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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 1966 of 2017

Hansmina Kumari Das and others* *Petitioners

-versus-

State of Odisha and others* *Opposite Parties

Advocates appeared in the cases:

***For Petitioners* : Mr. Ramakanta Sarangi, Advocate**

***For Opposite Parties* : Mr. B.A. Prusty
Standing Counsel for S&ME Dept.**

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK**

**JUDGMENT
05.08.2022**

Dr. S. Muralidhar, CJ.

1. Four residents of Jagatsinghpur District have filed this Public Interest Litigation (PIL), complaining of a large number of irregularities committed in the appointment of Teachers for Primary Schools pursuant to a Resolution dated 12th March, 1996 of the School and Mass Education Department (S&ME), Government of Odisha. In particular, it is alleged that the merit list of eligible Teachers for appointment as Primary Teachers in Jagatsinghpur included less meritorious candidates by-passing those who had secured more marks in the selection process.

2. It is stated that on its own, the S&ME Department realized its mistake and published a revised selection list in 2006. The Petitioners stated that this list too has numerous persons whose appointments are vitiated for having secured less marks than those overlooked and further that some of them have produced fake certificates.

3. The immediate provocation for the present petition appears to be an order dated 13th July, 2015 of the S&ME Department allowing such persons to have the benefit of the Revised Assured Career Progression (RACP) Scheme. It is alleged that the Government has tried to regularize the services of some of these illegally appointed Teachers and, therefore, the Court should interfere and direct the Opposite Parties “to take immediate steps to remove the disqualified Primary School Teachers from Jagatsinghpur Education District”. The further prayer is that a CBI enquiry should be directed.

4. On 18th April, 2017 when this petition was first listed for hearing, the following order was passed:

“This writ petition has been filed in the nature of a Public Interest Litigation by four petitioners with the primary prayer for a direction to the opposite parties to take immediate steps to remove the disqualified Primary School Teachers appointed in different Primary Schools of Jagatsinghpur district from their respective posts. One of such teachers has been arrayed as opposite party No.9, whereas the prayer made in the writ petition that a large number of such teachers who have been appointed, are not qualified.

Firstly, it is not known from perusal of the writ petition as to who the petitioners are, as nothing has been stated in the petition with regard to *locus* of the petitioners. Secondly, since the matter relates to service of teachers, the writ petition in the nature of Public Interest Litigation would not be maintainable. Thirdly, the selection is said to have been made from the select list of the year 1997. The petitioners have challenged the same after 2 decades in 2017.

At this stage, learned counsel for the petitioner prays for an adjournment.

List it after four weeks.”

5. When the petition was listed next five years later on 26th April, 2022, Mr. Ramakanta Sarangi, learned counsel appearing for the Petitioners, prayed for some more time to address the issues raised in the above order. Today, in the course of his submissions, Mr. Sarangi has placed reliance on the decision in ***Central Electricity Supply Utility of Odisha v. Dhobei Sahoo AIR 2014 SC 246*** to urge that while the general rule is that in service matters, PIL will not be entertained, the exception is where a writ of *quo warranto* was being sought to quash the illegal appointments.

6. On the other hand, Mr. B.A. Prusty, learned Standing Counsel for the S&ME Department, places reliance on the decision in ***Girjesh Shrivastava v. State of Madhya Pradesh (2010) 10 SCC 707***.

7. There can be no doubt that in the present case, the reliefs sought by the present Petitioners are in the realm of service law

since the prayers concern the legality of the employment of several Primary School teachers in Jagatsinghpur pursuant to a process that began nearly three decades ago in 1996. The present Petitioners did not participate in the said selection. The select list was published some time in 2006 and appointments were made. Yet, the Petitioners chose to wait for over 11 years to file this petition challenging the appointments.

8. In *Girjesh Shrivastava (supra)*, the Supreme Court was dealing with an appeal from the decision of the Madhya Pradesh High Court in two PILs alleging contravention of the Madhya Pradesh Panchayat Contractual Teachers (Conditions of Appointment and Services) Rules, 2001 (2001 Rules) in the appointment of such teachers. The ground for challenge was that no reservations had been made for Ex-Servicemen and further the Members of the Selection Committee had their near relatives appearing as candidates in the selection. The Supreme Court referred to its earlier decisions in *Dr. Duryodhan Sahoo v. Jitendra Kumar Mishra (1998) 7 SCC 273*, *B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Association (2006) 11 SCC 731* and *Dattaraj Nathuji Thaware v. State of Maharashtra (2005) 1 SCC 590*, which had categorically held that PIL in service matters should not be entertained. In *Girjesh Shrivastava (supra)*, the above principle was reiterated and the order of the High Court interfering in the PILs was set aside.

9. For that matter, even in *Central Electricity Supply Utility of Odisha v. Dhobei Sahoo* (*supra*), which has been relied upon by Mr. Sarangi, the Supreme Court actually allowed the appeal of the CESU and set aside the order of the High Court interfering in a PIL on the alleged plea of disqualification of the incumbent and issuing a writ of *quo warranto*. The order of the High Court was in fact quashed.

10. There is no issue of *quo warranto* involved in the present case. The prayers, in fact, do not even mention the word '*quo warranto*'. This Court is therefore not prepared to view the present PIL as one seeking a writ of *quo warranto*.

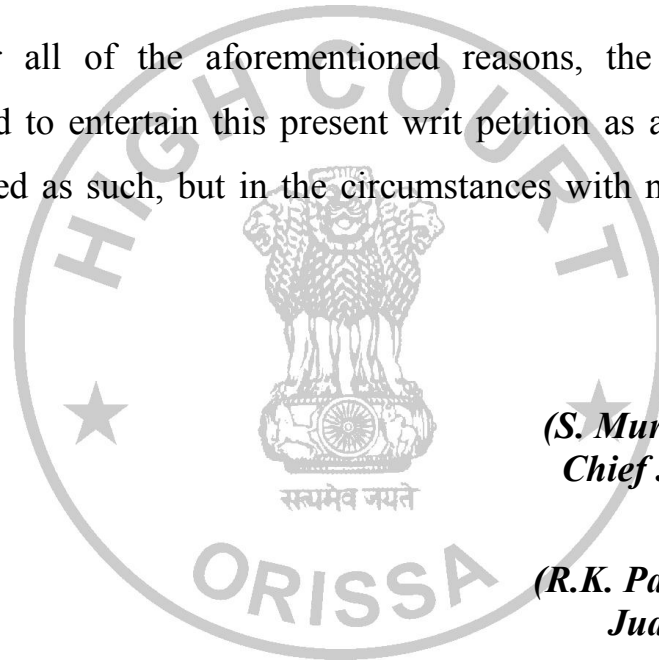
11. Secondly, only one private individual, who was allegedly disqualified for being appointed as a primary school teacher, has been impleaded as Opposite Party No.9. Although several names have been mentioned in Para-4 of the writ petition, the others have not been made as Opposite Parties. There is no convincing explanation given for this.

12. Further, as already noted, there is an inordinate delay in the Petitioners approaching this Court against the so-called illegal appointments. The selection took place in 1996, a revised selection list was published in 2006 and yet the present writ petition was filed only on 2nd February, 2017. The Petitioners have not offered any convincing explanation for the inordinate

delay of nearly 11 years in approaching the Court to challenge the said appointments made way back in 2006.

13. Mr. B.A. Prusty, learned Standing Counsel for the S&ME Department, states that the Government is already seized of the issue concerning teachers being appointed on the basis of fake certificates and concerted efforts are being made to tackle the problem.

14. For all of the aforementioned reasons, the Court is not prepared to entertain this present writ petition as a PIL and it is dismissed as such, but in the circumstances with no orders as to costs.



(S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S. Behera/ Jr. Steno