

-Versus -

State of Odisha and others

Opposite Parties

....

*Mr. P.K. Panda,
Standing Counsel for the
School and Mass Education
Department*

**CORAM:
JUSTICE SASHIKANTA MISHRA**

**ORDER
11.10.2022**

**Order No.
3.**

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioner and learned counsel for the State.
3. The petitioner was working as Non-Formal Facilitator in Ambagam Madhyamik Chatasali on 06.08.1996 under Aska Education District in the district of Ganjam. The Non-Formal Education Scheme being abolished, the petitioner was retrenched on 31.03.2001. The NFE scheme was substituted by a new scheme, namely, Education Guarantee Scheme (EGS) and Alternative & Innovative Education Scheme (AIE) by the Government in School and Mass Education Department vide notification dated 10.07.2001. The petitioner was engaged as an Education Volunteer under the EGS in Jagannath Prasad EGS centre in Gambharidihi

Gram Panchayat in the district of Nayagarh by the District Project Coordinator vide order of engagement dated 09.08.2004. She joined as such in the EGS centre and continued till 31.03.2008 on which date, the centre was closed. Thereafter, the Government in the Department of School and Mass Education passed a resolution dated 16.02.2008 to rehabilitate the retrenched Education Volunteers as Gana Sikshyaks, under Sarva Sikshya Abhijan (SSA). In the meeting of the District SSA held on 12.08.2011 under the Chairmanship of the Collector-cum-Chairman, SSA, it was decided to recommend the names of 12 such retrenched Education Volunteers for their appointment as Gana Sikshyaks. A copy of the proceeding, which is enclosed as Annexure-5 to the writ petition bears the name of the petitioner being placed at serial no.11 out of 12 similarly placed persons. It is further evident that there were 12 vacancies in the district. Since no action was taken in the matter in respect of the petitioner but all the other 11 persons were engaged as Gana Sikshyaks, the petitioner approached this Court in W.P.(C) No. 13154 of 2014. This Court, by order dated 25.07.2014, inter alia passed the following order:-

“Considering the contentions raised by the parties and after perusing the record, it is the admitted fact that earlier the petitioner was engaged under Non-Formal Education Scheme introduced by the Government of Orissa and she has discharged her duty under the said scheme. The said Scheme has been abolished in the year 2001. Subsequently, EGS Scheme was introduced and as per the guidelines the case of the petitioner has not been taken into consideration and the said scheme was also abolished and the Government has decided to rehabilitate those Education Volunteers as Gana Sikshyak under Sarva Sikshya Abhijan (SSA). But the reasons for discrimination of the petitioner have not been indicated anywhere. If the Government has

formulated such guidelines and priority is to be given to those who have gained experience they should be absorbed under the new scheme. Without doing so, the petitioner has been discriminated.

In view of such position, let the petitioner file fresh representation incorporating all the relevant documents put forth his grievances before opposite party no.1 so that opposite party no.1 shall consider the same in conformity with the provisions of law within two months from the date of communication of this order.

The petitioner is directed to produce the certified copy of this order and a copy of the writ petition along with all the Annexures before opposite party no.1 within two weeks, who shall act upon the same.

The writ petition is disposed of.”

Pursuant to such order, the matter was considered by the Principal Secretary to Government in School and Mass Education Department and by order dated 21.08.2021 (Annexure -12), which is impugned in the present writ petition, the claim of the petitioner for appointment as Gana Sikshyak was rejected. In rejecting the claim the Principal Secretary held that the petitioner had neither received any honorarium nor claimed the same during the period of her engagement and hence, it is presumed that she was not attending her duties as Education Volunteer. As such, it was held that the claim is doubtful and necessary documents to prove that she was working as Educational Volunteer are neither available with any concerned authority nor with her. It was also held that filing of writ petition seems to be an afterthought to coerce the authorities to post her as Gana Sikshyak.

4. It is submitted by learned counsel for the petitioner that all the relevant documents such as Attendance Registers etc. are available with the concerned authority and the copies thereof are

available with the petitioner. In fact, copies of such Attendance Registers have also been enclosed to the writ petition under Annexure-13 series and Annexure -14 series. It is further submitted that had an opportunity been granted to the petitioner she would have produced the relevant documents before the authorities. Further, had an enquiry been made, the engagement of the petitioner as Education Volunteer would have been clearly proved.

5. After going through the impugned order and the documents enclosed to the writ petition, this Court finds considerable force in the submission of learned counsel for the petitioner as indicated above. It is to be noted that this Court while remitting the matter to the Principal Secretary had specifically directed him to consider the representation of the petitioner in conformity with the provision of law. It is needless to mention that law requires that adequate opportunity of hearing should be granted to all concerned besides due application of judicial mind by the authority to the facts of the case before passing any order. Further, if the Principal Secretary had any doubt as regards the claim of the petitioner, necessary enquiry ought to have been made/directed instead of simply rejecting the representation at the threshold and that too, on presumption. Further, seeking a lawful remedy for redressal of her grievance by invoking the writ jurisdiction of this Court cannot in any manner be construed as an act on the part of the petitioner to coerce the authorities to act in a particular manner. The Constitution of India itself provides such remedy which needs to be respected by one and all. The observation as above of the Principal Secretary is something that cannot be countenanced in law.

6. The writ petition is, therefore, disposed of by quashing the impugned order under Annexure-12 and by remitting the matter to the Principal Secretary to consider the same afresh and to pass a lawful order after causing necessary enquiry to be made regarding the claim of the petitioner of having worked as Education Volunteer at the relevant time as also by granting opportunity to her to put forth her views. It is needless to mention that if any document or material is placed before the Principal Secretary, the same shall be considered on its own merit. The whole exercise shall be completed within a period of four weeks from the date of communication of this order or on production of certified copy thereof by the petitioner. It is made clear that this Court has not expressed any opinion on the merits of the case.

7. The writ petition is disposed of accordingly.

(Sashikanta Mishra)
Judge