
(2014) 10 OHC CK 0007
In the Orissa High Court
Case No : W.P.(C) No. 27083 of 2013

Vijaya Laxmi Behura

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 22-10-2014

Acts Referred:

Citation : (2015) 119 CLT 684 : (2014) 2 ILR 1275 : (2014) 2 OLR 349

Hon'ble Judges : Pramath Patnaik, J

Bench : Single Bench

Advocate : B. Mohanty, S. Pattnaik, R.P. Roy and A.C. Boxipatra, Advocates for the Appellant

Judgement

Pramath Patnaik, J.—The petitioner challenges the legality and propriety of the order dated 07.02.2013 passed by opposite party No. 1 and rejecting her representations by not considering regularization of her service. The facts as delineated in the writ petition is that the petitioner is a Bachelor of Arts with Certified Teacher training applied for the post of Sikhya Sahayak in the district of Jagatsinghpur in pursuant to advertisement. After selection was made, the name of the petitioner was found place in the merit list. Pursuant to the merit list, the opposite parties had issued appointment order in the name of the petitioner and she was directed to join on or before 01.01.2005 in Brajasena U.P. School under Jagatsinghpur Block. Copy of the said appointment order dated 01.01.2005 is annexed as Annexure-1.

2. Pursuant to the aforesaid appointment order, the petitioner joined in the said school on 05.01.2005 and her joining report has been accepted by the Headmaster, Brajasena U.P. School vide Annexure-2.

3. The petitioner while continuing as Shikhya Sahayak, she suffered from Collities and was under treatment in the District Headquarters Hospital, Jagatsinghpur from 09.01.2005 to 26.04.2005. She applied for leave to the Headmaster and it was forwarded to the concerned authority for sanction of leave. Since she was

advised to take rest from 27.04.2005 to 08.07.2007, while the petitioner was treated at Bhubaneswar, she sent leave application to the Headmaster for sanction of leave. Copy of the medical certificates issued by Capital Hospital, Bhubaneswar is annexed as Annexure-3 series. After recovery, the petitioner submitted her joining report before the Headmaster of the school but the Headmaster refused to accept the same. But finally on 27.11.2009, opposite party No. 4 allowed the petitioner to join her duty before the same school with a condition that the period of absence in the school till the date of joining shall be treated as no work no pay and no remuneration for the period shall be paid. Copy of the said order dated 27.11.2009 is annexed as Annexure-4 to the writ petition.

4. That in pursuant to the order dated 27.11.2009 under Annexure-4 the petitioner joined in the school and has been continuing till date without any interruption. Since similarly situated candidates like of petitioner who joined in the year 2005 have been regularized in the service and appointed as Primary School Teacher, the petitioner filed a representation on 17.02.2011 before opposite party No. 1 to consider her representation and regularize her service in the post of Primary School Teacher. Copy of the said representation dated 17.02.2011 is annexed as Annexure-5 to the writ petition. Due to non-consideration of representation, the petitioner approached this Court in W.P.(C) No. 16831 of 2012 which was disposed of on 19.12.2012, inter alia, directing opposite party No. 2 to dispose of the representation of the petitioner as early as possible preferably within a period of three months from the date of receipt of the certified copy of this order. In deference to the direction of this Court, opposite party No. 4 vide letter dated 02.03.2013 has communicated the rejection order of the representation of the petitioner vide order dated 07.02.2013 of opposite party No. 1 which is impugned in this writ petition (under Annexure-6).

5. Heard learned counsel for the petitioner and learned Standing Counsel for School and Mass Education Department.

6. Opposite party Nos. 1 to 4 filed counter affidavit justifying the order of opposite party No. 1 under Annexure-6 to the writ petition. In the counter affidavit, opposite parties have taken the stand that the petitioner was engaged as Sikshya Sahayak at Bajrasena U.P. School under Jagatsinghpur Block vide office order dated 01.01.2005 of the Collector-cum-Chief Executive Officer, Zilla Parishad, Jagatsinghpur. Pursuant to the engagement, the petitioner continued as Sikshya Sahayak from 05.01.2005 to 08.01.2005. Thereafter the petitioner went on leave from 09.01.2005 to 08.07.2007 by submitting bunch of leave applications to the concerned Headmaster of Bajrasena U.P. School. As such the petitioner has not served for a continuous period from the date of her joining on the other hand she remained absent from her duty for more than two years which is not permissible under the contract of service.

7. It is further stated in the counter affidavit that under Annexure A/4 to the

counter vide letter dated 10.11.2009 the petitioner has been asked by the D.P.C., SSA, Jagatsinghpur for execution of fresh agreement for engagement as Sikshya Sahayak and the petitioner executed a fresh agreement on 13.11.2009 vide Annexure-B/4 to the counter.

8. Learned Standing Counsel for School and Mass Education Department in course of hearing has referred to the guidelines of the Government of Odisha, Department of School and Mass Education dated 10.01.2008 under Annexure-7 and the Clauses 4.4, 9 and 12.2 of the said resolution are quoted herein below:--

"4.4 Orders of engagement shall be issued by the Zilla Parishad through its Chief Executive Officer-cum-Collector of the District. The engagement will be on an annual contract basis. Contract will be renewed in subsequent years depending on the performance of the candidate. While renewing the contract of the Sikshya Sahayaks (SSs), the Zilla Parishad/Collector-cum-CEO, Zilla Parishad must see that the Village Education Committee of the concerned school has given positive certificate in his/her favour about regular attendance and satisfactory teaching. The Sikshya Sahayak (SS) can be removed from engagement with 30 days prior notice, if she/he violates the conditions of the contract or is considered unsuitable later on by the authorities or on the basis of adverse report of the Village Education Committee."

"9. ASSIGNMENT

(i) Teaching in the schools shall be the main duty of the Sikshya Sahayaks(SS).

(ii) They must ensure minimum level of learning (MLL) for the students as prescribed by the Competent Authority (School & Mass Education Department).

(iii) They must ensure at least 90% attendance of the children in respective schools in all classes.

(iv) They shall reduce the dropout of the children in school below 10%.

(v) She/He shall motivate the parents/guardians of the village in which Primary Schools is situated for enrolment of children within the age group of 6 to 14 years. It shall be his/her duty to contact parents/guardians in case children fail to attend classes regularly and get back such children to the classes.

(vi) They shall perform all such other duties as assigned to them by the competent authority as and when required."

"12.2 Notwithstanding anything to the contrary in Para-12.1, a Sikhya Sahayak after completion of 6 years of continuous satisfactory engagement as Sikhya Sahayak and Junior Teacher, taken together, as on 1st April, 2008, shall be eligible for appointment as Regular Primary School Teacher."

9. In the counter affidavit filed by opposite parties 1 and 4, it has also been stated that the petitioner executed a fresh agreement on 13.11.2009 and pursuant to execution of the said agreement the petitioner was allowed for her

engagement on 30.11.2009. Hence the period from 05.01.2005 to 30.11.2009 cannot be counted towards continuity of service of the petitioner for the purpose of treating her as Zilla Parishad Teacher.

10. Having heard learned counsel for both the parties at length and on perusal of the writ petition as well as the counter affidavit, I am of the considered view that there is no infirmity or illegality in the impugned order under Annexure-6 of the writ petition. For all practical purposes her service is to be treated as fresh service after execution of the agreement i.e., on 30.11.2009. Since the engagement of the petitioner as Sikshya Sahayak is by virtue of execution of an annual agreement, the petitioner shall be eligible for appointment as regular Primary School Teacher only after completion of six years of continuous satisfactory engagement as Sikshya Sahayak and Junior Teacher taken together as per the Clause 12.2 of the said resolution. (supra). Having heard learned counsel for both the parties and on perusal of the writ petition and counter affidavit, I am of the considered view that there is no infirmity or illegality in the impugned order vide Annexure-6 which warrants any interference by this Court.

Accordingly, the writ petition being devoid of merits is dismissed. No order as to cost.