

ORISSA HIGH COURT : CUTTACK

W. P.(C) NO.13565 OF 2008

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Prafulla Behera -----
..... Petitioner

-Versus-

Commissioner-cum-Secretary,
School & Mass Education Department
and others Opp. Parties

For Petitioner : M/s. Miss. D.R.Nanda,
B.B.Mohanty & B.B.Mohapatra.

For Opp. Parties : Mr. S.K.Samal,
Standing Counsel.

M/s. L.K.Mohanty,
S.Pattnaik & A. Mohapatra.
(For intervenors).

Decided on 27.03. 2009.

P R E S E N T :

THE HONOURABLE SHRI JUSTICE M. M. DAS

M.M. Das, J.

The petitioner in this writ petition has called in question Clause-2.3 of the advertisement under Annexure-5 and paragraph-4.C of the admission brochure so far as it relates to admitting untrained graduate teachers working against the posts other than Trained Graduate Teachers of all types of High Schools and teachers of Elementary Schools to B.Ed. Course as in-service candidates.

2. For appreciating the contentions raised by the respective parties, it would be profitable to quote paragraph-4.C of the Information Brochure, 2008-09 for admission to one year B.Ed. Course as well as Clause 2.3 of the advertisement issued pursuant to the said brochure. Paragraph 4-C of the Information Brochure reads as follows:

“4. Eligibility for Admission:

(A) xx xx

(B) xx xx

(C) **In-service candidates:**

Untrained teachers appointed on regular basis against sanctioned yardstick posts in Government/Government Aided/Recognized High Schools are eligible to apply provided she/he must have been Science/Arts graduate and completed at least one year continuous service by the last date of submission of application form.

Teachers appointed on regular basis working in elementary schools (Government/Government Aided/Recognized) having graduation and completed at least one year continuous service by the last date of submission of application are eligible to apply.

The untrained teachers should submit their applications to their respective District Inspectors of Schools or Inspectors of Schools or Superintendent, Sanskrit Studies, as the case may be within the stipulated date. Their applications will be forwarded by the respective DI/CI of Schools/ Superintendent, Sanskrit Studies as the case may be with necessary entries and authentication to the Directorate of TE and SCERT, Orissa, Bhubaneswar within the stipulated date as specified in the Information Brochure.

All in-service candidates shall submit an undertaking at the time of admission to the effect that they shall not claim salary/stipend during the period of their training.

All the in-service candidates shall submit the Xerox copies of the following attested by the Headmaster as mentioned below along with their application forms.

Copies of all mark sheets and certificates from HSC to Graduation.

Copy of the first recognition order of the institution.

Copies of application form for securing the recognition and renewal of recognition wherein the name of the concerned teacher has been mentioned year-wise till date.

Copies of subsequent renewal of recognition order year-wise till date.

Copy of the appointment and joining letter.

Copy of the service continuing certificate.

Copies of the first and last page of Service Book in case of teachers, serving in Government Schools.

In-service applicants shall be called for verification of authenticity of the facts submitted in the application forms”.

Clause -2.3 of the Advertisement reads as follows:-

“2.0. ELIGIBILITY

2.1 to 2.2. xx xx

2.3. In-service Candidates:

Untrained teachers posted against sanctioned yardstick posts in Government/Government Aided/Recognized High Schools appointed on regular basis and teachers appointed on regular basis working in Elementary Schools (Government/Recognized), having Graduation are eligible to apply provided she/he must have completed at least one year continuous service by the last date of submission of application”

3. The petitioner’s case is that he was appointed as an Assistant Teacher at Khari Babaji Dora Bidyapitha situated at Pandiopathar in the district of Ganjam against Arts Trained Graduate Teacher post by the appointment letter issued by the erst-while Secretary of the Managing Committee on 27.11.2004. Pursuant to the said appointment letter, he joined in the aforesaid post on 7.12.2004 and is continuing as such. The Khari Babaji Dora Bidyapitha is an aided educational institution within the meaning of

section 3 (b) of the Orissa Education Act, 1969 and is also a recognized school. Since the petitioner is holding a Trained Graduate Teacher (T.G.T.) post as per the yardstick, but is an untrained teacher, he is not receiving grant-in-aid even though other teachers in the said school are receiving such grant by way of Block grant. It is the case of the petitioner that since he is untrained, he has been trying to get admission to B.Ed. course by making applications for such admission as an in-service candidate from 2005-06. However, unfortunately, he has not been selected as yet to undertake the said course. An advertisement was published on 25.7.2008 by the Director, T.E. & SCERT, -cum-Chairman, B.Ed. Central Selection Board, Orissa, Bhubaneswar, of which, Clause 2.3 has been quoted above. The petitioner obtained an application form along with the Information Brochure and submitted his application within the stipulated time through proper channel and thereafter, has preferred this writ petition before commencement of the selection process calling in question clause 2.3 of the advertisement and paragraph-4.C of the Information Brochure as unfair, unjust, illogical, arbitrary , discriminatory and unreasonable and violative of Article 14 of the Constitution of India and frustrating the object to be achieved. According to the petitioner, by allowing all other graduate teachers of High Schools as well as such teachers from elementary schools to undertake B.Ed. training by considering such teachers along with

trained graduate teachers amounts to treating different class of teachers as one homogeneous class which is violative of Article 14 of the Constitution. The petitioner further contended that such other graduate teachers of High Schools in previous years were not permitted to take admission as in-service candidates for B.Ed. course.

4. In the counter affidavit filed on behalf of the State, allegation of discrimination has been denied and it has been, inter alia, stated that the apprehension of the petitioner that he may not be selected under the in-service quota is not justified as the Government has permitted 13 Teachers Education Institute to accommodate 100 in-service teachers in each of the institute for B.Ed. through IGNOU Distant Education Programme. The petitioner has also filed a rejoinder affidavit.

5. Mr. B.B. Mohanty, learned counsel for the petitioner submitted that the decision of the Government to treat other teachers continuing in the post of Classical teachers, Hindi teachers and P.E.Ts of High Schools and Primary School Teachers under elementary cadre, as eligible to take admission as in-service candidates in B.Ed. course, is unjust and arbitrary inasmuch as a consequence of gross non-application of mind and lack of objectivity. According to Mr. Mohanty, by the aforesaid impugned decision of the Government, in equals have been treated as equals with the untrained teachers, who are holding the post of T.G.T. in High

Schools and such action amounts to discrimination being violative of Article 14 of the Constitution. He further submitted that except untrained teachers holding T.G.T. posts in various categories of High Schools, all other categories of teachers, who have now been made eligible for the first time in the academic session 2008-09 to take admission as in-service candidate to B. Ed. course, do not require B.Ed. degree to hold the post substantively or to become eligible to receive grant-in-aid.

Qualifications required as per the rules to hold the post of Classical teacher, Hindi teacher and primary school teachers are as follows:-

<u>Category of Post</u>	<u>Prescribed qualification as per Rules.</u>
Classical Teacher.	Acharya/Sahityacharya or at least Sanskrit as a subject in Degree stage.
Hindi Teacher.	Graduate with Hindi or Rastrbhasa Ratna from Rastrbhas Prachar Samiti Wardha or an equivalent Degree and Hindi Shikshyan Parangat from Kendriya Hindi Sansthan, Agra, Hindi Teachers Training Institute, Cuttack, Bhubaneswar & Sambalpur.
Classical Teacher. -	Matric, C.P.Ed./I.A., C.P.Ed.
Primary School Teacher Under Elementary Cadre. -	Matric C.T."

6. From the above table, it is clear that all other groups excepting teachers holding TGT post do not require B.Ed. qualification to hold the post substantively and, as such, they cannot be treated as untrained teachers so as to be treated at par with untrained teachers holding TGT post, as submitted by Mr. Mohanty. In support of his contention that primary school teachers, Classical teachers, Hindi

teachers and P.E.Ts do not belong to the same class as that of teachers holding TGT post, Mr. Mohanty submitted that Rule 2 (K) of Elementary Education Cadre provides definition of Teacher. Going by the composition of service provided under Rule 3, particular posts under Level – V, Level-IV and Level-III are teaching posts where the incumbents are covered under the definition of “Teacher”. On the other hand, posts under Level-II and Level-I are posts under the category of “Officer” as per the definition at Rule 2(e) . Since going by the Rule 11 (4) only for being considered for promotion from Level – II to Level-I, B.Ed. Degree is required, the incumbents under Level-II of the service being officers as per the definition under Rule 2 (e), they cannot be treated as “Teachers” so as to be considered for the purpose of admission into B.Ed. Course. The teachers of Elementary Cadre in Level – V, Level-IV and Level-III are not at all eligible to be considered going by the educational qualification prescribed for those posts. Moreover, when for those posts B.Ed. qualification is not the prescribed qualification, the impugned stipulation made in the Admission Brochure and advertisement and the very decision of making teachers under Elementary Cadre eligible under in-service quota is devoid of any reasonable basis and justification. So far as Hindi teachers working in the High Schools are concerned, Government in School and Mass Education Department by resolution dated 18.2.2008 has upgraded the status and scale of pay of Hindi

teachers to that of trained graduate teachers. Clause 12 of the aforesaid resolution dated 18.2.2008 has made the posts of Hindi teachers at par with that of trained graduate teachers. Hence, for the post of Hindi teachers, the acquisition of B.Ed. degree after 18.2.2008 is an act of surplus-age and so to say, meaningless. Moreover, for Hindi teachers, Government in the School and Mass Education Department has prescribed reservation at the rate of 50:50 for both in-service and direct candidates in all Hindi Training Institutes of Cuttack, Sambalpur and Bhubaneswar. Besides, in compliance to the aforesaid resolution dated 18.2.2008 from the session 2008-09, the very Director, T.E. & S.C.E.R.T. has issued notification for admission into Hindi Training Course exclusively for Hindi teachers working in the very categories of High Schools. Hence, in view of the aforesaid resolution dated 18.2.2008 of the Government and more, particularly, when the said resolution was within the knowledge of the Director, T.E. & S.C.E.R.T. , the impugned prescription in the advertisement and the prospectus for B.Ed. Admission making the Hindi teachers once again eligible for B.Ed. is misconceived, unreasonable and without any basis.

7. Mr. Samal, learned Standing Counsel for the School and Mass Education Department vehemently argued that by virtue of notification dated 2.11.1993 of the Government in its School and Mass Education Department, Classical teachers, Hindi teachers and

P.E.Ts working in Government High Schools were treated as LSES teachers for the purpose of selection to Junior grade of S.E.S. in terms of Rule 10-A of O.S.E.S. Rules, 1972 and, as such, all the Classical teachers, Hindi teachers and P.E.Ts working at present in various Government, Government aided and recognized High Schools are treated as L.S.E.S. According to Mr. Samal, such teachers, in order to get promotion to the junior grade of S.E.S. require B.Ed. qualification. Mr. Samal further contended that inclusion of elementary school teachers has not been done for the first time in the education session 2008-09 and such elementary school teachers were also given admission as in-service candidates in B.Ed. course for the session 2007-08 which would be clear from the Information Brochure of the said year. With regard to Classical teachers, Hindi Teachers and P.E.Ts in various types of High Schools, Mr. Samal submitted that for being considered for promotion, such teachers require B.Ed. qualification and, therefore, there is no illegality in including such teachers as eligible candidates for taking admission to B.Ed. course under in-service quota.

8. From the contentions of the respective parties, the questions that evolve for determination are as to whether the action of the opp. parties in including all kinds of teachers who are graduates and have been appointed on regular basis against sanctioned yardstick posts in Government/Government aided/recognized High

Schools and elementary school teachers, who are appointed on regular basis in Government/Government aided/recognized elementary schools having graduation and completed one year of continuous service, as eligible, to apply for taking admission to B.Ed. course as in-service candidates, is arbitrary, unreasonable and in violation of Article 14 of the Constitution.

9. In order to determine the above issues, it is necessary to comprehend and interpret the notification dated 2.11.1993 issued by the Government in its School and Mass Education Department on which reliance has been placed by the State. The said notification reads as follows:-

“No.32226/SME-VIII-SE(H)-78/93.

GOVERNMENT OF ORISSA

DEPARTMENT OF SCHOOL & MASS EDUCATION

The 2nd November, 1993.

From:

Sri J.B. Padhi, O.A.S. (I)
Deputy Secretary to Government.

To

The Director, Secondary Education, Orissa.

Subject: Clarification regarding selection of Trained Graduate Teachers working in L.S.E.S. cadre to Jr. S.E.S. Cadre.

Sir,

I am directed to invite a reference to your letter No. 2288-G dated the 3rd June 1993 on the subject noted above and to say that after careful consideration, Government have been pleased to decide that Classical Teachers, Hindi teachers and P.E.Ts working in Government High Schools in the State shall be treated as L.S.E.S. teachers with effect from their date of joining for the purpose of selection to the Jr. grade of the Subordinate Education service in terms of rule 10-A of the O.S.E.S. Rules, 1972.

Yours faithfully,

J.B. PADHI

Deputy Secretary to Government.”

10. Rules 10-A of the O.S.E.S. Rules, 1972 relates to eligibility criteria for being recruited by selection to the cadre of Orissa Subordinate Education Service and it prescribes that a candidate must have served under the Lower Subordinate Education Service (LSES) for at least a continuous period of three years. The above notification, therefore, included Classical teachers, Hindi teachers and P.E.Ts working in Government High Schools in the L.S.E.S. cadre from the date of their joining for the purpose of being selected to Orissa Subordinate Education Service (O.S.E.S.). (*Emphasis supplied*)

11. The O.S.E.S. Rules, 1972 was repealed by the Orissa Subordinate Education (Method of Recruitment and Conditions of Service) Rules, 1993. Both the aforesaid Rules of 1972 and 1993 have been framed under the powers conferred by Article 309 of the Constitution of India for regulating the method of recruitment and conditions of service of the persons appointed to the post of Teachers and equivalent posts in Class-III of the State Civil Service in the offices subordinate to the Director of Public Instruction (Schools) and Director (Secondary Education), Orissa, respectively. The above Rules, therefore, have absolutely no application to the teachers recruited in Non-Government/Aided/Recognized High Schools.

12. The contention that Classical teachers, Hindi teachers and P.E.Ts of Government Aided/Recognized High Schools belong to L.S.E.S. cadre and required B.Ed. qualification to be promoted to

Orissa Subordinate Education Service cadre cannot be accepted. Since in view of the notification dated 23.11.1993 teachers, who were already appointed in accordance with the 1972 Rules can only be considered to belong to the L.S.E.S. cadre, but such teachers appointed after 1993 Rules came into operation, i.e., 15.12.1993 cannot be construed to belong to the L.S.E.S. cadre.

13. It appears from the Information Brochure for the year 2007-2008 that in-service candidates were defined as follows:-

“In-service Candidates:-

Untrained teachers posted against sanctioned yardstick Trained Graduate posts in Government/Government Aided/Recognized High Schools are eligible to apply provided she/he must have completed at least one year continuous service by the last date of submission of application. Regular teachers working in elementary schools (Government/Government Aided/Recognized) having graduation and completed at least one year continuous service by the last date of submission of application are eligible to apply”.

It, therefore, appears that for the first time, all untrained teachers appointed on regular basis against any sanctioned yardstick posts in Government/Government Aided/Recognized High Schools have been made eligible to apply for admission to B.Ed. Course as in-service candidates provided such candidates are graduates and have completed at least one year continuous service.

14. From the above analysis, it is clear that untrained graduate teachers teaching Sanskrit , Hindi or graduate P.E.Ts do not

require B.Ed. qualification to hold such posts subsequently, whereas untrained teachers, who are holding the post of trained graduate teachers (T.G.Ts) either in Science or in Arts subjects as per the sanctioned yardstick are required to have B.Ed. training to continue in such posts as well as to receive grant-in-aid. The object to be achieved by allowing in-service candidates to take admission to B.Ed. course is, therefore, clear that teachers, who are holding such T.G.T posts, as per the sanctioned yardstick on regular basis, are to be given admission to B.Ed. course as in-service candidates in order to facilitate them for continuing in such posts and making them eligible to receive grant-in-aid. There is no requirement of B.Ed. training for Classical teachers, Hindi teachers and P.E.Ts, who are graduates, for continuing in their respective posts. As already discussed, such training is also not necessary for the aforesaid classes of teachers for being promoted to O.S.E.S. cadre as they are not in Government service.

15. Considering the above facts, it clearly manifests that the Classical teachers, Hindi teachers and P.E.Ts belong to a distinct class than the teachers holding trained graduate teacher posts in a High School.

16. Under Article 14 of the Constitution of India, equals cannot be treated as un-equals. Similarly, as in the instant case, un-equals cannot be treated as equals. No acceptable reason has also

been brought to the notice of this Court as to for what purpose, the Classical teachers, Hindi teachers and P.E.Ts were included within the definition of in-service candidates in the Information Brochure of 2008-09, when such teachers were not included in the Information Brochure for the year 2007-08. (See (2008) 2 SCC (L&S) 1000).

17. It is naïve to state that for achieving high standard in education, the yardstick prescribed that there shall be two trained graduate teachers each in Arts and Science in a High School. Teachers have been appointed to such trained graduate teacher posts, who do not possess B.Ed. qualification. Such teachers, who are holding such trained graduate posts on regular basis, are required to be trained and to facilitate such training, they are given the opportunity of undertaking B.Ed. course as in-service candidates. Hence, the objective of reserving some seats in the training colleges for in-service candidates can be nothing-else but to give opportunity to such teachers holding trained graduate posts in the High Schools to acquire B.Ed. qualification. The decision to include Classical teachers, Hindi teachers and P.E.Ts within the definition of in-service candidates and to allow them to be considered for admission to B.Ed. course as in-service candidates, is, therefore, clearly unreasonable. As already stated, the untrained teachers holding trained graduate teacher posts and the Classical teachers, Hindi teachers and P.E.Ts cannot be classified as one homogeneous class as their rules of

recruitment, eligibility criteria and nature of duties differ. Equating all of them and classifying them as one class for the purpose of admission to B.Ed. Course as in-service candidates, is, therefore, clearly violative of Article 14 of the Constitution of India. The same also cannot be construed to have been done to achieve the objective as already narrated above.

18. In my opinion, therefore, the opp. Parties could not have included the Classical teachers, Hindi teachers and P.E.Ts within the definition of in-service candidates in paragraph-4.C of the Information Brochure and such teachers could not have been permitted to apply for being considered for admission to B.Ed. course as in-service candidates.

19. Paragraph-4.C of the Information Brochure as well as Clause 2.3 of the advertisement cannot be sustained so far as it relates to untrained teachers posted against sanctioned yardstick posts in Government/Government Aided/Recognized High Schools appointed on regular basis except such untrained teachers holding the post of trained graduate teachers. However, since the elementary school teachers were also included as in-service candidates for the session 2007-08 and the Information Brochure discloses that out of 171 seats available for in-service candidates, 51 seats have been segregated for elementary school teachers, I am not inclined to interfere with the said decision of the Government for considering

elementary school teachers to be admitted to B.Ed. course as in-service candidates. The opp. Party no. 2 – Director, T.E. & S.C.E.R.T., Orissa, Bhubaneswar is, therefore, directed to consider only the applications made by the teachers of Government/Government Aided/Recognized High Schools, who are holding trained graduate teacher posts as per the sanctioned yardstick on regular basis and also teachers of elementary schools as per paragraph-4.C of the Information Brochure. The applications made by the Classical teachers, Hindi teachers and P.E.Ts of various High Schools shall not be considered for giving them admission to B.Ed. Course as in-service candidates.

20. By an interim order dated 23.9.2008, this Court has already directed that any appointment made to B.Ed. Course as in-service candidates shall be subject to final result of this writ petition. Now that it has been held that the action of the opp. Parties in admitting Classical Teachers, Hindi Teachers and P.E.Ts is unconstitutional, any such teachers, if admitted, in the meanwhile, such admission should be held to be null and void and the Director, T.E. & S.C.E.R.T., Orissa, Bhubaneswar is directed to conduct a fresh selection of candidates as per the observations made above to be admitted to B.Ed. Course 2008-09 as in-service candidates. Such exercise shall be completed within a period of thirty days from the date of communication of this order.

As it is submitted at the Bar that in the meantime, forms are being filled up for appearing in the first B. Ed. Examination, it is further directed that such examination shall be held only after candidates are admitted as in-service candidates as per the directions given above upon a fresh selection being made and they are permitted to attend required number of classes. The filling up of the forms, as is being done, shall also be kept in abeyance till such selection and appointment is made and such candidates, who take admission, are allowed to attend required number of classes. As a consequence thereof, the examination, as scheduled, shall be shifted accordingly.

21. With the aforesaid observations and directions, the writ petition is allowed in part. No costs.

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M.M. Das, J.

*Orissa High Court, Cuttack.
 March 27th, 2009/Biswal.*
