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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.41672 of 2021

Smruti Rekha Mishra

....

Petitioner

Mr.S.P.Mishra, Advocate.

-versus-

State of Odisha and others

....

Opp.Partes

Mr.Sangram Jena, Standing Counsel,
S & M.E. Department

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

06.01.2022

Order No.

01.

The present writ application has been filed by the Petitioner after failing to get the desired result from the authorities despite direction issued in earlier round of litigation by this Court to consider the case of the present Petitioner.

2. In the present writ application, the Petitioner seeks to challenge the order dated 3rd December, 2020 under Annexure-7 and order dated 27th October 2021 under Annexure-11 passed by the Director, Secondary Education, Odisha, Bhubaneswar and the Principal Secretary, Department of School & mass Education respectively. The Petitioner further prays for a direction to the Opposite Parties to appoint her in the post of Contractual Hindi

Teacher pursuant to the Government Resolution No.27th October, 2014 under Annexure-2 with all consequential service benefits at par with her counterparts.

3. Heard learned counsel for the Petitioner and Mr.Sangram Jena, learned Standing Counsel for School & Mass Education department.

4. The factual backdrops of the case, in a nutshell, is that the Petitioner after successful completion of +3 Arts from Utkal University in the year 1999 obtained Sastri (Hindi) from Orissa Rastrabhasa Parishad, Puri in the year 2014. She also successfully completed and obtained the degree of M.A. (Hindi) from Shobhit University, Meerut.

5. The Government of Odisha reviewed Teachers strength in various Schools in the State and found that there is scarcity of teachers in different Schools in the State of Odisha. To resolve the said problem faced by students in the Schools, the Opposite Party No.1 issued a Resolution No.23404/SME dated 27th October, 2014 notifying the recruitment procedure of teaching staff in Government Secondary Schools. Pursuant to the said Government Notification dated 27th October, 2014, the Petitioner submitted her candidature for

appointment as a contractual Hindi Teacher as she has the requisite qualification as provided in Clause 3(f) of the Resolution dated 27th October, 2014. The said Clause 3(f) of Resolution dated 27th October, 2014 has been extracted herein below:

“(f) Hindi Teacher – Bachelor’s degree from a recognized University with Hindi as one of the elective subject with minimum 50% marks in aggregate (45% for SC/ST/PH/OBC/SEBC candidates) or with Rastrabhasa Ratna from Rastrabhasa Prachar Samiti, Wardha or with Sastri from Orissa Rastrabhasa Parisada, Puri or with Snataka (Acquired by June-2005, the date up to which the temporary recognition has been granted) from Hindi Sikshya Samiti, Orissa, Cuttack or an equivalent degree from a recognized institution with at least 50% marks in aggregate (45% for SC/ST/PH/OBC/SEBC candidates) and Hindi Sikshyan Parangat from Kendriya Hindi Sansthan, Agra/B.H.Ed (a course prescribed by NCTE) from a Institution recognized by NCTE and affiliated to a recognized university/ B.Ed in Hindi (a course prescribed by NCTE) from Dakhin Bharat Hindi Prachar Sabha, Madras, a institution recognized by NCTE and affiliated to a recognized university.

OR

Bachelor’s degree with Hindi as one of the optional/Hons subject with minimum 50% of marks in aggregate (45% for SC/ST/PH/OBC/SEBC candidates) and M.A. in Hindi with minimum 50% marks in aggregate from a recognized University.

(The untrained candidates shall have to undergo required training within the timeline as prescribed by Govt.)”

6. As stated hereinabove, the Petitioner submitted her application

bearing No.10022288 for selection and appointment as Contractual Hindi Teacher. While the matter stood thus, the authorities published a draft reject list which was uploaded in the website. The said draft reject list reveals that the application of the Petitioner was rejected and her name finds place against Sl. No.264 with remark “Untrained (+3 without Hindi as a subject)”. Thereafter the Petitioner had filed an objection to the said rejection on 24th February, 2016. However, the same has not been considered as of now.

7. It is further pleaded in the writ application that the Petitioner has all the requisite qualification for being appointed as Hindi Teacher as per the eligibility norms prescribed in the Resolution dated 27th October, 2014. Further, candidates securing lower marks than the Petitioner have been selected and given appointment, whereas, the case of the Petitioner has not been considered illegally and arbitrarily although she is eligible to be considered for appointment.

8. It is further stated in the writ application that the Petitioner has acquired the degree of Sastri in Hindi from Rastrabhasa Parishad, Puri. The degree of Sastri from Odisha Rastrabhasa Parishad, Puri has been mentioned in Clause 3(f) of the said Resolution to be one of

the eligible qualifications for appointment as a Contractual Hindi Teacher. It has also been stated that the Utkal University, Vani Vihar, Bhubaneswar vide Notification dated 31st July, 2012 clarified at Sl.No.168 the degree of Sastri in Hindi from Odisha Rastrabhasa Paishad, Puri is equivalent to Bachelor degree of Utkal University. So far the issue of degree of Sastri by Odisha Rastrabhasa Parishad, Puri is concerned, the same is no more *res-integra*. The Orissa Administrative Tribunal, Principal Bench, Bhubaneswar while adjudicating O.A.No.1090 of 2016 was also required to adjudicate the above noted issue. Vide Order dated 24th May, 2019 passed in O.A.No.1090 2016 the Orissa Administrative Tribunal has come to a conclusion that the degree of Sastri from Odisha Rastrabhasa Parishad, Puri along with Bachelor Degree and M.A.in Hindi constitutes sufficient eligibility for being appointed to the post of Contractual Hindi Teacher.

9. The order dated 24th May, 2019 passed by Orissa Administrative Tribunal, Principal Bench, Bhubaneswar in O.A.No.1090 of 2016 was assailed by the State Government before this Court in W.P.(C) No.10616 of 2020. This Court vide order dated 7th September, 2020 has confirmed the order of the Orissa Administrative Tribunal, Principal Bench, Bhubaneswar.

10. After disposal of the aforesaid writ application, the Petitioner approached the Opposite Party No.1 by filing a representation on 11th September, 2020 with a request to Opposite Party No.1 to appoint her to the post of Contract Teacher. Since the authorities did not act upon her representation, the Petitioner approached this Court by filing W.P.(C) No.24056 of 2020. This Court disposed of W.P.(C) No.24056 of 2020 by order dated 7th October, 2020 directing the Opposite Party No.2 to consider and dispose of the representation filed by the Petitioner within a period of eight weeks.

11. After disposal of the aforesaid writ application the Opposite Party No.2 rejected the representation of the Petitioner by order dated 3rd December, 2020 in a very casual manner without considering the representation in the light of the order passed by the Orissa Administrative Tribunal as well as by this Court. The said order dated 3rd December, 2020 under Annexure-7 is under challenge in this writ application.

12. In the meanwhile, the State Government challenged the order dated 7th September 2020 passed in W.P.(C) No.10616 of 2020 before the Hon'ble Supreme Court of India by filing SLP(C) No.195-

196 of 2021. The Hon'ble Supreme Court of India by order dated 20th January, 2021 disposed of the SLP thereby the order passed by the Orissa Administrative Tribunal has been confirmed and the said order has attained finality.

13. Challenging the order dated 3rd December, 2020 under Annexure-7 the Petitioner again approached this Court by filing W.P.(C) No.8609 of 2021. This Court disposed of the said writ application by order dated 8th April, 2021 directing the Opposite Party No.1 to dispose of the representation of the Petitioner dated 24th February, 2021 under Annexure-9 within a period of three months taking into consideration the decision passed by this Court as well as the Hon'ble Supreme Court of India.

14. The learned counsel appearing for the Petitioner submits that despite a specific direction by this Court by order dated 8th April, 2021 her representation pending before the authority was not considered for which she was compelled to approach this Court by filing multiple Contempt Petitions bearing CONTC Nos.4024, 5143 and 5857 of 2021 disposed of on 23.07.2021, 08.09.2021 and 07.10.2021 respectively. However, all these efforts did not yield any fruit. Finally, the Opposite Party No.1 by order dated 27th October,

2021 rejected the representation of the Petitioner in a very mechanical and arbitrary manner. The said order dated 27th October, 2021 under Annexure-11 has also been assailed in the present writ application.

15. Learned counsel for the Petitioner emphatically argued that the case of the Petitioner is similar to the case of the candidate in W.P.(C) No.10616 of 2020. Both the present Petitioner as well as the candidate in W.P.(C) No.10616 of 2020 have the similar qualification. It is submitted that the candidate in W.P.(C) No.10616 of 2020 namely, Aparna Sinha, the decision in whose favour by the Tribunal to give her appointment as Contract Hindi Teacher has already been upheld by the Hon'ble Supreme Court of India and pursuant to such direction she has already been given appointment by the Government as a Contract Hindi Teacher.

16. With regard to the objection of Opposite Party No.1 in its order dated 27th October, 2021 with regard to cut-off mark, learned counsel for the Petitioner submits that such a ground has been raised for the first time by Opposite Party No.1 in its order dated 27th October, 2021. The Petitioner is not aware of any such cut-off mark. In this context, the learned counsel for the Petitioner argues that a lot

of posts of Contract Hindi Teachers are lying vacant. Therefore, the Petitioner, who is having the required qualification to be appointed to such post should have been given appointment against such vacant post. Further, it is submitted that persons securing less numbers have already been given appointment by the Opposite Parties as Contract Teacher. It is further stated that the candidate (Aparna Sinha) in W.P.(C) No No.10616 of 2020 had secured a mark of 223.9214. Therefore, the ground of rejection in letter dated 27th October, 2021 saying that the cut-off mark was 225.9612 is a vague, baseless and imaginary one. It is further stated that many candidates who have secured less mark than the alleged cut-off mark 225.9612 have been given appointment in the meantime.

17. That with regard to vacancy position, learned counsel for the Petitioner submits that as per Resolution under Annexure-2 a total number of 799 posts were required to be filled up. Out of which 400 posts were meant for UR category and only about 200 posts have been filled up and an equal number of posts are still lying vacant. Referring to the information obtained under RTI Act, the learned counsel for the Petitioner submits that there are still a large number of Contract Hindi Teacher posts lying vacant in Cuttack Education District.

18. Per contra, Mr.Jena, learned Standing Counsel for School & Mass Education department while supporting orders under Annexures-7 and 11 passed by the Opposite Party Nos.2 & 1 respectively, submits that the Petitioner was not found eligible by the authorities as she does not possess the requisite qualification as per the Government Resolution dated 27th October, 2014. He further submits that her case was carefully examined by the authorities and the Petitioner was not found eligible to be appointed as a Contract Hindi Teacher. Mr.Jena, further submits that the case of the Petitioner is not covered by the decision rendered by the Orissa Administrative Tribunal as well as by this Court which was confirmed in appeal by the Hon'ble Supreme Court of India in the matter of Aparna Sinha case and the ratio decided in the said case is not applicable to the facts of the present Petitioner's case. Accordingly, he has prayed for dismissal of the writ application.

19. Having heard learned counsel for the parties and upon perusal of records, documents and judgment cited before this Court, I am of the considered view that the authorities have not considered the case of the present petitioner in its proper perspective. Upon perusal of the records and documents filed in the writ application, this Court is of

the firm view that the Petitioner possesses the required qualification as prescribed in Government Resolution dated 27th October, 2014 and as such she is eligible to be considered for appointment to the post of Contract Hindi Teacher. Moreover, the qualification of the Petitioner i.e., Sastri degree issued by the Orissa Rastrabhasa Parishad, Puri has not only been declared to be equivalent to a Bachelors degree by Utkal University, the same has also been accepted by the Orissa Administrative Tribunal in the matter of Aparna Sinha case (supra) which was eventually confirmed by the Hon'ble Supreme Court of India. Rather, it is seen from both the orders under Annexures-7 and 11 that the authorities have failed to appreciate the real issue involved therein and as such have not considered the case of the Petitioner in the light of the judgment rendered in the case of Aparna Sinha (supra).

20. After careful consideration, this Court is of the firm view that the petitioner's case is squarely covered by the decision of the Orissa Administrative Tribunal in Aparna Sinha case (supra) which was ultimately confirmed by the Hon'ble Supreme Court of India. Moreover, the ground that the Petitioner has secured less mark than the cut off mark taken by the Opposite Party No.1 in its order under Annexue-11 appears to be fallacious and whimsical on the first

ground that such cut-off mark had never been notified by any authority, consequently persons who have secured less mark than such cut-off mark have been given appointment by the Opposite Parties in the meantime.

21. Law is fairly well settled that in Service Jurisprudence, if a similar benefit is given to an employee, such benefit should be extended to all similarly situated employees without any discrimination. The authorities are required to act with all fairness as fair play is an integral part of all administrative decision making process. In *K.I. Shephard and others vrs. Union of India*, reported in **AIR 1988 S.C. 686** it has been held by the Supreme Court of India as follows;

“15. Fair play is a part of the public policy and is a guarantee for justice to citizens. In our system of Rule of Law every social agency conferred with power is required to act fairly so that social action would be just and there would be furtherance of the well-being of citizens. The rules of natural justice have developed with the growth of civilisation and the content thereof is often considered as a proper measure of the level of civilisation and Rule of Law prevailing in the community. Man within the social frame has struggled for centuries to bring into the community the concept of fairness and it has taken scores of years for the rules of natural justice to conceptually enter into the field of social activities. We do not think in the facts of the case there is any justification to hold that rules of natural justice have been ousted by necessary implication on account of the time frame. On the other

hand we are of the view that the time limited by statute provides scope for an opportunity to be extended to the intended excluded employees before the scheme is finalised so that a hearing commensurate to the situation is afforded before a section of the employees is thrown out of employment.”

19. The writ petitions and the appeals must succeed. We set aside the impugned judgments of the Single Judge and Division Bench of the Kerala High Court and direct that each of the three transferee banks should take over the excluded employees on the same terms and conditions of employment under the respective banking companies prior to amalgamation. The employees would be entitled to the benefit of continuity of service for all purposes including salary and perks throughout the period. We leave it open to the transferee banks to take such action as they consider proper against these employees in accordance with law. Some of the excluded employees have not come to Court. There is no justification to penalise them for not having litigated. They too shall be entitled to the same benefits as the petitioners. Ordinarily the successful parties should have been entitled to costs but in view of the fact that they are going back to employment, we do not propose to make orders of costs against their employers. We hope and trust that the transferee banks would look at the matter with an open mind and would keep themselves alive to the human problem involved in it.”

22. The judgment of the Hon’ble Supreme Court of India in the matter of *Maharaj Krishna Bhatta and another vrs. State of J.K. and others*, reported in (2008) 9 SCC 24 has been relied upon by the learned counsel for the Petitioner in support of his argument that the Opposite Parties are bound to treat similarly placed persons in an identical manner without resorting to discrimination and

arbitrariness. The relevant paragraphs of the said judgment has been quoted here in below;

“16. In our considered opinion, in the light of the facts and circumstances, the Government ought to have accepted and respected the decision of the learned Single Judge without filing intra-Court appeal. No distinguishing feature had been brought to the notice of the Division Bench, nor the Division Bench set aside the judgment and order passed by the learned Single Judge holding or observing that though Abdul Rashid Rather was granted the benefit and the learned Single Judge ordered extension of those benefits to the writ petitioners, they were not entitled because the case of Abdul Rashid Rather was different. Even before us, nothing special or extraordinary fact or circumstance was shown to distinguish the case of Abdul Rashid Rather and of the present appellants. In our opinion, therefore, the learned Single Judge was wholly justified in allowing the writ petition and the Division Bench ought not to have interfered with the said decision.

17. It was no doubt contended by the learned counsel for the respondent-State that Article 14 or 16 of the Constitution cannot be invoked and pressed in service to perpetuate illegality. It was submitted that if one illegal action is taken, a person whose case is similar, cannot invoke Article 14 or 16 and demand similar relief illegally or against a statute. There can be no two opinions about the legal proposition as submitted by the learned counsel for the State. But in the case on hand, in our opinion, there was no illegality on the part of the learned Single Judge in allowing Writ petition No. 519 of 1997 instituted by Abdul Rashid Rather and in issuing necessary directions. Since the action was legal and in consonance with law, the Division Bench confirmed it and this Court did not think it proper to interfere with the said order and dismissed Special Leave Petition. To us, in the circumstances, the learned Single Judge was wholly right and fully justified in following the judgment and order in

Writ Petition No. 519 of 1987 in the case of present writ petitioners also. In fairness and in view of the fact that the decision in Abdul Rashid Rather had attained finality, the State Authorities ought to have gracefully accepted the decision by granting similar benefits to present writ-petitioners. It, however, challenged the order passed by the Single Judge. The Division Bench of the High Court ought to have dismissed Letters Patent Appeal by affirming the order of the Single Judge. The Letters Patent Appeal, however, was allowed by the Division Bench and the judgment and order of the learned Single Judge was set aside. In our considered view, the order passed by the learned Single Judge was legal, proper and in furtherance of justice, equity and fairness in action. The said order, therefore, deserves to be restored.”

23. In view of the facts and circumstances narrated above, as well as the analysis of legal position involving the case of the present petitioner, this Court is inclined to allow the present writ application and order dated 3rd December, 2020 under Annexure-7 as well as 27th October 2021 under Annexure-11 passed by the Opposite Party Nos.2 & 1 respectively are hereby quashed. The District Education Officer, Jajpur, Opposite Party No.5 shall give appointment to the Petitioner in the post of Contract Teacher as has been done in the case of one Aparna Sinha, Bandana Sahoo, Manjulata Mallik, Dipak kumar Majhi, Ramakanta Sahoo and many others, within a period of two months from today. The Opposite Party No.5 is further directed to calculate consequential service benefits, if any payable to the Petitioner within a period of one month from the date of her

appointment.

The writ application is hereby allowed. There shall be no order as to cost.

(A.K. Mohapatra)
Judge

RKS

