
(2016) 03 OHC CK 0058
In the Orissa High Court
Case No : W.P.(C) No. 16852 of 2015

Hemanta Kumar Ghadei

APPELLANT

Vs

State of Odisha

RESPONDENT

Date of Decision : 29-03-2016

Acts Referred:

Citation : (2016) 1 ILRCuttack 996

Hon'ble Judges : Dr. B.R. Sarangi, J.

Bench : Single Bench

Advocate : M/s. Dhuliram Pattanaik, N.S.Pana & N.Biswal, Advocates, for the Petitioner; Mr. A.K.Pandey, Standing Counsel S.M.E.Deptt, M/s. P.K.Chand, G.S.Das, Advocates, for the Opp. Parties

Final Decision : Allowed

Judgement

Dr. B.R. Sarangi, J.—The petitioner, who is working as a Gana Sikshyak, has filed this petition, seeking to quash the order dated 09.09.2015 passed by the Block Education Officer, Mahanga in Annexure-9, rejecting his claim to continue at Itamundali Primary School and directing him to join at Inda Primary School and further seeking for a direction to allow him to continue at Itamundali Primary School under Mahanga Block as per the rationalisation policy i.e. P.T.R. norms by quashing the order of transfer passed by the District Inspector of Schools, Salipur dated 13.06.2012 in Annexure-2.

2. The epitome of the facts is that, the petitioner having been duly selected, was appointed as Gana Sikshyak and posted at Itamundali Primary School under Mahanga Block on 28.06.2008 and thereafter he was transferred to Inda Primary School vide office order dated 13.06.2012. He made a representation to the Chief Executive Officer, Zilla Parishad-cum-Collector, Cuttack ventilating his grievance that he was illegally shown surplus violating the rationalisation policy. Similarly the parents of the students of Itamundali Primary School ventilated their grievance before the Collector, Cuttack alleging therein that the order of transfer of the petitioner is contrary to law. Considering the representation as

well as the grievance made by the parents of the students of Itamundali Primary School, the District Inspector of Schools, Salipur, pursuant to the direction of the Collector, Cuttack by office order dated 02.03.2013 directed the petitioner to take classes at Itamundali Primary School. But subsequently the District Inspector of Schools, Salipur by office order dated 18.03.2013 cancelled the office order dated 02.03.2013 directing the petitioner to take classes at Itamundali Primary School and in the said order the petitioner was directed to join in his former post at Inda Primary School. Assailing the said order, the petitioner approached this Court in W.P.(C) No. 6731 of 2013 and this Court by order dated 04.08.2015 disposed of the writ petition directing the authority to consider the representation of the petitioner in accordance with law within a period of one month from the date of communication of the order. In response to the same the Block Education Officer, Mahanga passed the office order on 09.09.2015 justifying his action stating, inter alia, that the claim of the petitioner to continue at Itamundali Primary School has no merit and accordingly directed him to join at Inda Primary School immediately. Hence this petition.

3. Mr. N. Biswal, learned counsel for the petitioner strenuously urged that the order of transfer of the petitioner from Itamundali Primary School to Inda Primary School dated 13.06.2012 is contrary to the rationalisation policy of teachers and further stated that the petitioner being a Gana Sikshyak cannot be transferred vide office order dated 13.06.2012 in view of the direction issued by the Government in School & Mass Education Department vide letter dated 15.05.2012. He further submitted that the order dated 9.9.2015 passed by the District Education Officer cancelling the deputation of the petitioner without considering the aforesaid letter of the Government cannot sustain in the eye of law. He further submitted that the post held by the petitioner being not a transferable post as per the aforesaid letter of the Government dated 15.05.2012, the petitioner should not have been transferred to Inda Primary School from Itamundali Primary School.

4. Mr. A.K. Pandey, learned Standing Counsel for the School and Mass Education Department, stated that in compliance to the order of transfer dated 13.06.2012 in Annexure-2, the petitioner having joined in his new place of posting, i.e. Inda Primary School and has been discharging his duties and the same having been acted upon, he cannot turn around and say that the order of transfer is bad. It is further urged that the petitioner made a grievance before the Collector, Cuttack and on consideration of the same, the District Inspector of Schools, Salipur issued office order dated 02.03.2013 deputing the petitioner to take classes at Itamundali Primary School under the same Block. But subsequently, the same was cancelled vide office order dated 18.03.2013 and the petitioner was directed to work at Inda Primary School, which was challenged before this Court and this Court directed to consider his representation. Consequently the impugned office order dated 09.09.2015 rejecting the claim of the petitioner to continue at Itamundali Primary School has been passed. It is further urged that, it is the employer's prerogative to allow the persons to continue on deputation on

administrative exigency and cancel the same. Therefore, the action taken by the authorities is wholly and fully justified.

5. On the basis of the facts pleaded above, admittedly the petitioner was working as a Gana Sikshyak at Itamundali Primary School and while he was so continuing, he was transferred to Inda Primary School on 13.06.2012 pursuant to which he joined there. But subsequently on the grievance of the petitioner as well as the parents of the students of the said School, though the petitioner was posted at Inda Primary School, he was allowed to take classes at Itamundali Primary School on deputation basis. It is also admitted fact that the students' strength of Itamundali Primary School is 88 whereas the strength at Inda Primary School is only 29. When there is requirement of a teacher at Itamundali Primary School, the order of transfer has been made directing the petitioner to join at Inda Primary School, which is contrary to the student-teacher ratio. For rationalisation of Elementary Teachers/Zilla Parishad Teachers/Sikshya Sahayaks/ Gana Sikshyaks in Govt. Primary and Upper Primary Schools during the academic session 2012-13, the Government of Odisha in the School & Mass Education Department issued a guide line on 15.05.2012. Clause 9 thereof reads as follows :

"9. Regular teachers who are working in New Primary Schools/ New Upper Primary Schools under deployment may be allowed to continue. Otherwise the practise of deployment shall be stopped altogether and in case of exigency prior approval of Director, Elementary Education, Odisha shall have to be taken for deployment of teachers."

As per the above mentioned provision, only regular teachers, who are working in new primary School and new upper primary School, have been allowed to continue on deployment, but there is no mention in the rationalisation policy with regard to transfer or deployment of Gana Sikshyaks. On consideration of the grievance made by the petitioner when the Collector directed the D.E.O., to allow the petitioner to take classes at Itamundali Primary School on deputation, the same has been done by office order dated 02.03.2013. But subsequently on 18.03.2013 the same has been cancelled without any reason. Consequently the petitioner approached this Court in W.P.(C) No. 6731 of 2013 and this Court by order dated 04.08.2015 directed the authorities to consider the representation of the petitioner in accordance with law. Thereafter, the impugned order in Annexure-9 has been passed. As per the letter dated 15.05.2012 of the Government of Odisha, School & Mass Education Department issued to all the Collectors/CEOs, Zilla Parishads, no deployment of teachers shall be made without necessary approval of the Director, Elementary Education, Odisha. In the case of the petitioner, no approval of the Director to the deputation of the petitioner to Itamundali Primary School was taken and the said order of deputation passed in favour of the petitioner has been cancelled and the petitioner's representation has been rejected by the Block Education Officer, Mahanga. The Government of Odisha in School & Mass Education Department

issued a Circular on 18.05.2013 to all Collectors-cum-CEOs Zilla Parishads with regard to Rationalization of Elementary Teachers/Zilla Parishad Teachers/Shikshya Sahayaks/Gana Sikshyaks in Govt. Primary and Upper Primary Schools during the academic session 2013-14. Clause 3 whereof states as follows:

"3. Gana Sikhyak/Sikhya Sahayak were recruited to be posted in difficult areas to address of issue of shortage of teachers in these areas. However, in few districts they were transferred. Transfer of these categories of teachers is highly objectionable. Even while calculating the station seniority the Sikhya Sahayak/Gana Sikhyak should not be disturbed."

On perusal of the aforementioned clause, it clearly reveals that transfer of Gana Sikhyak/Sikhya Sahayak is highly objectionable and while calculating the station seniority, the Gana Sikhyak/Sikhya Sahayak should not be disturbed. Therefore, the Government on consideration of the fact that Gana Sikshyak cannot be transferred, any action taken by the authorities transferring the petitioner from Itamundali Primary School to Inda Primary School cannot sustain in the eye of law. Apart from the same, the subsequent direction issued in favour of the petitioner to take classes at Itamundali Primary School pursuant to Annexure-5, otherwise could not have been cancelled vide order dated 18.03.2013. If by virtue of the circular issued on 18.05.2013, the Government as a matter of principle decided not to transfer Gana Sikshyaks, applying the same to the present case, the petitioner could not have been transferred and after joining in the transferred place, he could not have been directed to take classes in the previous place of posting.

6. In view of the aforesaid facts and circumstances, this Court is of the considered view that since under the rationalisation policy of 2012-13 of the Government, only regular teachers who are working in new primary school or new upper primary school on deployment have been allowed to continue and such rationalisation policy does not provide for transfer and/or deployment of Gana Sikshyaks and the position is more clarified in the subsequent rationalisation policy of the Government for the year 2013-14 wherein the Government has decided not to transfer Gana Sikshyaks, the present order of transfer in favour of the petitioner vide Annexure-2 cannot sustain and accordingly the impugned order in Annexure-9, rejecting the claim of the petitioner to continue at Itamundali Primary School also cannot sustain.

7. For the foregoing discussions, the impugned order of transfer dated 13.06.2012 (Annexure-2) transferring the petitioner from Itamundali Primary School to Inda Primary School as Gana Sikshyak and the order of cancellation of deputation from Inda Primary School to Itamundali Primary School on consideration of the representation dated 09.09.2015 in Annexure- 9 are hereby quashed and it is directed that the petitioner be allowed to continue at Itamundali Primary School as before with all the consequential benefits as due and admissible to him in accordance with law.

8. With the aforesaid observation and direction, the writ petition is allowed. No order as to cost.