
(1999) 02 OHC CK 0021
In the Orissa High Court
Case No : O.J.C. No. 889 of 1999

Sudhakar Gouda and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 08-02-1999

Acts Referred:

Administrative Tribunals Act, 1985 — Section 15, 2
Constitution of India, 1950 — Article 226, 227

Citation : (1999) 02 OHC CK 0021

Hon'ble Judges : P.K. Tripathy, J;P.C. Naik, J

Bench : Division Bench

Advocate : C.A. Rao, S. Behera and A. Tripathy, for the Appellant; A.K. Mohapatra, Additional Government Advocate and B.D. Mohanty, A.S.C., for the Respondent

Final Decision : Dismissed

Judgement

P.C. Naik, J.—The Petitioners have approached this Court for issuance of an appropriate writ, direction or order commanding the opposite parties to declare the result of the viva-voce test that was held in connection with appointment to the posts of Government teachers in primary schools and for a further direction commanding the said opposite parties to issue appointment letters in favour of the Petitioners appointing them as Government teachers in primary schools within a stipulated period.

2. It is their case that Petitioner Nos. 2, 3 and 4 have completed C.T. course and Petitioners 1, 5 and 6 have completed the D.I.E.T. which is equivalent to C.T. course and all of them have registered their names under Gunupur Employment Exchange. It is alleged that the State Government has passed a resolution on 12-3-1996 which provides modalities for recruitment of persons to be appointed as primary school teachers in Government schools. This resolution, inter alia, provides for the qualification, conditions of eligibility and the procedure that is to be adopted for direct recruitment to the post of primary school teachers. It also

provides for shortlisting the candidates for the posts of primary school teachers and creation of district-wise cadre for such appointment. The relevant clause thereof relating to district-wise selection reads thus:

Government teachers appointed to primary schools shall be borne in a district cadre and for this purpose the district shall mean the educational district. All appointments shall be made to the cadre of the concerned educational district.

Feeling aggrieved with the aforesaid resolution, a large number of writ applications came to be filed before this Court including O.J.C. No. 615 of 1997 by one Sucheta Mishra and O.J. C. No. 1560 of 1997 by the present Petitioners along with nine others. Like the other similar cases, in O.J. C. No. 1560 of 1997, on the prayer of the Petitioners, an interim order was passed by this Court on 29-1-1997 in the following terms:

Misc. Case No. 1255 of 1997

3. 29-1-97 Petitioner(s) may be permitted to appear at the interview if held in future. This permission shall not confer any equity on them.

The misc. case is disposed of.

xx xx xx.

Subsequently, O.J.C. No. 615 of 1997 along with the connected matters was disposed of on 6-12-1997 with the following order:

In the present writ applications, two points have been raised viz. (a) short listing of candidates for the post of primary school teachers, and (b) creation of District wise cadres for such appointment.

2. Regarding short listing, the matter is no longer res integra in view of decision of the Apex Court in Ashok Kumar Yadav and Others Vs. State of Haryana and Others, . In view of that, power of short listing is available to the Selection authorities. According to learned Addl. Govt. Advocate for the purpose of appointment of selection of primary school teachers candidate in ratio 1 is to 3 have been called for. This procedure cannot be faulted.

3. Regarding District-wise selection, paragraph-1 of the resolution dated 12-3-1996 of the Government in School and Mass Education Department reads as follows:

Government teachers appointed to primary schools shall be borne in a district cadre and for this purpose the district shall mean the educational district. All appointments shall be made to the cadre of the concerned educational district.

4. On behalf of the Petitioners, it is urged at the Bar that the persons obtaining less marks in a particular district would be appointed; whereas a person having more marks in another district will be left out.

5. We are of the opinion that whether a cadre would be District-wise or State-

wise, is purely a policy decision of the State Government. Therefore, we are not at all inclined to interfere in the matter.

The writ applications fail and are dismissed. No costs,

Accordingly, O.J. C. No. 1560 of 1997 was also disposed of with a direction that order passed by this Court in O.J. C. No. 615 of 1997 and other batch of cases disposed of on 6-12-1997 shall govern that case.

4. It appears that in terms of the interim orders passed in those writ applications, the Petitioners herein appeared in the interview that was held in connection with recruitment of primary school teachers for appointment in Government schools. No orders having been passed regarding their appointment, they have approached this Court for relief, as aforesaid.

5. The question is, whether this Court can entertain this writ application and grant the relief claimed.

6. Admittedly, all the primary schools have been taken over by the State Government and the teachers to be appointed in the said primary schools would be teacher in Government service. Thus, the relief sought in this writ application, in substance, is one relating to the recruitment of persons to be appointed in Government service.

7. The Administrative Tribunals Act, 1985, as the Preamble states, is an Act to provide for adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State.....and for matters connected therewith or incidental thereto. Section 2 of the said Act, however, provides for exclusion of certain categories of persons from the application of the Act. Obviously, the case of the Petitioners herein is not covered under the said exclusion.

8. Section 15 of the said Act defines the jurisdiction, powers and authority of State Administrative Tribunals in regard to service matters of various categories of persons mentioned therein and as a result thereof, for matters coming within the jurisdiction of the Tribunal, the jurisdiction of Courts other than the Supreme Court by implication stands excluded. Thus, though, in view of the recent decision of the Apex Court, the power of judicial review under Article 227 of the Constitution of India can be exercised by this Court; it can have no jurisdiction under Article 226 in any matter relating to recruitment or matters concerning recruitment to any civil service of the State or to any civil post under the State and matters connected there with or incidental thereto, in terms of Section 15 of the Act.

9. In the aforesaid view of the matter, the dispute in question, as it relates to recruitment of the Petitioners for being appointed as Government teachers in primary schools, falls within the jurisdiction of the Orissa Administrative Tribunal and accordingly, we decline to entertain this writ application which is dismissed

on the ground of jurisdiction. However, we observe that in case, as alleged, the test and interviews have been held, it is up to the authorities to take necessary follow-up action in accordance with law on which we express no opinion.

P.K. Tripathy, J.

10. I agree.

11. Writ application dismissed.