



**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No.20977 of 2010**

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

**A.F.R.                      Jawaharlal Mohanta                      ...                      Petitioner**

*-versus-*

**State of Odisha & others ...                      Opposite Parties**

**Advocates appeared in the case through hybrid mode:**

**For Petitioner                      : Mr.Satyajit Behera,  
Advocate.**

*-versus-*

**For Opposite Party  
Nos.1 to 4                      : Mr. A.R.Dash, A.G.A**

-----  
**CORAM:  
JUSTICE SASHIKANTA MISHRA**

**JUDGMENT  
09.05.2024.**

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



*“Under the circumstances, it is humbly therefore prayed that this Hon’ble Court may graciously be pleased to issue a writ in the nature of mandamus or any other appropriate writ/writs by directing the opp.parties to grant the regular scale of pay of the petitioner w.e.f. the date of his initial appointment i.e. w.e.f. 29.02.95.*

*And further be pleased to modify the order dated 15.01.2011 and 24.01.2011 under Annexure-16 and 17 to the extent that the benefit of regular scale of pay be given to the petitioner w.e.f. the initial date of appointment i.e. 29.07.1995;*

*And further be pleased to direct the opposite parties to grant all consequential service benefits.”*

**2.** The facts of the case, briefly stated, are that Subarnarekha Irrigation Project Composite High School was established under the administrative control of the Government in Water Resources Department and managed by the Chief Engineer and Basin Manager, Baitarani, Subarnarekha and Budhabalanga Basin, Laxmiposi (Opposite Party No.2). Said school was established to provide educational facilities to the children of the employees of Subarnarekha Irrigation Project, which was recognized by the Education Department and Director, Secondary Education as per provisions of the Odisha Education Act. The School was also recognized by the Board of Secondary Education. By order dated 28.4.1994, the



Government in Water Resources Department created certain teaching and non-teaching posts in respect of the School including two posts of Science Trained Graduate Teachers. Request was made on behalf of the School to the Inspector of Schools, Mayurbhanj for deputation of Teachers, but it was not acceded to for want of adequate Teachers and Opposite Party No.2 was requested to recruit teaching staff from among the existing staff or from the open market. Under such circumstances, the Petitioner was appointed as Science Teacher (CBZ) vide order dated 29.7.1995 of the Opposite Party No.2 on contract basis at the rate of Rs.30/- per class subject to maximum of 20 classes per month. The appointment was for a period of three months or posting of regular Teachers, whichever was earlier. Accordingly, the Petitioner joined on 29.7.1995. By letter dated 16.11.1996, Opposite Party No.2 intimated the Collector that the teaching posts were lying vacant and requested him to sponsor the names of suitable candidates duly selected by the Section Committee in the education circle for issue of



appointment orders. What action was taken on such request is not known. But the Petitioner continued in the post as before. He therefore, approached the erstwhile Odisha Administrative Tribunal, Cuttack Bench, Cuttack, in O.A. No.4147(C) of 1996 with prayer for regularization of his service and for allowing him service benefits like a regular Trained Graduate Teacher. By order dated 31.1.2002, learned Tribunal taking note of the fact that the School in question is a Project School with the prospect of being closed down, was disinclined to issue any direction for regularization. However, it was directed that the Petitioner be paid the minimum of the scale if he is utilized for teaching till the School is closed down. The Petitioner challenged such order before this Court in OJC No.2977/2002. By judgment passed on 2.8.2005, a Division Bench of this Court held that the Tribunal committed error in holding that there was no teaching cadre in the Water Resources Department without considering the fact that some posts of Teachers and non-teaching staff were sanctioned by the Governor,



which were still continuing for more than 10 years. As such, it could not be held that there was no cadre or sanctioned posts for teaching or non-teaching staff and also that there was no regular post. The Writ Petition was thus allowed in part by directing the authorities to make an endeavour to take a decision and also consider regularization of the Petitioner taking into consideration the fact that he had rendered more than 10 years of service as Trained Graduate Teacher. Pursuant to the order of this Court, the Opposite Party No.2 vide order dated 25.3.2010 allowed the Petitioner to draw regular pay scale of Rs.5000-150-8000 with usual D.A. and other allowances as sanctioned by the Government from time to time w.e.f. 02.8.2005, i.e. from the date of judgment of this Court. The order was subsequently modified by order dated 24.1.2011 of the Opposite Party No.2 by allowing the regular scale of pay w.e.f. 31.1.2002 i.e. from the date of the judgment of Tribunal.



**3.** It is stated that the Petitioner having rendered continuous service against a duly sanctioned post, should have been granted regular pay w.e.f. the date of his initial appointment i.e. 29.7.1995. Since the posts were duly created and yet the Petitioner was appointed on contractual basis, he is entitled to be regularized from the date of his initial joining.

**4.** Counter affidavit has been filed by the Opposite Parties admitting the relevant facts. It is basically stated that the Tribunal held the Petitioner to be entitled to the minimum of the scale attached to the post prospectively and not prior to the date of judgment. The Division Bench of this Court also directed the authorities to consider his regularization pursuant to which, the Petitioner was granted regular scale initially w.e.f. 01.8.2005 which was subsequently modified as w.e.f. 1.1.2002. It was also stated that the Writ Petition is hit by principle of constructive res-judicata.



5. Heard Mr. Satyajit Behera, learned counsel for the Petitioner and Mr. A.R. Dash, learned Addl. Government Advocate for the State.

6. Mr. Behera argues that there is no provision for appointment of a Teacher on contract basis under the Orissa Education Act. The School in question was established by the Government in Water Resources Department to cater to the educational needs of the children of the Staff employed in the project. The teaching and non-teaching posts were created being duly sanctioned by the Governor. The Petitioner was appointed against such a post on contractual basis, which is illegal. Nevertheless, the Petitioner having served for a long time deserves to be regularized as held by this Court in the earlier Writ Petition filed by him. The Opposite Party authorities therefore, should not have confined the benefit only from the date of judgment of the Tribunal, but extend the same from the date of his initial appointment against a sanctioned post i.e. w.e.f. 29.7.1995.



**7.** Mr.A.R.Dash, learned Addl. Government Advocate, would argue that the Writ Petition is not maintainable for the reason that neither the Tribunal nor this Court passed any order directing the authorities to regularize the services of the Petitioner from any particular date but left it to the discretion of the authorities. Since the Petitioner, though appointed against a sanctioned post was not so appointed after following a regular recruitment procedure, the authorities deemed it proper to regularize his service only from the date of judgment of the Tribunal. As such, he cannot claim to be regularized prior to that date as he cannot be said to have any vested right in his favour.

**8.** The facts of the case as narrated earlier are not disputed. The only question that remains to be determined in the present Writ Petition is, whether the Petitioner is entitled to be regularized in service from the date of his initial appointment. As already noted, by order dated 28.4.1994, the Government in Water





Resources Department created several teaching and non-teaching staff for the Composite High School at Laxmiposi under Subarnarekha Irrigation Project including two posts of Science Trained Graduate Teachers. By letter dated 30.6.1994, the Opposite Party No.2 requested the Inspector of Schools, Baripada to depute suitable teachers against certain vacant posts including Science Trained Graduate Teachers. By letter dated 05.8.1994, the Inspector of Schools expressed his inability to depute any Teacher due to deficit in teaching staff with request to make fresh appointment from among the existing staff or from open market. Accordingly, some of the posts were filled up. Consequent upon termination of services of two retired Teachers engaged by the School one post of Science Trained Graduate Teacher (CBZ) fall vacant. By letter dated 29.7.1995 of Opposite Party No.2, the Headmaster of the School was permitted to engage the Petitioner as Science Teacher and another person as P.E.T. on contract basis @ Rs.30/- per class subject to maximum of 20 classes per month for a period of



three months or posting of regular teachers whichever is earlier. It is not forthcoming as to on what basis the Petitioner's name was recommended by the Opposite Party No.2 for engagement. However, by letter dated 16.11.1996, Opposite Party No.2 requested the Collector to sponsor the names of suitable candidates duly selected by the Selection Committee for their appointment against the vacancy.

**9.** From the above narration and sequence of events, it is clear that the Petitioner did not undergo any selection process before his engagement on contractual basis. It is not known what happened to the request made by the Opposite Party No.2 to the Collector for sponsoring of candidates selected by the Selection Committee. Be that as it may, fact remains that the Petitioner was not appointed after undergoing a due recruitment process.

**10.** The Petitioner's claim is apparently based on the fact that he was engaged for a long time against a sanctioned post. But then, it is needless to mention



that law does not permit any person to be appointed straightaway against a sanctioned post without undergoing due process of recruitment. Notwithstanding the above defect and having regard to the direction issued by this Court in the earlier Writ Petition the authorities have regularized the services of the Petitioner w.e.f. the date of order of the Tribunal. In the considered view this Court, the Petitioner, given the fact that his initial appointment was not in accordance with law, should be satisfied with the relief granted by the Government. It is the settled law that the date from which regularization is to be granted is a matter to be decided by the employer keeping in view several factors. Reference may be had to the judgment of the Supreme Court in the case of ***Managing Director, Ajmer Vidhyut Vitran Nigam Ltd. Ajmer and another vs. Chiggan Lal and others***<sup>1</sup>. The following observations made in the judgment are noteworthy;

*“It is the settled position that the date from which regularization is to be granted is a matter to be*

---

<sup>1</sup> 2022 SCC OnLine SC 1351



*decided by the employer keeping in view a number of factors like the nature of the work, number of posts lying vacant, the financial condition of the of the employer, the additional financial burden caused, the suitability of the workmen for the job, the manner and reason for which the initial appointments were made etc. The said decision will depend upon the facts of each year and no parity can be claimed based on regularization made in respect of the earlier years."*

**11.** For the foregoing reasons therefore, this Court finds that the claim of the Petitioner for regularization of his services from the date of his initial appointment is without any basis. Resultantly, the Writ Petition being devoid of merit, is therefore dismissed.

.....  
**Sashikanta Mishra,**  
**Judge**

**Ashok Kumar Behera**