**IN THE HIGH COURT OF ORISSA**

W.P. (C) Nos. 17820, 17821, 17909, 17910, 17911, 17914, 17972, 17975, 17977, 17978, 17979, 17841, 17969, 17905, 17970, 17976, 17912, 17840, 17903, 17904, 17906, 17907, 17908, 17913, 17968, 17971, 17973, 17902 & 17974 of 2009

Decided On: 18.01.2012

Appellants: **Biswambhar Behera**
**Vs.**
Respondent: **State & ors**

**Hon'ble Judges/Coram:**
Aruna Suresh, J.

**JUDGMENT**

**Aruna Suresh, J.**

1. All these writs have been clubbed together & are disposed of by this common order as the question of law involved in all these petitions is the same & the Orders Dated 27.02.2008 & 7.11.2009 pertaining to the show cause notice & termination of service of all the Petitioners under challenge are similar in nature. Petitioners were engaged as Swechha Sevi Slkshya Sahayak (S.S.S.) in the Primary Schools, district Nayagarh in different years ranging from December 2004 to June, 2007. As per the Government Policy, the educational qualification for selection of Sikhaya Sahayaks (S.Ss.) is High School Certificate (H.S:C.)/+2 with Teachers' Certificate (C.T.), or Graduation with B.Ed. All the Petitioners having minimum educational qualification & having a Diploma in Special Education from the National Institutes under the Ministry of Social Justice & Empowerment, Government of India, New Delhi, duly approved by the Rehabilitation Council of India (RCI), were selected by the competent authority & engaged as S.Ss. Some of the Petitioners have subsequently been engaged as Junior Teachers (J.T.). The Government had taken a decision on 27.02.2908 (Annexure-11) not to accept any equivalent certificate of C.T. for engagement as S.Ss. Thereafter, Petitioners have been served with the show cause notice dated 7.11.2009 intimating their termination from service on the grounds that Diploma in Special Education obtained by respective Petitioners could not be considered as equivalent to C.T. training. Aggrieved by the notice of termination dated 7.11.2009, Petitioners have filed the present petitions.

2. Respondents have contested the Petitioners & have filed their counter affidavit. Case of the Respondents is that none of the clauses of the respective advertisements contained any stipulation that a candidate having Diploma in Special Education qualification would be considered for appointment as S.S. &, therefore, concerned authorities of Nayagarh appointed the Petitioners as S.Ss on a wrong notion that the notification treating the qualification of Junior Educators from any National Institute as equivalent to C.T. recognized by the Education Department which was issued by the C.D. & R.R. Department & not by the School & Mass Education Department, was to be followed. Since the Petitioners' did not posses the requisite qualification for appointment as S.Ss & were wrongly appointed, the show-cause notice of termination dated 7.11.2009 issued by the District Project Officer, SSA, Nayagarh is valid. Similarly, the order of the Commissioner-cum-Secretary, School & Mass Education Department, Government of Orissa dated 27.2.2008 dismissing the appeal/representation of Petitioner, Goutam Pradhah is also legal & valid.

3. Mr. Sameer Kumar Das, Learned Counsel appearing for the Petitioners has submitted that the State Government, C.D. & R.A. Department in its resolution dated 28.12.1987 had declared & accepted the Junior Educator Course organized by or in collaboration with any National Institute established or recognized by the Government of India as equivalent to C.T. qualification recognized by the Education Department. He has further argued that the Women & Child Development Department vide its letter No. 8410 dated 21.3.2005 also accepted the equivalency of the Certificate of the Diploma in Special Education for visually handicapped, hearing handicapped & mentally handicapped to that of C.T. Course of Board of Secondary Education, Orissa (B.S. E.) for engagement in special schools as well as in the normal schools.

4. He has submitted that the Director of Teacher Education & SCERT, Orissa, i.e. Respondent No. 5 in its letter 18.6.2005 had issued a clarification to the Joint Secretary, Government of Orissa, School & Mass Education Department to the effect that the candidates who had acquired professional qualification for Special Education offered by any National Institute be treated as equivalent to C.T. offered by B.S.E., Orissa. He has also pointed out that the Director of Teacher Education & SCERT, Orissa is the Apex Body of the Academic Institutions imparting B.Ed or C.T. Courses & is the final authority of the Policy Planning Body of the Government. He has averred that in view of all these letters, there cannot be any dispute with regard to he equivalency of Diploma in Special Education Certificate to that of C.T. Certificate issued by B.S.E., Orissa. He, has also referred to a decision of this Court in Writ Petition (C) No. 16637 of 2006 dated 8.8.2008 wherein the equivalency of Diploma in Special Education Certificate was accepted as that of C.T. certificate issued by B.S.E., Orissa.

5. The second limb of argument of Learned Counsel for the Petitioners is that, D.P.C. being not the appointing authority, had no power & jurisdiction to issue the impugned show-cause notice &, therefore, the said notice is against law & is void.

6. As regards maintainability of the writs, it is submitted that since the authorities had already decided to disengage the Petitioners from service & the show-cause notice dated 7.11.2009 was issued with a view to cover up the legal formalities & the latches, it is maintainable. He has prayed that the Order Dated 27.2.2008 & the subsequent termination notice dated 7.11.20.09 are against law & procedure & are in violation of the earlier instruction issued from time to time, & deserve to be quashed.

7. Mr. Rangadhar Behera, Senior Standing Counsel for Respondents has submitted that the Diploma in Special Education Certificate possessed by the Petitioners is considered equivalent to C.T. by the School & Mass Education Department but, at the relevant time when the Petitioners were appointed, Special Education Certificate was not considered as equivalent certificate to that of C.T. Since the appointment of the Petitioners was dehors the guidelines, show cause notice of termination dated 7.11.2009 served upon the Petitioners is valid & has been served upon them to provide them a fair opportunity to put up their defence. He has further submitted that neither the Order Dated 27.2.2008 nor the show cause notice of termination dated 7.11.2009 is ultra vires the guidelines or against the principles of natural justice & this Court under its writ jurisdiction cannot interfere in the administrative functioning of the Department. He has also disputed the maintainability of the Writ Petitions having been filed only on receipt of show cause notice without even awaiting for the final decision of the Department.

8. Grievance of the Petitioners is that many other persons with the same certificate of Diploma in Special Education are continuing & discharging the duties both as S.S's & J.Ts in different Blocks of Nayagarh district whereas District Project Coordinator (D.P.C.) (Respondent No. 4) issued a thirty days show cause notice for disengagement of the Petitioners & others, on the ground that person holding a certificate, of Junior Educator Course (Diploma in Special Education) is not eligible to apply for the post of S.S. being not equivalent to the O.(sic) Certificate in pursuance of order No. 4194/SME dated 27.02.2008 of the Commissioner-cum-Secretary (Annexure-11).

9. The CD. & R.R. Department, Government of Orissa had published a resolution dated 28th December, 1987 in the Orissa Gazette on 19th February, 1988, which relate to the Rules governing grant-in-aid to the institutions imparting Education to Handicapped Children. In Clause-5A of the Resolution, there is a stipulation that a person, who has successfully completed the Junior Educators' Course organized by or in collaboration with any National Institute established or recognized by the Government of India shall be deemed to have acquired a qualification equivalent to the C.T. recognized by the Education Department.

10. Clause-5 (A) of the Resolution reads as follows:

(1) The teachers of the institutions shall be paid salary at rates applicable to teachers of comparable rank & qualification in Government schools subject to their possessing the qualifications prescribed for the posts.

Note-(i) A person", who has successfully completed the Junior Educator's Course organized by or in collaboration with Any National Institute established or recognized by the Government of India shall be deemed to have acquired a qualification equivalent to the Teacher's Certificate (C.T.) recognized by the Education Department.

(ii) Government may from time to time declare any other course or examination for teachers of handicapped children as equivalent to any recognized course or examination of teachers of normal schools.

11. Thus, it is clear that even in the year 1987, the Government of Orissa had acknowledged & given recognition to Junior Educators' Course organized by or in collaboration with any National Institute established or recognized by the Government of India as equivalent qualification to the C.T. recognized by the Education Department, i.e. Respondents. The Commissioner-cum-Secretary to Government vide letter No. 29557/S & ME. dated 4.11.2000, communicated to the Collector Balasore, clarified the guidelines governing engagement of S.S.Ss. In Para-4 of the letter there is a reference of the qualifications to be possessed by a candidate, to be scrutinized & considered by Selection committee for appointment as S.S.Ss. The said letter also speaks that the candidates must have obtained H.S.C. or equivalent Examination & C.T. Examination or BA/ B.Sc/B.Com & B.Ed. Examination.

12. A letter was issued by Women & Child Development Department on 21.3.2005 to the School & Mass Education Department pertaining to the equivalency of the Junior Educator Course' to the C.T. Course. Vide this letter, the Respondents were communicated that National Institute for Visually Handicapped (V.H.), Hearing Handicapped (H.H.) & Mentally Handicapped(M.H.) are organizing the Diploma Course in Special Education for V.H., H.H. & M.H. which are regarded as Junior Educators' Course & the trained persons are being engaged in special schools & in the normal schools under Integrated Education Programme to teach the disabled students; This letter further clarified that Junior Educators' Course has been declared equivalent to the C.T. recognized by the Education Department vide Resolution No. 10404 dated 28.12.1987 (supra).

13. A communication was sent by the Director, Teacher Education & SCERT, Orissa, Bhubaneswar on 18.6.2005 to the Joint Secretary to Government, Department of School & Mass Education, i.e. Respondents. This letter was issued as a clarification relating to the Diploma for Primary School Teachers of Visually Handicapped issued by the National Institute of Visually Handicapped, Dehradun. Relying on the resolution dated 28.12.1987 issued by the C.D. & R.R. Department, it was clarified that Teachers Training Course organized by or in collaboration with any National Institute such as National Institute of Visually Handicapped, Dehradun, National Institute of Hearing Impaired etc. was equivalent to C.T. recognized by the Education Department. It was directed that the candidates who had acquired professional qualification for Special Education offered by National Institute be treated as equivalent to C.T. offered by the B.S.E. Orissa.

14. A conjoint reading of aforesaid letters make it clear that at the time when the Petitioners were selected & appointed as S.Ss. by the Respondents treating their Diploma in Special Education Certificate issued by the National Institute of Ministry of Social Justice & Empowerment, Government of India, New Delhi as equivalent to C.T., the Respondents were aware of the directives & subsequent clarification issued by various Departments regulating the qualification, selection & appointment of teachers for imparting education to the children including the handicapped children. To say, therefore, that at the time when the Petitioners were appointed, the Junior Educator Course was not considered as equivalent to C.T. Course, would be dehors the guidelines issued by the CD. & R.R. Department vide resolution dated 28.12.1987, subsequently accepted & clarified by Women & Child Development Department & Director of Teacher Education & SCERT, Orissa, & is not acceptable. It is pertinent that in the show cause notice dated 7.11.2009 issued by District Project Coordinator, S.S.A., Nayagarh did indicate that the certificates of equivalence were taken into consideration while engaging the Petitioners as S.Ss.

15. It seems that Respondents issued order No. II-SME-LMC-772/07 4194/SME dated 27.02.2008 wherein it was categorically stated that the certificate holders of Junior Educators Course (Diploma in Special Education) were not eligible for being engaged as SS since in the guidelines of SS requirement there was no stipulation that any candidate having qualification equivalent to C.T. could apply for engagement of SS. in view of this order, show cause notice dated 7.11.2009 was saved upon, the Petitioners. This order was passed on the represent (ion of Gautam. Pradhan in pursuance of directions/issued on 30.10.2007 by this Court in Writ Petition (C) No. 1175 of 2007 (Gautam Pradhan v. State of Orissa & others). While disposing of the petition, this Court did observe:

In the aforesaid scenario, to avoid further disparity, this Court feels that ends of justice & equity would be better served if the Writ Petition is disposed of giving liberty to the Petitioner to approach the Secretary to Government, Department of School & Mass Education, Khurda, Opp. Party No. 1, by filing a representation annexing all the testimonials & Government circulars. If such a representation is filing within a period of four weeks from today, Opp. Party No. 1 shall consider as to whether the diploma acquired by the Petitioner can be equated with the Teachers' Certificate as has been done in some of the districts & pass necessary orders strictly in accordance with law. It is made clear that this Court has not expressed any opinion with regard to the merits of the case.

16. Considering the directions issued by this Court, in the said case, a representation was filed by Gautam Pradhan which was disposed of vide impugned Order Dated 2-7.2.2008. In his order, Commissioner-cum-Secretary while interpreting Para-5 Note-(i) of the resolution dated 28.12.1987 issued by C.D. & R.R. Department observed that the Teacher Educator qualification is to be considered as equivalent to the scale of pay of the teacher having C.T. qualification & not for the qualification for recruitment for the post of a teacher. Intriguingly, if Teacher Educator qualification is not to be considered as equivalent to C.T. qualification then how a person possessed with Teacher Educator qualification can be given an appointment & put at par with the teacher having C.T. qualification for the purpose of applicability of the scale of pay. Equivalency to the scale of pay is a subsequent matter to be considered after a person is so appointed. If a teacher Educator cannot be appointed there is no occasion to put him in the equivalent scale of pay as of a teacher having C.T. qualification. To my mind, the Commissioner-cum-Secretary to the Government made these observations without application of mind. In case the Teacher Educator qualification is to be considered at par with C.T. qualification for purpose of salary only than to say that Teacher Educator qualification cannot be considered at par with Teacher Certificate recognised by the Education Department would be mockery of provisions contended in Clause-5 of the Resolution dated 28.12.1987. While referring to the circular dated 7.3.2005 issued by Women & Child Development Department, he observed that certificate holders of Junior educator Course, were not eligible for S.Ss. since in the guidelines of S.S., there was no stipulation that any candidate having Qualification equivalent to C.T. could apply for engagement of S.S. This order of the. Commissioner-cum-Secretary has not only jeopardized the interest & right of eligible candidates having Teacher Educator qualification to be considered & appointed as S.Ss, but has also motivated the department to disengage S.S. who were appointed after considering their diploma in Special education certificate as equivalent to C.T. & is, therefore, violative of Principles of natural Justice.

17. True that the Rules regulating the appointment of S.S. of the years 2006 & 2007 as placed on record do not specifically speak of considering equivalency of Junior Educator qualification to C.T. Course. The fact remains that S.Ss. are appointed by Zilla Parishad, to be selected by a Selection Committee & the directions issued or resolutions passed by the Department from time to time have been implemented by the Respondents while considering & appointing the Petitioners besides others as S.S.Ss. (now being called as S.Ss.). It is significant to note that Respondents have not placed on record any resolution containing the terms & conditions for appointment of S.Ss. in the year 2005, when most of the Petitioners were engaged. It is not the case of the Respondents that resolution dated 28.12.1987 published by C.D.& R.R. Department is not applicable to or cannot be enforced by School & Mass Education Department in the absence of specific stipulation in the advertisement.

18. The SSs who have completed three years of satisfactory service are entitled to be appointed as Junior Teachers & such Junior Teachers who have completed three years of service are entitled to be considered & appointed as regular Primary school teachers by Zilla Parishad. From a bare perusal of the Rules & Guidelines regulating the Selection &, appointment of S.Ss., it is crystal clear that they are appointed as teachers, may be with a different nomenclature i.e. S.S. The assignment of S.Ss. is to teach in the schools. Petitioners have been working as S.Ss. since after their joining in the said post & for all practical purposes they are discharging their duties as of a teacher. Since their basic job is to impart education to the children, the Department did & rightly so consider their Diploma in Special Education from National Institute under the Ministry of Social Justice & Empowerment, Government of India, New Delhi as equivalent to C.T. Course.

19. National Council for Teacher Education, Government of India issued a notification dated 23.08.2010 laying down the minimum qualifications for a person to be eligible for appointment of a teacher in class I to VIII in view of the Right of Children to Free & Compulsory Education Act, 2009. One of the recognized qualifications is Diploma/ Degree Course, in Teacher Education. A Diploma in Education (Special Education) & B.Ed. (Special Education) is a course recognized by the Rehabilitation Council of India (RCI). This Resolution of National Council for Teacher Education was taken care of by the Respondents as is evident from the circular No. 2618/SME/dated 5.2.2011 by which a clarification was issued regarding engagement of SS during 2010-11. As per Para-2 of this letter, the courses of Diploma in Education (Special Education) & B.Ed (Special Education) recognized by the RCI have to be taken into Consideration as equivalent to general C.T. candidates. As pointed out above, Learned Senior Standing Counsel for the Respondents did admit that Diploma in Special Education is being considered as equivalent to C.T. course for appointment of S.Ss. by the Zilla Parishad. In fact, since 1987 the Respondents have been treating the Diploma in Special Education as equivalent 'to C.T. Course & have been appointing S.Ss. holding, Diploma in Special Education as minimum educational qualification required to be possessed by a person to be eligible for appointment as S.S. The Petitioners having been appointed after considering their Diploma in Special Education as equivalent to C.T. course, the Respondents cannot be permitted to terminate them from service in view of the order of Commissioner-cum-Secretary. The Commissioner-cum-Secretary to the Government while rejecting the representation of Gautam Pradhan pursuant to the direction of this Court erroneously enforced that order against the Petitioners who have been continuing in service since the year 2005 onwards. This Court, in the case of Gautam Pradhan, did not in any manner issued any direction to the Department to issue show cause notice of termination to other persons, i.e., the Petitioners who had been engaged as S.Ss. & are continuing in their services. Some of these persons have already been appointed as Junior Teachers after successful completion of requisite length of service as S.Ss. in accordance with Rules & Regulations. The Order Dated 27.2.2008, therefore, could not have been enforced against anyone else in the manner in which it has been done by the Respondents. The Respondents who had given engagement to the Petitioners as S.Ss. on the basis of Certificate of equivalency are estopped by their own act from disengaging the Petitioners. It is not the case of the Respondents that the appointments were illegal. It is a show cause notice, which was issued in the light of Order Dated 27.2.2008 as the same could not be enforced against the Petitioners. Gautam Pradhan was not given appointment by the Department on the basis of equivalency of Junior Educator Course whereas the Petitioners were already in employment when they faced the displeasure of the Department & received the show cause notice of termination dated 7.11.2009. How could be the Order Dated 27.2.2008 be given retrospective effect against the Petitioners to face anguish of the Department who were neither a party nor had any occasion to plead their case. Therefore the show cause notice of termination dated 7.11.2009 is bad in law & cannot be enforced by the Respondents.

20. In another writ filed by Paresh Kumar Rout & others against the Respondents being Writ Petition (C) No. 16637 of 2006, the same Judge, who had given the liberty to Gautam Pradhan to file a representation before the Commissioner-cum-Secretary in its Order Dated 8.8.2008 observed.

2. After hearing Learned Counsel for the parties & perusing the letter dated 18.6.2005 issued by the Directorate of Teacher Education & SCERT, Orissa, Bhubaneswar (Annexure-4) which clearly indicates that candidates who have acquired professional qualification in Special Education offered by any National Institute are to be treated as holders of equivalent certificate as Certified Teacher (CT) issued by the Board of Secondary Education, Orissa. This Court disposes of this Writ Petition with an observation that as & when fresh advertisements are issued, if the Petitioners submit their applications their cases shall be considered along with others accepting the certificates issued by the National Institute of Visually Handicapped, Dehradun.

21. Thus, it is crystal clear that this Court had directed the Respondents to enforce the letter dated 18.6.2005 issued by the Director of Teacher Education & SCERT, Orissa in case the said Petitioners submitted their applications in response to fresh advertisement when issued by the Respondents for appointment of S.Ss. It was clearly stipulated that the professional qualification for Special Education issued by the National Institute of V.H. Dehradun has to be accepted by the Respondents while considering their applications.

22. Under the circumstances, I am of the considered opinion that the Collector in the impugned Order Dated 12.11.2008 did not adopt correct approach in interpreting various resolutions, guidelines & circulars issued by CD. & R.R. Department, Women & Child Development Department & was unmindful of the communication issued by Director of Teacher Education & SCERT, Orissa on 18.06.2005 to the Department of School & Mass Education wherein it was clarified that Diploma of Primary School Teachers of visually Handicapped issued by the National Institute of Visually Handicapped, Dehradun, National Institute of Hearing Impaired etc. was equivalent to C.T. recognized by the Education Department: Petitioners in these petitions possessed Special Education Certificate issued by National Institute under the Ministry of Social Justice & Empowerment, Government of India.

23. As regards maintainability of the petition, a bare reading of the show cause notice of termination dated 7.11.2009 clearly reveals that Respondents had issued the notice with premeditation having already formed an opinion regarding the disengagement of the Petitioners. Therefore the show cause notice of termination does not remain in the realm of the show cause notice. In such an event even if the Court directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose. Reference is made to Siements Ltd. versus State of Maharashtra & others  : (2006) 1.2 SCC 33. Since the appointment of the Petitioners was made by the Respondents while considering their Diploma in Special Education as equivalent educational qualification to C.T. Course consciously in accordance with the resolution dated 28th December, 1987 & letter dated 18.6.2005 issued by the Director of Teacher Education & SCERT, Orissa & are continuing in service since after their appointment, they were validly appointed & cannot be terminated from service by giving retrospective effect to the Order Dated 27.2.2008 which was passed while disposing of representation filed by Gautam Pradhan in pursuance of the direction, of this Court. Hence the show cause notice is uncalled for, is illegal, invalid & is devoid of any reasonable cause. In view of my discussion as above, the Petitioners are hereby allowed. Respondents are directed not to enforce the Order Dated 27.2.2008 (Annexre-11) against the Petitioners as it does not relate to them in any manner. Consequently, the show cause notice of termination dated 7.11.2009 (Annexure-10) is hereby quashed. If any of the Petitioners have been disengaged from the service, the Respondents shall ensure that he/she or they (as the case may be) are re-engaged within fifteen days of this order.