

(2010) 08 OHC CK 0006

In the Orissa High Court

Case No : Writ Petition (C) No. 17060 of 2009

Prafulla Kumar Rath

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 23-08-2010

Acts Referred:

Citation : (2010) 110 CLT 717

Hon'ble Judges : S. Panda, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sanju Panda, J.—Post-globalization, the world has changed and the notion of "One World" has emerged as a powerful and modern phenomenon. Amidst all this, one sector that has changed dramatically is the education sector. This changing situation requires building of human capital to be utilized for overall development of our country. To put it simply, it is the development of our country. We must invest the energies and aspirations of a vast majority of our people so that they can contribute to and get the benefit from the new phase of growth and be a part of the exciting future. India has to grow from developing country to a developed country and alleviate poverty by changing itself from an agrarian to a manufacturing and services. To meet all round growth in agriculture, manufacturing and Indian Law Reports, Cuttack Series (2010) services which need up-skill or re-skill 500 million people by 2020 to meet the growth but at present we can train barely 50 million with an astounding gap of 90%. Considering the said gap and having foresight, the Government has already taken steps by encouraging public and private partnership to allow Corporations and NG Os to put up schools across the country and to unshackle the school sector from bureaucratic red-tape and allow both public and private schools to co-exist and compete. The Government has also taken steps to ensure education to all and also introduced Integrated Child Development Services Scheme and Sarva Sikhya Abhiyan Scheme to provide education to mass

illiterate persons living in rural areas as well as unskilled labourers living in urban areas. The aim and object of Sarva Sikhya Abhiyan is to provide useful and relevant elementary education for all children by 2010 and complete elementary schooling after reading in Education Guarantee Centre, alternate school and back to school camp with emphasis on education for life. (Emphasis supplied). Alas! Here is a case where red-tapism prevents the Petitioner to participate in the changing system and educate the children of remote villages at base-level having requisite qualification and experience when the Government has admitted that there is shortage of teachers to provide education facilities to mass illiterate persons.

2. In this writ petition, the Petitioner has challenged the order dated 30.7.2009 passed by the Collector, Jajpur rejecting his representation to be engaged as Gana Sikshyak as per Government Resolution dated 16.2.2008 as he had already been disengaged as Education Volunteer.

3. The facts, as narrated in the writ petition, are as follows: The Petitioner passed the High School Examination in the year 1982 and the Secondary Teachers Training Certificate Course in the year 1992. He being a physically handicapped person having 60% disability comes under the category of Neurological handicap, as per the disability certificate issued in his favour by the District Medical Board of Jajpur District. In pursuance of Sarva Sikhya Abhiyan (in short, "SSA"), the State Government formulated Education Guarantee Scheme and Alternative Innovative Education (in short, "EGS & AIE") to educate people in remote villages. Accordingly, the Petitioner applied to be engaged as Education Volunteer. The Korai Praharajpur Village Education Committee constituted under the Education Guarantee Scheme duly recommended the name of the Petitioner for engagement as Education Volunteer. The District Project Officer, Jajpur considering the recommendation made by the Village Education Committee approved the engagement of the Petitioner as Education Volunteer in respect of Korai Praharajpur EGS Centre vide Order No. 344 dated 23.2.2004. The said order reflects that the District EGS Committee after considering the recommendation of the Village Education Committee Prafulla Kumar Rath v. State S. Panda J. approved the candidature of the Petitioner as an Education Volunteer for Korai Praharajpur EGS Centre and directed to execute an agreement before issuance of engagement order in favour of the Petitioner under Annexure-3. Accordingly, after due execution of the agreement, the Petitioner was engaged as Education Volunteer from 24.2.2004 and continued as such in the said Centre.

4. While the matter stood thus, on 1.6.2004, the District Project Officer, Sarva Sikshya Abhiyan, Jajpur issued a circular directing closure of the EGS Centre functioning or proposed to function with effect from 1.6.2004 where new Primary Schools have been opened. As per the said circular, the Education Volunteers of EGS Centre were unilaterally disengaged from 1.6.2004. The Government of Orissa while taking a policy decision to close the EGS Centre, considering the problems to be faced by the Education Volunteers under the said Scheme on

disengagement, decided to rehabilitate the Education Volunteers as Gana Sikshyaks and passed a resolution on 16.2.2008. In the said resolution, it was decided that the disengaged Education Volunteers who are trained (Matric, 10th (H.S.C.) +2 with C.T., B.A./B. Sc./B. Com with B. Ed) will be engaged as Gana Sikshyak with a consolidated remuneration of Rs. 2000/-per month and those who are untrained (Matric, 10th (HSCE)/+2) will be engaged with a consolidated remuneration of Rs. 1750/-per month. The Petitioner being a trained Matric having been disengaged as Education Volunteer was eligible for being engaged as Gana Sikshyak. But his case was not considered in terms of the aforesaid resolution. Therefore, he filed a representation before the Collector & District Magistrate, Jajpur, opposite party No. 2, ventilating his grievances. As opposite party No. 2 did not take any decision on the representation of the Petitioner, he approached this Court in WPC No. 14961 of 2008, which was disposed of on 21.10.2008 with a direction to the Collector, Jajpur to dispose of the representation of the Petitioner in accordance with the resolution. On considering the representation of the Petitioner, the Collector, Jajpur rejected his representation on the ground that the Education Committee in its meeting dated 23.11.2003 decided to open one EGS Centre at Korai Praharajpur under Binjharpur Block, but no approval was made by the Committee to engage Sri Rath as Education Volunteer. Qualification of the Education Volunteer has been provided under the Education Guarantee Scheme. The minimum age to apply for the said post is 18 years on the date of filing of the application, and the maximum age is 35 years. From the matriculation certificate, it appears that the Petitioner was 37 years of age on the date of filing of his application for engagement of Education Volunteer. Hence, he did not qualify for the post of Education Volunteer as per the provision contained in the Scheme and also there was no such record available to show that Sri Rath had served in any EGS Centre.

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5. Learned Counsel appearing for the Petitioner submitted that the Petitioner had filed the documents, i.e., the recommendation made by the Village Committee which was approved by the District Project Officer and engagement order issued in favour of the Petitioner (Annexure-3) and the disability certificate issued by the District Medical Board (Annexure-2). The Government by resolution dated 10.6.2004 directed for closure of the EGS Centre and proposed for functioning new Primary Schools with effect from 1.6.2004. Though the Petitioner submitted his application, opposite party No. 2 did not consider his case. The Petitioner is a physically handicapped person. He is entitled to the upper age limit relaxation as per the Orissa Civil Service (Fixation of Upper Age-Limit) Rules, 1989 (in short, "the Rules"). As per Rule "3 of the said the Rules, relaxation for upper age limit in case of physically handicapped persons for entry into the Government service is up to 10 years. Therefore, the Petitioner's case should have been considered by the Collector, Jajpur instead of rejecting his application. He further submitted that as per Government Resolution dated 16.2.2008, the Education Volunteers who have been disengaged due to closure of the EGS & AIE Centres are to be

engaged as Gana Sikshyaks to rehabilitate such Education Volunteers. Since the Petitioner is coming under the said category, his case should have been considered.

6. A counter affidavit has been filed by the opposite parties reiterating the same thing as Collector, Jajpur held in the impugned order.

7. From the impugned order, it appears that the Collector has totally ignored the recommendation of the Village Committee which was approved by the District Project Officer and engagement order issued in favour of the Petitioner under Annexure-3. The Petitioner executed an agreement while joining the post of Education Volunteer. Annexure-5, the letter dated 10.6.2004 issued by the District Project Coordinator, S.S.A, Jajpur, shows that Korai-Praharajpur EGS Centre has been closed due to opening of the Primary School and the Petitioner has been disengaged due to such closure of the Centre. The Petitioner having qualification to be engaged as Education Volunteer, his case should have been considered as per category (e) of Rule-3 of the Rules for upper age limit relaxation for physically handicapped persons though he had crossed the maximum age limit of 35 years. Since the Petitioner is coming within the category fixed by the Government Resolution dated 16.2.2008, his case should have been considered by the authorities.

8. This Court in the case of Sasmita Sethi Vs. The State of Orissa and Others, has held that even if the advertisement was made for contractual appointment, the authorities ought to have adhered to ORV Act.

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9. To safeguard the rights of the persons with disability, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (in short, "the Act") was promulgated. The said Act provides that the appropriate Government may by notification make rules for carrying out the provisions of the Act and also reservation of posts in every such establishment to fill up such vacancies not less than 3 per cent for the persons or class of persons with disabilities. One per cent each shall be reserved for the person suffering from blindness or low-vision, hearing impairment, locomotor disability or cerebral palsy. Accordingly, the relaxation of upper age limit fixed under Rules for entry into the Government service so far as physically handicapped persons in the State of Orissa are concerned was 10 years. The Government Resolution dated 16.2.2008 reveals that the Gana Sikshyak will be engaged against the existing created vacancies of Sikshya Sahayaks and their consolidated remuneration etc. will be borne out of Sarba Sikshya Abhijan Budget. They will be engaged in the Government Primary Schools. Since the Primary School teachers' service is a nature of public service, the entry of such appointment may be as Education Volunteers or Sikshya Sahayaks through the process of selection as per the existing procedure. Therefore, the said Act is applicable to the present case. Thus, the concerned authority shall follow the said Act while giving engagement

to the Education Volunteer, Gana Sikshyak, etc. Accordingly, the Petitioner being a physically handicapped person applied under that category. Taking into consideration his disability certificate the Petitioner had been engaged as Education Volunteer and applying the Upper Age Relaxation Rules, the authority engaged him as Education Volunteer in the year 2004 earlier. Therefore, the finding of the Collector that the Petitioner was above the maximum age limit is not sustainable in the eye of law.

10. Accordingly, this Court sets aside the order dated 30.7.2009 passed by the Collector, Jajpur. It is not in dispute that posts of Gana Sikshyaka are lying vacant in the District. Therefore, this Court directs the Collector-cum-CEO, Jajpur to engage the Petitioner as Gana Sikshyaka within a period of four weeks from the date of receipt of this order. The writ petition is accordingly allowed.