



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No13837 of 2013

(Application under Articles 226 and 227 of the Constitution of India)

Tapaswini Acharya ... Petitioner

-versus-

State of Odisha & others ... Opposite Parties

Advocates appeared in the case through hybrid mode:

For Petitioner : Mr.K.Swain,
Advocate.

-versus-

For Opposite Parties : Mr. S.N.Patanaik, A.G.A

**CORAM:
JUSTICE SASHIKANTA MISHRA**

**JUDGMENT
30.1.2025.**

Sashikanta Mishra,J. The Petitioner has approached this Court
seeking the following relief;



"Under the above circumstances, it is humbly prayed that the writ petition may be allowed;

And

(A) A writ of mandamus or an appropriate writ may be issued commanding the opposite parties more particularly to the opposite party Nos.1 and 2 to accord approval of the petitioner's appointment against the Additional Trained Graduate post and thereafter her monthly salary may be released forthwith;

And

(A-1) An appropriate writ may be issued by extending the benefit of the judgment and order dated 24.02.2003 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.1634 (C) of 2000 and batch of cases by approving the appointment of the petitioner with effect from 07.06.1994 as has been done in the case of other Additional Section Teachers in consonance with the said judgment and order dated 24.02.2003 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.1634 (C) of 2000 and batch of cases under Annexure:7 to the rejoinder affidavit filed by the petitioner, which has been upheld by this Hon'ble Court vide order dated 17.11.2005 passed in W.P.(C) No.5864 of 2004 under Annexure:8 to the rejoinder affidavit filed by the petitioner, and also by the Hon'ble Apex Court by treating the letter dated 24.04.2000 issued by the State Government in School and Mass Education Department under Annexure: 10 as illegal in respect of the petitioner and she may also be allowed to discharge her duties in the School in question pursuant to the judgment and order dated 24.02.2003 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 1634 (C) of 2000 and batch of cases which has been upheld by this Hon'ble Court vide order dated 17.11.2005 passed in W.P.(C) No.5864 of 2004 with all consequential service and financial benefits, within a time to be stipulated by this Hon'ble Court;

(B) And any other order orders or direction/directions may be issued so as to give complete relief to the petitioner;



And for this act of kindness, the petitioner shall as in duty bound remain ever pray.”

2. The Petitioner was appointed against an Additional Trained Graduate post on 04.7.1991 in Akhua Odanga High School, Odanga in the district of Kendrapara having B.S.C. B.Ed. qualification in C.B.Z. Her appointment was confirmed by the Managing Committee in its resolution dated 31.7.1991. On 23.7.1996, the Managing Committee recommended her case to the authorities for approval of her appointment. The Inspector of Schools, after necessary verification recommended the case of the Petitioner to the Director, Secondary Education for approval of her appointment and for release of her monthly salary under the direct payment scheme. Though the post against which the petitioner was appointed was admissible as per the yardstick dtd.08.7.1981, her appointment was not approved on the ground that she did not have the requisite qualification i.e. B.Ed., which she acquired in July, 1996 as an in-service candidate. She therefore, approached this Court in O.J.C. No.6381/1998 which



was disposed of by order dated 14.5.1998 directing the Director, Secondary Education to dispose of her representation after making proper inquiry. However, no action was taken. It is stated that similarly situated Additional Section Teachers having approached this Court, their appointments were approved basing on the ratio decided by this Court in the case of ***Bibekananda Das v. State of Orissa and others***, 1997 (23)OLR 222. The petitioner submitted several representations to the authorities including the Director, but no steps were taken. By letter dtd.24.4.2000 of the Government in School and Mass Education Department, the persons who had not acquired B.Ed. qualification by 7.4.1994 were decided to be removed from service by holding their appointments to be illegal and ab initio void. Said decision of the Government was challenged by large number of Addl. Section Teachers before the erstwhile Odisha Administrative Tribunal in O.A. No.1634 (C)/2000 and batch. By order dated 24.2.2003 the Tribunal, relying upon the judgment rendered in the



case of ***Bibekananda Das v. State of Orissa (supra)*** quashed the letter dtd.24.4.2000 and consequential termination letters issued by the Inspector of Schools. The Tribunal further directed the authorities to allow the applicants to continue as Government servants with all benefits attached to their posts. The order of the Tribunal was challenged by the State Government before this Court in W.P.(C) No.5864/2004, which came to be dismissed by order dated 17.11.2005. Said order was challenged by the State before the Apex Court, but the same was also dismissed. On such basis, it is claimed by the Petitioner that she stands on similar footing as the applicants before the Tribunal and therefore, she should be allowed to discharge her duty in the School in question with all consequential service and financial benefits.

3. Counter affidavit has been filed by the State authorities (Opp.Party No.3). The maintainability of the Writ Petition has been challenged on the ground that the Petitioner is guilty of suppression of material facts



inasmuch as she completed her +3 degree course in April, 1992, which is subsequent to her appointment in the School. Further, she took up new appointment as Headmistress in Sidheswar U.P. School at Jagadapur in the district of Kendrapara since 2003 wherein she is continuing as such till date. Her post has been duly approved and she is receiving block grant from the Government. It is further stated that the Petitioner has approached this Court after long lapse of 15 years from the date of order passed in OJC No.6381/1998 without explaining the delay. She never submitted any representation and those enclosed as Annexure-6 are fabricated for the purpose of the present Writ Petition. On facts, it is stated that the Petitioner was appointed as Asst. Teacher by the Managing Committee of the School as per resolution dtd.04.7.1991 against Supra Post describing her as an outsider subject to approval of Inspector of Schools. Her appointment was approved by the Managing Committee. She was never appointed against an Additional Trained Graduate post. At the time of her



appointment she was pursuing her +3 degree course in Bachelor of Science at Kendrapara College as a regular student, which she completed only in April, 1992. Therefore, her appointment is illegal and void ab initio. She passed B.Ed. from Berhampur University in July, 1996 claiming to be an in-service candidate, but the same was completely false. For all such anomalies, her appointment was never approved and thereafter she remained willfully absent and voluntarily abandoned her service. She thereafter joined as Headmistress of Sidheswar M.E. (U.P.) School.

4. The Petitioner has filed a rejoinder seeking to refute the averments of the counter affidavit. It is stated that she appeared in +3 examination in 1991 but the result was published in 1992. Therefore, said result would relate back to the date of examination as per the settled position of law. Since the Petitioner was appointed in the School in question prior to December, 1993, the ratio decided in ***Bibekananda Das v. State of Orissa (supra)*** squarely applies to her and



therefore, her service could have been approved with untrained graduate scale of pay and after acquiring B.Ed. qualification, with trained graduate scale of pay. The Tribunal in the batch of cases, quashed the order of termination issued by the Government, which is a judgment in rem and therefore, squarely applies to the Petitioner, even though she was not an applicant. Since her services were terminated and she was out of job thereby, she took up another employment in Sidheswar U.P.School, which cannot be treated as an illegality. She never remained unauthorisedly absent rather she has been fighting litigation from the very beginning.

5. Heard Mr. K. Swain, learned counsel for the Petitioner and Mr. S.N.Patanaik, learned Addl. Government Advocate for the State.

6. Mr. Swain would argue that the Petitioner admittedly joined on 04.7.1991 which is prior to the cut-off date i.e., December, 1993 and therefore, the ratio decided in ***Bibekananda Das v. State of Orissa***



(supra) squarely applies to her. As such, her services ought to have been approved on untrained graduate scale of pay till acquisition of B.Ed. qualification in 1996 and thereafter on trained graduate scale of pay. Despite clear direction of this Court in the earlier Writ Petition, the Director did not consider the representation submitted by the Petitioner. Mr. Swain further argues that in any case, the judgment of the Tribunal being a judgment in rem also applies to the Petitioner and therefore, she is entitled to the same benefit as the applicants therein.

7. Per contra, Mr. Patanaik, learned Addl. Government Advocate, would argue that the Writ Petition is grossly delayed inasmuch as the Petitioner did not take any steps pursuant to the order passed by this Court in the earlier Writ Petition. She took up employment in another School and never challenged the decision of the Government on her own. Even otherwise, the Tribunal passed the order in the year 2003 which ultimately became final by dismissal of the



Writ Petition filed against it by the State in 2005 as also of the SLP by the Apex Court. Even then the Petitioner did not act. Since she has already taken up employment in another School where her services have been approved and she is in receipt of block grant, her claim to be regularized in her former post, no longer survives for consideration.

8. Since the question of maintainability of the Writ Petition on the ground of delay and laches has been raised, it would be proper to consider the same at the outset.

It is settled law that even though no period of limitation is prescribed for entertaining a Writ Petition yet, stale claims are not to be considered. Further, an application which is grossly delayed without any plausible explanation being offered for the delay also should not be entertained. In the instant case, the Petitioner had originally approached this Court against non-approval of her appointment in O.J.C. No.6381/1998. Said Writ Petition was disposed of by



order dtd. 14.5.1998. The following order was passed by a Division Bench of this Court;

"Heard.

The petition is disposed of with a direction to the Director of Secondary Education, Orissa, Bhubaneswar, opposite party No.2 to dispose of the representation at Annexure:5 within six months from the date of receipt of this order after making proper enquiry. The Director shall pass appropriate orders.

Send a copy of this order along with copy of the writ petition to opposite party No.2.

*Sd/- S.N.Phukan, C.J.
Sd/- C.R.Pal. J."*

It is stated that the Director did not act upon the above order. As is evident, the direction was to dispose of the representation within 6 months from the date of receipt of the order. The order being passed on 14.5.1998, it can be reasonably presumed that the 6 months period, after accounting for the date of receipt thereof, would be in December, 1998. So, if the Director was guilty of inaction or non-compliance of the order passed by this Court, it was always open to the Petitioner to approach this Court by filing



appropriate application. The Petitioner appears to have slept over the matter since then and sprung into the action only in 2013. Nothing has been put forth to explain as to why the Petitioner did not approach this Court earlier.

9. On consideration of the contentions advanced by the Petitioner it would be clear that she has based her claim entirely on the judgment passed by the erstwhile Odisha Administrative Tribunal in O.A. No.1634(C)/2000 and batch, which was confirmed by this Court as well as the Apex Court. Even though the Tribunal's order was passed in 2003, the Petitioner did nothing for all these years. Secondly, the Petitioner was not one of the applicants before the Tribunal.

10. From what has been narrated above, it is apparent that the Petitioner is a fence-sitter and sprung into action only because a favourable order was passed in favour of those persons who choose to challenge the decision of the Government to terminate their services. Evidently, the Petitioner having in the



meantime secured employment in another school with her services being approved and block grant being released in her favour, had not felt the need to join with the applicants before the Tribunal. Long after, the Petitioner has staked claim to restore her position in the former School. Nothing has been placed before this Court by the Petitioner to show that she was discharging her duties in the former School till she was appointed in another School as Headmistress. This is therefore, a case where the Petitioner, despite being validly employed in an institution seeks to extend such employment backwards to her former institution apparently to claim further service and financial benefits.

11. It is also significant to note the fact that the Petitioner was subsequently appointed as Headmistress in Sidheswar U.P. School was not disclosed in the Writ Petition. It is only after the said fact was pointed out by the State in its counter that the petitioner came forward to admit the same in her



rejoinder. This cannot be treated as an act of coming to the Court with clean hands.

12. In view of the foregoing narration and particularly, taking note of the gross delay and laches exhibited by the Petitioner and her conduct of not disclosing the fact of her employment in another School in the Writ Petition, this Court is of the considered view that she is not entitled to any relief, much less the relief claimed by her.

13. In the result, this Court finds no merit in the Writ Petition, which is therefore, dismissed but in the circumstances, without any cost.

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Sashikanta Mishra,
Judge

Ashok Kumar Behera