

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.19100 of 2021

(In the matter of an application under Articles 226 and 227 of the Constitution of India, 1950).

Dulamani Patel *Petitioner*
-versus-
State of Odisha and Ors. *Opp. Parties*

Advocates appeared in the case through Hybrid Mode:
For Petitioners : *Mr. B.S. Panigrahi, Adv.*

-versus-
For Opp. Parties : *Mr. Sonak Mishra, SC*
(for S & ME Deptt.)

CORAM:

MR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-18.05.2022

DATE OF JUDGMENT:-27.05.2022

S.K. Panigrahi, J.

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioner and learned counsel for the State.
3. This Writ Petition has been filed challenging the order passed by the Director, Secondary Education, Odisha rejecting the prayer of the petitioner to modify the order of promotion to the post of Sr. SES (Headmaster) from Jr. SES (Asst. Teacher).

4. The Petitioner has further prayed to consider his promotion, absorbing him in the Govt. Girls' High School, Lephripara where he is continuing at present or in the alternative, posting him at B.S.D.G.M High School, Jogimal or at a nearer place keeping in view the health condition of the Petitioner.

5. It is argued on behalf of learned counsel for the Petitioner that the Petitioner was compelled to join at a place of posting which is at a distance of 140 km from the place of his residence and the petitioner, being a chronic rheumatic arthritic patient, was unable to travel such a long distance.

6. Per contra, learned counsel for the Opposite Parties submitted that the Petitioner had not joined his promotional post of Sr. SES (Headmaster) and submitted in writing on 18.09.2020 to forgo his promotion to the post of Sr. SES (Headmaster) and requested to allow him to continue as Assistant Teacher in the Girls' High School, Lephripara which was intimated to the Director, Secondary Education, Odisha vide letter no.9916 dated 30.09.2020.

7. Indisputably, in the case at hand, it can be consciously ascertained that the Petitioner was promoted to the cadre of Sr. SES and posted as Headmaster in Deokaran Vidyapitha, Lathikata on the basis of availability of vacancy at that point of time. After hearing the counsel for the parties and

considering the matter in its right perspective, this Court is of the opinion that the Petitioner decided to forgo the promotion to the post of Sr. SES out of his own volition and was not compelled by any means by the appointing authority i.e., the opposite parties.

8. The Hon'ble Supreme Court in the case of **State of M.P.& Ors vs. Ramanand Pandey**¹ overruled the decision of the High Court which had allowed the respondent to challenge the order relating to cancellation of his promotion. The respondent had sent back the order of promotion out of his own volition but approached the High Court through writ petition after two years; challenging the cancellation of his promotion. The Hon'ble Supreme Court observed that-

“The entire approach of the High Court is erroneous in dealing with the matter at hand. In fact, the issue focused and discussed, on the basis of which cancellation order dated November 25, 2006 is passed, itself is extraneous. From the conspectus of factual matrix taken note of above, it becomes clear that insofar as the Department is concerned, the respondent was duly considered for promotion, nay, he was in fact promoted to the post of ADO vide orders dated December 23, 2005 as he was found fit for promotion. It is, thus, not that kind of a case where the respondent was either not considered for promotion or the recommendation of the Departmental Promotion Committee was kept in a sealed

¹CIVIL APPEAL NO. 9486 OF 2014

cover. On the contrary, promotion orders were issued, which, however, were cancelled subsequently.....As we find that it is the respondent himself who is responsible for cancellation of the promotion order as he did not join the promoted post, the impugned order of the High Court is clearly erroneous and against the law.”

9. The Petitioner’s prayer insofar as promoting and repositioning him in the school where he was continuing or at a nearby place, is unsustainable as the Petitioner was holding a transferable post and under the conditions of service applicable to him, he was liable to be transferred and posted at any place within the State of Odisha. The Petitioner had no legal or statutory right to insist for being posted at one particular place. In this regard, it is worthwhile to stress upon the observations of the Hon’ble Supreme Court in the case of **Gujarat Electricity Board & Anr vs. Atmaram Sungomal Poshani**². The Hon’ble Court held that

“Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to other is an incident of service. No Government servant or employee of public undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is

²1989 AIR 1433

necessary in public interest and efficiency in the Public Administration.”

10. Further, in the case of **Union of India & Anr v. Manju Arora & Anr.**³, the Hon’ble Supreme Court observed that:

“When an employee refuses the offered promotion, difficulties in manning the higher position might arise which give rise to administrative difficulties as the employee concerned often refuse promotion to continue in his or her own place of posting. On refusal to accept regular promotion, the employee cannot be considered to be stagnating as she has opted to remain in the existing grade of her own volition.”

11. Moreover, the averments made by the Petitioner in relation to appointment and promotion of 23 candidates in the same school they were continuing earlier, is untenable and implausible. The Court is of the opinion that the appointing authority is best placed to decide whether it is expedient to promote and reposition any candidate on basis of their representations. Highlighting the importance and sanctity of the administrative sanctions and orders, the Hon’ble Supreme Court in the case of **N.C Shinghal v. Union of India**⁴ observed that:

“Creation and abolition of posts is a matter of Government policy and every sovereign Government has this power in the interest

³CIVIL APPEAL NOS.7027-7028 OF 2009

⁴AIR 1980 SC 1255

and necessity of internal administration. The creation or abolition of post is dictated by police decision, exigencies of circumstances and administrative necessity. The creation, the continuance and the abolition of post are all decided by the government in the interest of administration and general public. The Court would be the last competent in the face of scanty material to decide whether the Government acted honestly in creating a post or refusing to create a post or its decision suffers from mala fide, legal or factual.”

12. From the conspectus of factual matrix taken note of above, this Court is of the opinion that the Petitioner is not entitled to promotion to the post of Sr. SES (Headmaster) as he preferred not to accept the promotion, out of his own volition and, accordingly, the vacancies have been taken for consideration for promotion of other candidates.

13. It is clear that there is no substance in any of the contentions urged on behalf of the Petitioner and, therefore, this Writ Petition is dismissed with no order as to costs.

(S.K. Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 27th of May, 2022/B. Jhankar