

(2024) 05 OHC CK 0078
In the Orissa High Court
Case No : Writ Petition (C) No. 11042 Of 2024

Bhimakanta Naik & Ors

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 06-05-2024

Acts Referred:

Citation : (2024) 05 OHC CK 0078

Hon'ble Judges : Biraja Prasanna Satapathy, J

Bench : Single Bench

Advocate : S. Mishra, S. Rath

Final Decision : Disposed Of

Judgement

Biraja Prasanna Satapathy, J

1. This matter is taken up through hybrid mode.
2. Heard Mr. S. Mishra, learned counsel for the Petitioner and Mr. S. Rath, learned Addl. Standing Counsel appearing for the Opp. Parties.
3. The present writ petition has been filed inter alia with the following prayer:-

"In the above facts and circumstances, the petitioner humbly prays that this Hon'ble Court may be graciously pleased to issue a writ/writs in the nature of a writ of Certiorari quashing the Notification dtd.04.03.2024 under Annexure-5 after declaring the same as illegal.

And further be pleased to issue a writ/writs in the nature of a writ of Mandamus directing the Opposite Parties to regularize the service of the petitioners as Level-V Primary School Teacher with effect from the date the Gnasikshyakas became regular in view of Notification did.25.07.2016 under Annexure-3 with all admissible benefits without insisting passing of OTET examination within a stipulated time.

And further be pleased to pass any other order/orders, direction/directions as

deemed fit and proper.

And for this act of kindness, the Petitioner shall remain ever pray.”

4. It is contended that Petitioners though were otherwise eligible to get the benefit of regularization in terms of resolution dtd.16.02.2008 under Annexure-1, but till date they are not being

regularized on the ground that they don't have the required OTET so reflected in the impugned notification issued by the Govt.-Opp. Party No. 1 on 04.03.2024. It is also contended that such notification was issued by the Govt.-Opp. Party No. 1 on 04.03.2024 under Annexure-5 placing reliance on the decision so passed by this Court in the case of Balabhadra Majhi Vs. State of Odisha & Ors., W.P.(C) No. 15345 of 2022, disposed of on 11.11.2022.

4.1. However, in course of hearing learned counsel for the Petitioners produced before this Court order dtd.26.04.2024 so passed in a similar issue in Writ Appeal No. 1912 of 2023. This Court relying on the Judgment passed in the case of Balabhadra Majhi and the contention raised by the learned State Counsel, has observed that on completion of 6 years of service as Gana Sikshyak, a Gana Sikshyak will be entitled for regularization of his/her service. The order passed by this Court in the aforesaid Writ Appeal No. 1912 of 2023 vide Para 8 to 12 is reproduced hereunder:-

“8. The appellants do not question now, the correctness of the direction issued by the learned Single Judge in the impugned judgment to the extent it relates to regularisation of service of the respondent. It has, however, been submitted that the respondent is not entitled to any pension under the Odisha Civil Service (Pension) Rules, 1992. He has submitted that if the judgment passed by the learned Single Judge is clarified to the said extent, the purpose of the present appeal shall be served. He has submitted that in any case, the respondent cannot claim pension under the said Pension Rules.

9. Learned counsel representing the respondent does not controvert the submission that the respondent is not entitled to pension in accordance with Odisha Civil Service (Pension) Rules, 1992, however, the respondent is entitled to get retiral benefits under New Pension Scheme, he contends.

10. Learned counsel representing the respondent has, however, submitted that despite the order, which is under challenge in the present writ appeal, passed by the learned Single Judge, service of the respondent has not been regularised.

11. Learned Additional Government Advocate representing the State of Odisha has submitted that the respondent's service shall be regularised in accordance with the Government Policy, which is Page 3 of 4 Page 4 of 4 more beneficial to her than what has been held by the learned Single Judge since according to the said policy, from the date of successful completion of six years of service, instead of eight years, the respondent's service is to be regularized.

12. Considering the submissions advanced on behalf of the parties as noted above, this writ appeal stands disposed of with an observation that from the date of successful completion of six years as Gana Sikhyaka, the respondent shall be entitled to regularization of her service, and her service shall be regularized accordingly.”

5. Mr. S. Rath, learned ASC though on the other hand relying on Annexure-5 contended that unless and until Petitioners have got required OTET, they cannot be regularized. However, learned AGA does not dispute the order passed by this Court in Writ Appeal No. 1912 of 2023.

6. Having heard learned counsel appearing for the Parties and considering the submission made, this writ petition is also disposed of in the light of the order dtd.26.04.2024 so passed by this Court in Writ Appeal No. 1912 of 2023. Claim of the Petitioner to get the benefit of regularization be considered and disposed of in accordance with law and in terms of the order so cited above within a period of three (3) months from the date of receipt of this order.

7. The writ petition is disposed of.

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