
(2015) 05 OHC CK 0021

In the Orissa High Court

Case No : Writ Petition (C) No. 19843 of 2011

Padala Bindu Madhavi

APPELLANT

Vs

Director, Elementary Education and Others

RESPONDENT

Date of Decision : 01-05-2015

Acts Referred:

Citation : (2015) 120 CLT 1051 : (2015) 2 ILR Ori 395 : (2015) LabIC 3315

Hon'ble Judges : S.N. Prasad, J

Bench : Single Bench

Final Decision : Disposed off

Judgement

S.N. Prasad, J.—The petitioner has challenged the order dated 16.7.2011 passed by the District Inspector of Schools, Paralakhemundi whereby and whereunder she has been transferred from Relief Colony P.S/NAC under Kasinagar Block/Municipality to Chandragiri PUPS under Mohana Block/Municipality.

2. Case of the petitioner is that she was engaged on 22.3.2011 as Sikhya Sahayak but within short span of time within a period of less than four months order of transfer has been issued which is contrary to the guideline dated 5.7.2011 which prescribes suggestive guidelines for rationalisation of teachers at elementary level wherein provision has been made that in the schools where Shikshya Sahayaks have been posted recently without immediate need of teaching hands they may be shifted to the schools where there is dearth of teachers.

3. Lady teachers and teachers with physical disabilities may be posted in the schools having communication facilities, while transferring the surplus teachers from the school the station senior teacher may be taken into consideration in case of rural area but in case of schools in urban areas, the station seniority of the teacher in that NAC or Municipality may be taken into consideration.

4. Case of the petitioner is that she having appointed on 22.3.2011, being lady, junior to two station seniors, i.e. Sashi Bhusan Patra and Prasad Mishra who are

continuing in the same block for more than 10 years but they are not transferred.

5. Heard learned counsel for the parties and perused the documents on record.

6. Petitioner was appointed as Sikshya Sahayak in Relief Colony P.S/NAC under Kasinagar Block/Municipality under the District Inspector of Schools, Paralakhemundi in the district of Gajapati and started serving.

7. Guideline has been formulated by the Government wherein the following provisions have been made:

(i) In the schools where Shikshya Sahayaks have been posted recently without immediate need of teaching hands they may be shifted to the schools where there is dearth of teachers.

(ii) Lady teachers and teachers with physical disabilities may be posted in the schools having communication facilities.

(iii) While transferring the surplus teachers from the school the station senior teacher may be taken into consideration in case of rural area but in case of schools in urban areas, the station seniority of the teacher in that NAC or Municipality may be taken into consideration.

8. Case of the petitioner is that she being engaged on 22.3.2011 has been transferred within short span of less than four months by office order dated 16.7.2011 in order to rationalise the PTR.

9. Further case of the petitioner that station seniors who are regular teacher and they were continuing in the station for about more than 10 years but has not been transferred.

10. Further submission has been made by learned counsel for the petitioner that the petitioner is unmarried lady and it is difficult for her to go to the new station that too without following provisions made in the guideline by the authorities and further without disturbing other persons who have been permitted to remain in the same station for last ten years.

11. Guideline has been made governing the transfer of Sikshya Sahayak from any place to another wherein various grounds have been given but the relevant ground which is paramount of consideration of case of the petitioner, which has been quoted above, is to be seen.

12. In spite of direction given by this Court on 26.7.2011 no counter affidavit has been filed.

13. Admittedly, petitioner is an unmarried lady and even two other persons have been permitted to remain in the same school for last ten years but petitioner who has recently been posted has been transferred within short span of less than four months on the ground of rationalisation of PTR, for rationalisation suggestive guidelines has been made wherein certain conditions have been made.

14. It is true that the guideline has no binding effect but in absence of any such rule, guideline is to be given paramount consideration otherwise there will be no purpose from making the guideline governing the transfer policy. In this context, judgment rendered by the Supreme Court in the case of Union of India and Others Vs. S.L. Abbas, AIR 1993 SC 2444 : (1993) 3 JT 678 : (1993) LabIC 1311 : (1993) 2 LLJ 626 : (1993) 2 SCALE 718 : (1993) 4 SCC 357 may be seen. Hon"ble Supreme Court at paragraph-7 held:

"xxx While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. xxx"

15. Since the guideline has been formulated by the Director, Elementary Education, Orissa which is supposed to be followed by the authority concerned, but while transferring the petitioner the provision of the guideline has not been followed and for that on what reason the petitioner has been transferred has also not been disclosed in the order of transfer.

16. Considering the fact that the order of transfer is contrary to the provisions made in the guideline, same cannot be said to be in conformity with the said guideline.

17. In view of the reasons mentioned above, the order of transfer dated 16.7.2011 is hereby quashed.

18. The matter is remitted before the competent authority to take fresh decision in accordance with law within a reasonable period, preferably within a period of four weeks from the date of presentation of certified copy of this order.

19. The writ petition is accordingly disposed of.