

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) NO.1810 OF 2016

(An application under Section 19 of the Administrative Tribunal Act)

Kamalakanta Sahu ... Petitioner

-versus-

State of Odisha & others ... Opposite Parties

Advocates appeared in the case through hybrid mode:

For Petitioner : Mr. S.S.Mohapatra, Advocate

-versus-

**For Opposite Parties : Mr.R.N.Acharya, Advocate
Addl. Standing Counsel,
School & Mass Education
Department**

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

15 .03.2022.

Sashikanta Mishra,J. The Petitioner has filed the present application seeking the following relief:-

“The Petitioner prays that this Hon’ble Court may be graciously be pleased to admit the Writ Petition, call for the record and after hearing the parties be pleased to quash the corrigendum to the merit list dated 19th March, 2016 prepared for Physically Handicapped category in respect of the Petitioner under Annexure-8 and the Opposite Parties be directed to consider the candidature of the Petitioner and engagement order be issued to the Petitioner on the basis of the Physically Handicapped certificate submitted by the Petitioner at the time of engagement which was issued in favour of the Petitioner on 11th June, 2015;

And may pass such other order/orders as this Hon’ble Court may deem just and proper in the facts and circumstances of the case.”

2. The brief facts of the case are that the Petitioner was appointed as a TGT (CBZ) Contract Teacher under Physically Handicapped (PH) category on 11th June, 2015 pursuant to an advertisement issued on 27th October, 2014 followed by a corrigendum dated 6th January, 2015. The Petitioner submitted a disability certificate issued by the Medical Board of Balasore indicating 45% disability in hearing. The Petitioner was selected for the District of Cuttack though he had given Ganjam as his first preference. He was called upon to execute an agreement on 9th June, 2015 and thereafter engagement order being issued, he joined in the post on 12th June, 2015 by submitting his joining report. Subsequently the Commissioner-cum-Secretary, School and Mass Education Department, State of Odisha (Opposite Party No.1) issued a letter to all the District Education Officers directing them to disengage

all the Contract Teachers who were appointed on or after 11th June, 2015 and in the process, the Petitioner was disengaged. On 19th March, 2016 the Opposite Party-authorities drew a corrigendum to the select list of candidates of PH category by deleting the name of the Petitioner. It is stated that the Petitioner's name was deleted in the subsequent merit list on the ground that he had less than 20% disability which was placed on a report of the Appellate Medical Board which was held much after the selection of the applicant in the year 2015. It is further claimed by the Petitioner that even otherwise he had secured 202.49% of mark whereas the last selected candidate in the select list prepared for the whole State in respect of TGT(CBZ) namely, Bibasta Kumar Meher had secured 137.86% mark. Thus, challenging the action of the authorities in disengaging him, the Petitioner prays for quashment of the corrigendum to the merit list dated 19th March, 2016 and for a direction to consider his candidature by issuing engagement order.

3. A counter affidavit has been filed by the District Education Officer, Cuttack (Opposite Party No.4) stating that as per the documents submitted by the Petitioner and on verification of documents, it was found that the PH certificate issued in favour of the Petitioner was in the year 2009 for which further examination was required. On such examination being held it was seen that his audiometric finding is less than 45% and also gradually improved for which he is not entitled for consideration under PH category as per norms of the Government. It is also stated that while issuing engagement order to the Petitioner, it was stipulated that if the documents submitted are fake/forged/invalid or not acceptable as

per Government rules, the engagement would be cancelled and it is also the duty of the authorities to verify the genuineness and authenticity of the documents at any moment when doubt arises. It is also stated that not only the Petitioner but several other candidates were also disengaged. As regards the PH certificate submitted by the Petitioner, it is stated that the same was issued in the year 2009 and, therefore, there are doubts regarding its propriety/legality. On further examination by the Appellate Board i.e. by the S.C.B. Medical College and Hospital, Cuttack, it was found that the Petitioner is disabled only to the extent of 1% hearing impaired and, therefore, he cannot be considered for engagement under the PH category. It is also stated that the Petitioner's claim to be considered under the S.E.B.C category is not tenable since he had submitted his candidature under PH category, which cannot be changed at a later stage.

A rejoinder affidavit has also been filed by the Petitioner disputing the averments made in the counter.

4. Heard Mr. S.S.Mohapatra, learned counsel for the Petitioner and Mr. R.NAcharya, learned Addl. Standing Counsel for the School and Mass Education Department.

5. It is argued by Mr. Mohapatra that the Petitioner submitted the disability certificate issued by the competent authority which has never been proved to be fake or invalid. Furthermore, accepting such certificate, he was engaged. Since the certificate was valid there was no occasion for the authority to send him for further examination by the Appellate Board. In any event, according to Mr.

Mohapatra, the findings of the Appellate Board conducted more than six years after issuance of the PH certificate submitted by the Petitioner cannot be treated as valid more so, when the same has not been issued by the Appellate Board but under the seal and signature of the Professor and HOD of the ENT Department.

6. On the other hand, Mr. R.N.Acharya argued that as per the recruitment procedure of teaching staff in Government Secondary Schools, the case of the PH candidates shall be referred to Appellate Medical Board constituted by the W and C.D. Department vide Notification No.16430/WCD dated 6th September, 2011 for re-examination and engagement order shall be issued if such candidates are found genuine by the Board. According to Mr. Acharya, in the instant case the Petitioner was referred to the Appellate Medical Board wherein his disability was found to be only 1%, which was grossly at variance from the percentage indicated in the disability certificate submitted by him at the time of his engagement. It is thus evident that the Petitioner is not physically disabled so as to be considered for engagement under the PH quota.

7. Perusal of the disability certificate submitted by the Petitioner, which is enclosed as Annexure-2 series to the Writ Petition, reveals that the Medical Board comprising of the Medicine Specialist, Eye Specialist and ENT Specialist of District Headquarters Hospital, Balasore issued the same being duly counter signed by the CDMO, Balasore. It has not been specifically pleaded by the Opposite party-authorities that the said certificate

was in any manner fake or forged or otherwise invalid. The Petitioner is said to have been sent for re-examination by the Appellate Medical Board at SCB Medical College and Hospital, Cuttack and the findings thereof are enclosed as Annexure-A/4 to the Counter. A perusal of the said report shows that the percentage of disability of the Petitioner is indicated as 01% and the nature of disability as temporary. Firstly, there is nothing in the aforesaid document to suggest that the same was issued by the competent Appellate Medical Board, rather the same appears to have been issued by the Professor and HOD of ENT Department, SCB Medical College and Hospital, Cuttack with an endorsement that the same is an audiogram report of PWD candidates. There is nothing on record to suggest as to who comprised the Appellate Medical Board. Even accepting the report as correct for a moment, it is seen that the Petitioner is disabled though only to the extent of 1%. What exactly is the percentage of disability required for being selected as a PH candidate, has not been stated at all by the Opposite Party-authorities.

8. Be that as it may, when the disability certificate issued by the District Medical Board, Balasore cannot in any manner be treated as fake or invalid, the question is, can a subsequent report render the same a nullity or invalid. A reference to Clause (1)(e) of the recruitment procedure provides that engagement order shall be issued if such candidates are found genuine by the Board. In the instant case, the Petitioner submitted his certificates including the disability certificate, which was not only accepted but also he was issued with engagement order. In fact, he joined in the post and

worked for some months. If the authority had any doubt as regards the authenticity or correctness of the disability certificate submitted by the Petitioner, then taking recourse to the provision under Clause (1)(e) of the recruitment procedure they could have referred him to the Appellate Medical Board and thereafter issued engagement order basing on the report of such board. But once the authority had itself accepted the disability certificate submitted by the Petitioner and issued engagement letter in his favour, they cannot turn around at a later stage and raise questions with regard to the extent of disability of the Petitioner and disengage him on such score more so when there is simply no material or reason to even remotely suggest that the disability certificate submitted by the Petitioner was a fake or otherwise invalid.

9. It must be kept in mind that the State is supposed to be a model employer and as such, cannot be allowed to take actions that are arbitrary and not countenanced in law. In the instant case, the Opposite Party-authorities are guilty of approbation and reprobation, i.e. of blowing hot and cold at the same in the manner as described above thereby adversely affecting the right to livelihood of the Petitioner included under Article 21 of the Constitution of India.

10. In the case of *Union of India and others v. Miss Pritilata Nanda*; reported in (2010) 11 SCC 674, the Apex Court held that once the candidature of a person is accepted by the concerned authorities and he/she is allowed to participate in the process of selection, it is not open to them to turn around and question his or

her entitlement to be considered for engagement. The case at hand stands on an even better footing inasmuch as not only was the candidature of the Petitioner considered but also he was engaged and allowed to work for some months. The action of the authorities, therefore, cannot be countenanced in law as this Court finds that the Petitioner cannot be deprived of his right to be engaged as a TGT(CBZ) Contract Teacher as a PH candidate.

11. In the result, the Writ Petition succeeds and is, therefore, allowed. The impugned merit list under Annexure-8 in so far as it relates to the Petitioner is hereby quashed. The Opposite Party-authorities are directed to issue necessary orders for engagement of the Petitioner in the post in question. It is, however, made clear that the Petitioner shall not be entitled to any back wages for the period of disengagement on the principle of 'no work' 'no pay'.

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Sashikanta Mishra,
Judge

Ashok Kumar Behera





