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(2015) 09 OHC CK 0026

In the Orissa High Court

Case No : Writ Petition (C) No. 20364 of 2009

Purna Chandra Panda — APPELLANT

Vs

State of Orissa and Others — RESPONDENT

Date of Decision : 02-09-2015

Acts Referred:

Citation : (2015) 09 OHC CK 0026

Hon'ble Judges : D.H. Waghela, C.J;Biswanath Rath, J

Bench : Division Bench

Advocate : S.P. Mishra, Advocate General, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Biswanath Rath, J—By filing this writ petition, the petitioner has sought to challenge the order dated 15.12.2009 passed by the Orissa Administrative Tribunal in T.A. No. 34(C) of 2004.

2. Short background involved in the case as borne out from the Original Application, the Writ Petition as well as from the submission of the petitioner in person is that being duly selected by the Selection Board, the petitioner was appointed as an Assistant teacher in Bharandia M.E. School in the district of Mayurbhanj pursuant to the order dated 1.3.1983 of the competent authority. Pursuant to the offer of appointment dated 8.3.1983, the petitioner joined in the School. While the petitioner was discharging his duty, his services were withdrawn from the said School and was allotted to Anantapur M.E. School in the district of Balasore following an order dated 25.3.1983 issued by the Director of Public Instruction(s), Orissa, Bhubaneswar. Petitioner continued to discharge his duty as a Section Teacher against Class-VI-B of the said School. Following the steep dropping in the students strength in the particular class, the Secretary of the School made a request to the Director of Public Instruction(s) to withdraw the petitioner from the School and adjust him anywhere else. Following the above, the petitioner was issued with an appointment letter against Additional

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Section Teacher post of Class-VII-B of Town High School, Balasore. While the petitioner was continuing as such, the Headmaster-cum-Secretary, Town High School, Balasore vide letter dated 30.7.1984 sent proposal to the Inspector of Schools for approval of the services of the petitioner against Additional Section Teacher post of Class-VII-B of the School. Petitioner alleged that even though the aforesaid proposal was approved in his favour and he continued in such post, yet he was given Trained Matric Scale of Pay instead of Trained Intermediate Scale of Pay. Finding the request of the Managing Committee recommending to grant Trained Graduate Scale of Pay to one Ajaya Kumar Mohanty, a Selection Board Candidate for Trained Matric Post, the petitioner made several representations ventilating his grievances to the authorities but to no response. It is further submitted by the petitioner that while the petitioner was continuing as a Trained Intermediate, he acquired B.Ed. qualification on 6.2.1985 and became a Science Trained Graduate Teacher. Petitioner further alleged that due to non up-gradation of the post as per the yardstick, the petitioner was not given Trained Intermediate Scale of Pay from the date the post was approved. Finding no response from the competent authorities on his grievances, the petitioner filed a writ petition seeking direction for payment of Intermediate Scale of Pay with effect from 12.8.1983 and Trained Graduate Scale of pay with effect from 12.8.1989. Pursuant to introduction of the Administrative Tribunal Act, the writ petition was no more maintainable in the High Court and consequently by the direction of this Court the same was transferred to the Orissa Administrative Tribunal for their disposal.

3. On their appearance, the State opposite parties through opposite party No. 3 filed their counter inter alia contending therein that the particular School was taken over by the Government with effect from 7.6.1994. The petitioner even though had B.Ed. and C.T. qualification, joined against a Trained Matric post on 12.8.1983. He had no Trained Graduate qualification at the time of his appointment. In the counter, the state-opposite parties also brought to the notice of the Tribunal that prior to 12.8.1983 i.e. the joining date of the petitioner, two other persons namely, Smt. Subarna De and Smt. Sibani Parida joined on 22.2.1983 and 3.2.1983 respectively having acquired higher qualification on 14.11.1981 and 12.5.1981 respectively and both of them are not only senior to the petitioner but they had also acquired higher qualification much prior to the petitioner''s acquiring of higher qualification. Under the circumstances, the learned Advocate General contended that the petitioner''s case could not have been considered ignoring two other seniors, already there in service.

4. Hearing the parties involved in the T.A., the State Administrative Tribunal vide its judgment dated 15.12.2009, as appearing at Annexure-12 rejected the claim of the petitioner as not maintainable.

5. Heard the petitioner in person and the learned Advocate General appearing for the State. There is no denial to the fact that there are two seniors having higher qualification above the petitioner. The State Administrative Tribunal considering

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the pleadings and the submissions made by the respective parties has come to a categoric findings that for the existence of two senior Selection Board candidates above the petitioner did not entertain the claim of the petitioner with regard to Trained Intermediate Scale of Pay as well as Trained Graduate Scale of Pay.

6. During course of argument, learned Advocate General brought to our notice through the averments made in paragraph-9 of the counter affidavit of opposite party No. 3 filed in this writ petition, which reads as hereunder:

"That it is humbly stated that as per office order No. 14728 dated 19.10.2000 issued by erstwhile Inspector of Schools, Balasore the petitioner has been adjusted with his original Trained Matric scale against Trained Intermediate post that fell vacant on dt 30.6.2000 after giving an undertaking that he would never claim Trained Intermediate scale. His claim for higher scale now is therefore a breach of trust and manifestation of opportunistic temperament."

On the basis of the above, the learned Advocate General contended that apart from the observation of the Administrative Tribunal, in view of the undertaking at the instance of the petitioner not to claim Trained Intermediate scale, the petitioner is also otherwise estopped from making any such claim and he is not permitted to go behind his undertakings before the State authorities. In this context, we have also perused the rejoinder affidavit filed by the present petitioner in the writ petition and from the rejoinder affidavit, we find that the petitioner while responding to the averments made in paragraph-9 of the counter of opposite party No. 3, has contended as follows:

"That, the statements made in para-9 of the counter is after-thought which was never pleaded in the original proceeding and new plea/facts at this appellate stage should not be entertained. The document at Annexure-C/3 supporting the contentions in para-9 appears to be manufactured in as much as it was never relied in the original proceeding and the document is of the year 2000, whereas the petitioner has filed his case in 1996."

From the above, it is quite clear that petitioner had a clear undertaking to the effect not to claim Intermediate Scale of pay. Further, for no specific denial by the petitioner to the said allegation of the State, it is presumed that the petitioner had a clear undertaking in the said regard and cannot be permitted to go behind it.

7. For the reasons assigned by the State Administrative Tribunal and the observations made herein above, we do not find any scope to interfere in the writ petition for which while confirming the order passed by the State Administrative Tribunal in T.A. No. 34 (C) of 2004, we dismiss the writ petition. However, there is no order as to cost.

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