

(2022) 05 OHC CK 0151

In the Orissa High Court

Case No : Writ Petition (C) No. 6479 Of 2015

Shivadatta Tripathy

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 06-05-2022

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2022) 05 OHC CK 0151

Hon'ble Judges : M. S. Sahoo, J

Bench : Single Bench

Advocate : Sidhartha Swain, Sangram Jena

Final Decision : Dismissed

Judgement

M.S.Sahoo, J

1. The writ petition has been filed by the petitioner, who is serving as Sikshya Sahayak in Banamalipur Government M.E. School, challenging the order dated 13.02.2015 (Annexure-8) passed by the Collector-cum-Chief Executive Officer, Zilla Parishad, Nayagarh-opposite party no.3, whereby, the Collector has heard the petitioner in person (pursuant to the earlier order passed by this Court in W.P. (C) No.9355 of 2014) and has rejected the claim of the petitioner to treat him as recruitee/appointee for the year 2011 and to accord him all consequential service benefits.

2.1. The brief background of the case is that on 23.01.2011, the opposite party no.3- Collector-cum-Chief Executive Officer, Zilla Parishad, Nayagarh issued advertisement for appointment of Sikshya Sahayak on contract basis in Upper Primary (U.P.)/Up-graded M.E. Schools in the district of Nayagarh. The petitioner applied for the post of Sikshya Sahayak under Nayagarh under the Trained Graduate Arts category. His candidature was rejected on the ground that Sikhya Sastri qualification of Rastriya Sanskrit Sansthan is not equivalent to B.Ed certificate.

2.2. The case of the petitioner is that the petitioner possesses a "Sikshya Sastri" Degree: from Rastriya Sanskrit Sansthan, New Delhi, which is a recognized Institution, however in the final select list his name was excluded on account of his degree not being B.Ed degree. The petitioner contends that the Sikshya Sastri Degree of Rastriya Sanskrit Sansthan is equivalent to the corresponding B.Ed Degree of Utkal University.

2.3. Thereafter, the petitioner raised his grievance regarding to the non-selection, before the opposite party no.4-District Project Co-ordinator, Sarva Shikshya Abhiyan, Nayagarh and apprised him that "Sikshya Sastri" is equivalent to the Utkal University B.Ed. Course. The petitioner further asserted that his name found place in the list of trained candidates for the post of Trained Graduate Teacher (Arts), at Sl. No.196.

3. The petitioner then filed W.P.(C) NO.8051 of 2011, challenging the decision of the authority in not selecting him, with a prayer to quash the notification of selection dated 05.02.2011, issued by the School and Mass Education Department.

4. This Court by its order dated 25.08.2011 was pleased to dispose of the aforesaid writ petition along with W.P.(C) No.10325 of 2011 with the following observations :

"The respondents are directed to consider the appointment of the petitioners along with other applicants having acquired necessary qualification of B.A., B.Ed within a period of four weeks from the date of the order."

5. Subsequently, the petitioner filed CONTC No.2605 of 2011, alleging non-compliance of the order dated 25.08.2011 and the said petition was disposed of on 29.03.2012 with an undertaking by the learned Standing Counsel for the School and Mass Education Department to comply the Court's order and for such compliance, the time was extended till the end of April, 2012.

6. Subsequently, some other contempt petitions were filed by the petitioner and ultimately by order dated 17.08.2013, Collector-cum-Chief Executive Officer, Zilla Parishad, Nayagarh-opposite party no.3 issued engagement order dated 17.08.2013 engaging the petitioner as "Sikshya Sahayak" in Barpalli "A" primary school under Khandapada Block. Pursuant to the said appointment order the petitioner joined on 23.08.2013.

7. Afterwards, the petitioner started claiming his engagement with effect from 2011 on the ground that the advertisement was made in 2011, filed another writ petition, i.e., W.P.(C) No.9355 of 2014, the said writ petition was disposed of by order dated 18.08.2014 directing the authority to consider the case of the petitioner and the petitioner's case was rejected by the opposite party no.3-Collector-cum-Chief Executive Officer, Zilla Parishad, Nayagarh by office order dated 13.02.2015 which has been impugned in the present writ petition.

8. A counter affidavit has been filed on behalf of the opposite party nos.3 and 4,

sworn to by the in-charge District Project Co-ordinator, Sarba Sikhsya Abhijan (SSA), Nayagarh, on behalf of opposite party no.3- Collector-cum-Chief Executive Officer, Zilla Parishad, Nayagarh.

At paragraph-6 of the counter affidavit, it has been specifically averred that there was a notification of School and Mass Education Department No.2618/SME dated 05.02.2011 to the effect that the Rastriya Sikshya Sansthan Deemed University has not been recognized. It has been further stated on behalf of opposite party nos.3 and 4 that after the order dated 25.08.2011 in the earlier writ petition, i.e., W.P.(C) No.8051 of 2011, the authority considered the cases of Sikshya Sashtri applicants whose candidature was earlier rejected and the District Selection Committee found that only three posts of B.A., B.Ed, category were left vacant, all the three vacancies were filled-up. Several persons including the petitioner could not be accommodated due to lack of vacancies from the Recruitment year 2011.

9. At paragraph-9 of the counter affidavit, it has been further stated on behalf of opposite party nos.3 and 4 that pursuant to the subsequent advertisement for "Sikshay Sahayak" by the Government, School and Mass Education Department, in the year 2012 (January), the present petitioner applied in the B.Ed category, was selected as Sikshay Sahayak and his name found place at serial no.10 of the merit list. Pursuant to his selection, the petitioner did not join. It is further asserted, the petitioner was available to respond to the authorities as he was working as Block Resource Teacher (Child with Special Need) under the administrative control of opposite party no.4. The petitioner's continuance as Block Resource Teacher is supported by Annexure C/4 to the counter affidavit that is the absentee statement.

10. However, as the events have unfolded, after filing of CONTC No.1734 of 2012, during the pendency of contempt proceeding alleging non-compliance of this Court's order dated 29.03.2012 in CONTC No.2605 of 2011 and order dated 25.08.2011 in W.P.(C) No.8051 of 2011 and W.P.(C) No.10325 of 2011, the petitioner was issued the order of engagement on contractual basis, viz, order no.1998 dated 17.08.2013.

11. The petitioner has filed a rejoinder affidavit sworn to on 23.06.2016 and filed on 23.06.2016. In the said rejoinder, the petitioner has not disputed the fact that there was no vacancy for the year 2011 recruitment year as contended in the counter affidavit on behalf of opposite party nos.3 and 4.

A co-ordinate Bench of this Court by earlier order dated 27.01.2020 had directed as follows :

"Both the counsel are directed to satisfy the Court on the next occasion that if the petitioner joined in the post without any protest, whether the benefit can be admissible to him from the year 2011 or from the date of his joining, i.e., in the year 2013.

List after two weeks.

Further by order dated 12.02.2020, it was directed by this Court as quoted hereunder :

"..... Mr. B. Satpathy, learned Standing Counsel for School and Mass Education Department contended that for the period from 2011 to till the date of engagement, the petitioner is not entitled to get any benefit because the petitioner was engaged somewhere for the said period. To that extent also, learned counsel for the petitioner wants to file affidavit.

On the request of learned counsel for the petitioner, list after two weeks. After be filed in the meantime."

12. On perusal of the entire records, it is found that the petitioner has filed an affidavit dated 28.02.2020 pursuant to the order by this Court dated 12.02.2020. In the said affidavit, particularly at paragraph-5, the petitioner has stated that "he is in no manner responsible for delay in engagement, the petitioner is entitled to get the service benefits from the year 2011". Nothing else has been stated regarding the specific query made by this Court vide order dated 12.02.2020.

In reply to the said affidavit of the petitioner dated 28.02.2020 an additional affidavit has been filed by opposite party no.4 dated 28.02. 2020, wherefrom Paragraphs-5 & 7 are quoted hereunder :

"5. That it is respectfully submitted that since the petitioner was employed as Block Resource Teacher in Bhapur Block under SSA, Nayagarh from August 2012 to July,2013 on monthly salary @ 7335/- as admitted at para-6 of the affidavit dated 28.2.2020, his continuance from 2011 as Sikshya Sahayak is not permissible under law as one cannot be allowed to continue in two separate post at the same time.

7. That since the petitioner joined on 23.08.2013 executing agreement on 20.08.2013 without protest and he was employed from August,2012 to July,2013 as Block Resource Teacher in Bhapur Block, his claim to treat him as appointee of the year 2011 with continuity of service from the year 2011 does not have merit consideration and as such the writ petition filed by the petitioner is liable to be dismissed."

13. From the aforesaid, it is apparent that the petitioner was gainfully employed from August, 2012 to July,2013 on monthly salary @ 7335/- as a Block Resource Teacher in Bhapur Block under SSA, Nayagarh. In view of such uncontroverted facts, the claim of the petitioner to get the service benefits in his subsequent engagement on contract as Sikshya Sahayak vide engagement order no.1998/SS dated 17.08.2013 is untenable for a period when he was concededly engaged as Block Resource Teacher.

14. Further, for continuance of the petitioner in his engagement from August,

2012-2013, the petitioner has received his salary and, therefore, seeking further service benefits for the selfsame period is misconceived.

15. Learned counsel for the petitioner has relied on the decision rendered by a co-ordinate Bench of this Court dated 11.07.2011 in *Basanta Kumar Rout vs. State of others*, in W.P.(C) No.12228 of 2011 along with two other writ petitions.

In *Basanta Kumar Rout (supra)*, this Court was considering the contention as raised in those writ petitions, i.e., the prayer of the petitioner to get engaged as *Sikshya Sahayak* after their candidature was rejected on the ground that non-resident person of the Block was not entitled to apply for engagement as *Swechhasevi Sikshya Sahayak* in that particular Block.

After disposal of the writ petition, W.P.(C) No.14133 of 2006 (*Chandramani Jena & others v. State of Orissa & others*) and W.P.(C) No.14981 of 2006 in order dated 23.08.2007, directing the petitioner therein to be given appointment; *Basanta Kumar Rout and others*, had approached this Court praying for similar relief. In the batch of writ petitions where *Basanta Kumar Rout and others* were the petitioners, this Hon'ble Court granted similar relief.

In considered opinion of this Court the facts of the case in *Basanta Kumar Rout* being different, inasmuch as *Basanta Ku. Rout* did not claim inclusion of any earlier period of service to get the benefit rather he challenged the decision of the authority not to give him appointment.

16. Learned Counsel for the State has relied on decisions of the Hon'ble Supreme Court dated 28.09.2021 Civil Appeal No.3767 of 2010, the *State of Bihar and others v. Arbind Jee* : 2021 SCC OnLine SC 821 and *K. Meghachandra Singh and others v. Ningam Siro and others*: (2020) 5 SCC 689.

17. In *K. Meghachandra Singh and others (supra)* at paragraph-28, referring to the earlier decisions rendered by the Hon'ble Supreme Court in *Jagdish Ch. Patnaik v. State of Orissa* : (1998) 4 SCC 456, the Hon'ble Court, following the decision in *Jagdish Ch. Patnaik (supra)* reiterated :

"28. ... The Court observed that there could be time-lag between the year when the vacancy accrues and the year when the final recruitment is made. Referring to the word "recruited" occurring in the Oriss Service of Engineers Rules, 1941 the Supreme Court held in *Jagdish Ch. Patnaik (supra)* that person cannot be said to have been recruited to the service only on the basis of initiation of process of recruitment but he is borne in the post only when, formal appointment order is issued."

[Emphasis supplied]

18. It is submitted by Mr. Jena, learned Standing Counsel for the School and Mass Education Department that applying the said principle, the petitioner in the present writ petition cannot claim the benefits prior to his date of joining, i.e., dated 23.08.2013, joining without any protest after executing the agreement

dated 23.08.2013.

Mr. Jena, learned Standing Counsel further highlights the fact that the petitioner prior to 23.08.2013, was employed under the Block Authority, Bhapur, as a Block Resource Teacher from August, 2012 to July, 2013.

19. Applying the principle as laid down in K. Meghachandra Singh and others (supra) to the present case, it has to be held that the petitioner was borne in the cadre of Sikhya Sahayak only after he joined on 23.08.2013, by executing the agreement with the authority and cannot claim for any service benefit prior to that.

20. In State of Bihar and others v. Arbind Jee (supra), the Hon'ble Apex Court considered the issue, "whether the respondent is entitled to claim seniority in service from a retrospective date i.e., 20.11.1985, as was ordered by the High Court or whether he is entitled for seniority from the date he entered service".

Following the earlier decisions rendered by the Hon'ble Supreme Court, the Hon'ble Court set aside the order passed by the High Court in granting retrospective seniority to the respondent.

It would also be apt to note that the respondent in the said case, Arbind Jee, who got appointment as per the directions of the Hon'ble Supreme Court, never raised any claim relating to his appointment to an earlier date before the Hon'ble Supreme Court and also post appointment, had never raised any grievance within reasonable time for fixing his date of appointment, earlier to the date he entered the service on 10.02.1996.

21. To draw an analogy, in the present case, the petitioner was working in a different post as "Block Resource Teacher" under Bhapur Block prior to he joined as "Sikshya Sahayak" on 23.08.2013 and never had claimed in his earlier writ petition to treat him as a "Sikshya Sahayak" appointee of the year 2011, without continuing in service from 2011.

22. In view of the aforesaid discussions, the writ petition is dismissed being devoid of any merit. All the interim orders passed earlier stand vacated. However, there shall be no order as to costs.

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