

(2024) 07 OHC CK 0046
In the Orissa High Court
Case No : Writ Petition (C) No. 17052 Of 2011

Md. Swalehuzzaman

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 01-07-2024

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2024) 07 OHC CK 0046

Hon'ble Judges : Savitri Ratho, J

Bench : Single Bench

Advocate : Sachidananda Sahoo, S.N. Mohapatra,

Final Decision : Dismissed

Judgement

Savitri Ratho, J

1. This writ petition has been filed by the petitioner challenging the office order No. 45339 dated 15.09.2010 vide Annexure-8 where the Deputy Director (Hindi & Sanskrit), Orissa has examined the representation dated 15.03.2010 pursuant to order dated 19.02.2010 passed by this Court in W.P.(C) No. 3699 of 2003 and passed the following order:-

1) The petitioner is continuing as Urdu Teacher in a primary School which is now in Elementary Cadre.

2) For adjustment against the post of Urdu Teacher in High School, Govt. Permission is required as all the sanctioned posts of Urdu Teacher in High Schools which have fallen vacant are treated as abolished as per circular of Finance Deptt. There will be no regular posting against the vacant sanctioned Urdu teacher posts without concurrence of Finance Deptt. in High Schools only contractual postings have been allowed.

3) Hence due to non-availability of vacant sanctioned posts and regular appointment process at present the petitioner cannot be adjusted against the

post of Urdu Teacher in any High School.”

CASE OF THE PETITIONER

2. The petitioner pursuant to Advertisement dated 23.06.1986 vide Annexure-1 of 1986 inviting applications for recruitment of Teachers for preparation of Urdu Teachers in Aided High and M.E. Schools of the State had applied. Pursuant to the said Advertisement, letter dated 07.01.1988 had been issued to the Secretary, Sayed Seminary, School, Cuttack with copy marked to the petitioner asking him to report to the Secretary for duty. In the said letter, it has been indicated that as per the vacancy in the post of Urdu Teacher in the School, the petitioner has been allotted for appointment against the said vacancy.

3. In spite of the said order, the School authority, Sayed Seminary, School, Cuttack did not allow the petitioner to report for duty for which the petitioner approached this Court in O.J.C. No. 2783 of 1991 with the prayer that the petitioner may be absorbed in the School in question or in the alternative, the petitioner may be appointed in any other School of the State as an Urdu Teacher. O.J.C. No. 2783 of 1991 was disposed of by this Court vide order dated 18.09.1991, with a direction to the opposite parties to take steps regarding appointment of the petitioner in another school if there is no vacancy in opposite party no.5 School as per rules and communicate the decision to the petitioner within two months from that day and if there is vacancy in opposite party no.5 School, necessary steps should be taken within the said time. Thereafter the Director, Secondary Education Orissa vide letter dated 15.11.1991 asked the D.I. of Schools, Dhenkanal to issue appointment order in favour of the petitioner against the post fallen vacant at Tavapal Primary School. After receipt of the said letter, the petitioner had made a request to the opposite party no.3 on 29.11.1991 that a clear and acceptable order regarding his appointment be issued in a post of Urdu Teacher in High School paying due regard to order of the High Court on his representation. But in spite of that, vide letter no.6322 dated 17.02.1992, the District Inspector of Schools, Khurda issued another appointment letter to the petitioner as Urdu Teacher in Arakhapali Urdu Primary School. When the petitioner approached the Director, Secondary Education, Orissa in person and requested him to issue appointment letter against the post of Urdu Teacher in a High School, he was assured that this is a provisional arrangement and later on consideration shall be made for giving posting in a High School.

4. In the said consequences, the petitioner had joined at Arakhapalli Urdu Primary School and submitted his representation dated 10.02.1998 to the Director, Secondary Education, Orissa, Bhubaneswar with the prayer to adjust him in BJB High School, Khurda in the post of Urdu Teacher in the retirement vacancy.

5. Since the same was not considered, the petitioner again approached this Court in W.P.(C) No. 3699 of 2003 which was disposed of by order dated 19.02.2010

granting liberty to the petitioner to file representation before the opposite party no.2 Director, Secondary Education Orissa enclosing all relevant documents highlighting his grievance and for a direction to dispose of the representation within a period of six months from the date of its filing.

6. The petitioner accordingly submitted a representation on 15.03.2010 with the prayer to adjust him as an Urdu Teacher in any High School at an early date. Thereafter the Director, Secondary Education Orissa has passed the impugned order on 15.09.2010.

SUBMISSION

7. Mr. Sachidananda Sahoo, learned counsel for the petitioner submits that as initial appointment of the petitioner was against the post of Urdu Teacher in a High School and the petitioner had necessary qualification, the opposite party should have adjusted him as per their advertisement in any High School of the State. Instead of doing so, his representation has been rejected by the impugned order which is liable for interference. He further submits that even if the stand of opposite party is accepted that there is no vacant post of Urdu Teacher in any High School and presently all recruitments and all posts of Urdu Teacher in High School are contractual posts,

considering the background of the case, a super numerary Post should be created for adjusting the petitioner, before his retirement .

8. Mr. S.N. Mohapatra, learned Standing Counsel for School & Mass Education Department opposes the said prayer stating that the Advertisement had been issued for appointment of Urdu Teacher in both High School and M.E. School and Syed Seminary School was a M.E. School so it cannot be accepted that the appointment of the petitioner against the post of Urdu Teacher could be in a High School only. He further submits that when the petitioner had initially approached this Court, it has been noted in order dated 18.09.1991 that his prayer was for direction to the Management Committee to absorb him in the School in question or in the alternative in any other School of the State as Urdu Teacher.

9. Considering the said prayer, he has been given appointment in a primary School for which no illegality can be said to have been committed by the opposite party. As regards the contention of the petitioner that the Director had given him assurance that after his join as Urdu Teacher in primary School, later on he will be given posting in High School is not correct and cannot be accepted as it is not supported by any documents. He further submits that since there is no regular vacancy of Urdu Teacher in any High School, the prayer of the petitioner cannot be granted and the writ petition is liable to be dismissed.

ANALYSIS AND CONCLUSION

10. As the Advertisement in question had been issued for appointment of Urdu Teacher in both High School and M.E. School and Syed Seminary School was a M.E. School so it cannot be accepted that the appointment of the petitioner was

against the post of Urdu Teacher in a High School only. In OJC No. 2783 of 1991 , the petitioner had approached this Court with a prayer that the petitioner may be absorbed in Syed Seminary School or any other school in the State as Urdu teacher and this Court vide order dated 18.09.1991 had directed that steps may be taken to appoint the petitioner in any other school if there was absence of vacancy in Syed Seminary School . There was no direction by this Court that the petitioner should be appointed in a High School. The petitioner had joined at Arakhapalli Urdu Primary School and submitted representation for adjustment in BJB High School. But no document has been brought on record that any assurance had ever been given to the petitioner at the time of his appointment in a Primary school that such appointment was provisional in nature and that he would soon be appointed as Urdu Teacher in a High School as soon as there was a vacancy . The alternate submission of the learned counsel for the petitioner that a super numerary post should be created for the petitioner in case of non availability of a post of Urdu teacher in a High School is also bereft of merit as the petitioner has no right to claim appointment as a Urdu teacher in a High School . I therefore find no illegality in the order No. 45339 dated 15.09.2010 passed by the Deputy Director (Hindi & Sanskrit), Orissa so as to interfere with the same .

11. As no illegality has been committed by the Opposite Parties , I find no merit in the writ application , which is dismissed, but without any order as regards cost .

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