
(2009) 08 OHC CK 0034
In the Orissa High Court

Anil Kumar Das and Others		APPELLANT
	Vs	
State of Orissa and Others		RESPONDENT

Date of Decision : 31-08-2009

Acts Referred:

Citation : (2009) 108 CLT 923 : (2009) 2 OLR 412 Supp

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.M. Das, J.—The Petitioners in this Writ Petition seek quashing of the advertisement dated 14.7.2009 under Annexure-15 to the Writ Petition in which no seats in the B.Ed. course for the session 2009-2010 have been reserved for in service candidates. The Petitioners are teachers holding trained graduate posts, who have not acquired B.Ed. training qualification.

2. Mr. Swain, Learned Counsel for the Petitioners submits that the reservation of seats for in-service candidates in B.Ed. course for the past sessions 2006-2007, 2007-2008 & 2008-2009 were being made. He further submits that teachers who have been appointed by the management of various institutions, in the post of trained graduate teachers, have remained untrained & the law requires that unless they acquire B.Ed. qualification, their appointments cannot be approved nor they will be brought into the grant-in-aid fold. He, therefore, submits that since previously seats were reserved for in-service candidates for B.Ed. course, the Petitioners were legitimately expecting that in this year, also there would be reservation for such in-service candidates in B.Ed. course so that they can have the opportunity of acquiring B.Ed. qualification & their appointments can be approved & they can be considered as regular appointees in the school. Various grounds have been taken in the Writ Petition in support of such contention.

3. A counter affidavit has been filed on behalf of Opposite Party No. 3, inter alia, stating that the Petitioners have absolutely no legal right to be enforced in a Writ

Petition under Article 226 of the Constitution of India & further the Government in a policy decision decided not to reserve any seat for in-service candidates for B.Ed. course for the session 2009-2010.

4. Considering the nature of dispute involved in this Writ Petition, this Court called for the policy decision of the Government pursuant to which such reservation of seats for in-service candidates in B.Ed. course for the Session 2009-2010 have been given a go-bye & the impugned advertisement has been published. JL

5. Mr. Samal, Learned Counsel appearing for the School & Mass Education Department has produced the entire record for perusal of this Court. It appears from the said record that the draft guidelines for taking admission in B.Ed. course for the session 2009-2010 were placed before the Government for approval, wherein no seats were reserved for in-service candidates in B.Ed. course for the session 2009-2010. While placing the said guidelines, the Joint Secretary to Government has noted that "The Director, TE & SCERT in the draft guidelines has excluded reservation for in-service teachers as Government has made provisions for untrained in-service teachers to avail the facility of B.Ed. Training in distance mode/Summer Course being imparted by the IGNOU in 13 Teachers Education Institutions of the State. Further, in Writ Appeal Nos. 55 & 58 of 2009, this Court by Order Dated 21.4.2009 dismissed the said appeal on the ground that the Appellants therein were not appointed as per the procedure prescribed by law & so they can not claim for in- service training. The Government vide letter dated 5.1.1991 had strictly restricted the appointment of untrained teachers in Non-Government High Schools vide G.O. No. 1074 dated 5.1.1991.

6. On perusal of the said note, it is evident that the Principal Secretary to Government in its School & Mass education Department raised certain queries. In Query No. 2, the Principal Secretary has mentioned thus "Special Reserved Category for in-service teachers has been excluded this year. The rationale which was not understood specially since the Director, TE & SCERT himself admitted in a meeting with the Hon"ble Minister, S & ME that training through the Distance Mode cannot be compared to the training under Regular Mode". The Principal Secretary, therefore, expressing such concern called upon the Director to give the reply in writing & also called upon the Director, TE & SCERT to come for a discussion on the issues. Such queries were raised by the Principal Secretary on 29.5.2009 as seen from the record. A note thereafter has been made that pursuant to the discussion as aforesaid, the Director, TE & SCERT submitted a modified draft. The said modified draft was thereafter approved by the Government. However, nothing is revealed from the records as to what discussion took place between the Director, TE & SCERT & the Principal Secretary & as to what draft modifications were made with regard to reservation of seats for in- service candidates in B.Ed. course. Nothing also appears from the record, which suggests that the Government has applied its mind with regard to such

reservation of seats for in-service candidates in REd. course. Thus, it is clear that approval of the draft guidelines has been made mechanically without due application of mind. This Court also finds that in the last three sessions, 171 seats were reserved for in-service candidates in B.Ed. course & as a matter of fact, for the session 2008-2009, a question was also raised before this Court with regard to filling up of such seats for in service candidates by candidates, who are untrained teachers holding trained graduate posts & primary school teachers & other category of teachers, like P.E.T., Hindi teachers. In W.P.(C) No. 13565 of 2008, this Court after discussing the entire materials available on record came to the conclusion that such seats reserved for in-service candidates can be filled up only by untrained teachers holding trained graduate posts & primary school teachers. There is absolutely no reason manifest on record to show as to why there should not be any reservation of seats in REd. course for the session 2009-2010 for in-service candidates & there should be a deviation from the same. Such untrained teachers holding trained graduate posts in various schools of the State can legitimately expect like the previous years that there would be reservation for in-service candidates. In this year also they should have got an opportunity to obtain B.Ed. Degree thereby getting an opportunity to get their services approved & on such approval, receive grant-in-aid as & when due, in the event they are selected to take admission into B.Ed. course & complete the same successfully.

7. Now coming to the question of "legitimate expectation" of the Petitioners that there will be seats reserved for in-service candidates in B.Ed. Course 2009-2010, it would be appropriate to state that in a plethora of decision, the Supreme Court has dealt with the question elaborately. It has been laid down that the doctrine of legitimate expectation can be pressed if a person satisfies the Court that he has been deprived of some benefit or advantage which earlier he had in the past been permitted by the decision maker to enjoy or he has received the assurance from the decision maker that such benefit shall not be withdrawn without giving him an opportunity of advancing reasons for contending that it should not be withdrawn. The legal maxim "*salus populi est suprema lex*" (regard for public welfare is the highest law) comes to an aid in the instant case also See *A. Mahudeswaran and Others Vs. Govt. of T.N. and Others*, , *Dr. (Mrs.) Meera Massey, Dr. Abha Malhotra and Dr. S.C. Bhadwal and Others Vs. Dr. S.R. Mehrotra and Others*, , *National Buildings Construction Corporation Vs. S. Raghunathan and Others*, *State of West Bengal and Ors. v. Niranjana Singha* (2001) 2 SCC 326, *State of Bihar Vs. S.A. Hassan and Another*, , *Dr. (Mrs.) Chanchal Goyal Vs. State of Rajasthan*, , *J.P. Bansal Vs. State of Rajasthan and Another*, , *Hira Tikkoo v. Union Territory, Chandigarh* AIR 2004 SC 3649, *Ram Pravesh Singh and Others Vs. State of Bihar and Others*, , *Confederation of Ex-Servicemen Associations and Others Vs. Union of India (UOI) and Others*, & *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, . In *Union of India and others Vs. Hindustan Development Corpn. and others*, the supreme Court held as follows:

On examination of some these important decisions it is generally agreed that legitimate expectation gives the applicant sufficient locus standi for judicial review & that the doctrine of legitimate expectation is to be confined mostly to right of a fair hearing before a decision which results in negating a promise or withdrawing of an undertaking is taken. The doctrine does not give scope to claim relief straight way from the administrative authorities as no crystallized right as such is involved. The protection of such legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words where a person's legitimate expectation is not fulfilled by taking a particular decision then decision-maker should justify the denial of such expectation by showing some overriding public interest.

In Punjab Communications Ltd. Vs. Union of India and Others, the Supreme Court held as follows:

...the doctrine of legitimate expectation in the substantive sense has been accepted as part of our law & that the decision-maker can normally be compelled to give effect to his representation in regard to the expectation based on previous practice or past conduct unless some overriding public interest comes in the way....

In M.P. Oil Extraction and Another Vs. State of M.P. and Others, & National Buildings Construction Corporation Vs. S. Raghunathan and Others, it has been held as follows:

The doctrine of legitimate expectation has a meaning that the statements of policy or intention of the Government or, its Department in administering its affairs should be without abuse or discretion. The policy statement could not be disregarded unfairly or applied selectively for the reason that unfairness in the form of unreasonableness is akin of violation of natural justice. It means that said actions have to be in conformity of Article 14 of the Constitution, of which non arbitrariness is a second facet. Public Authority cannot claim to have unfettered discretion in the public law as the authority is conferred with power only to use them for public good. Generally legitimate expectation has essentially procedural in character as it gives assurance of fair play in administrative action but it may in a given case be enforced as a substantive right. But a person claiming it has to satisfy the Court that his rights had been altered by enforcing a right in private law or he has been deprived of some benefit or advance which he was having in the past & which he could legitimately expect to be permitted to continue unless it is withdrawn on some rational ground or he has received assurance from the decision making Authority which is not fulfilled, i.e., the kind of promissory estoppel. Change of policy should not violate the substantive-legitimate expectation & if it does so it must be as the change of policy which is necessary & such a change is not irrational or perverse. This doctrine being an aspect of Article 14 of the Constitution by itself does not give rise to enforceable right but it provides a reasonable test to determine as to whether action taken by the Government or authority is arbitrary or otherwise, rational & in accordance

with law.

In *Kuldeep Singh Vs. Govt. of NCT of Delhi*, , the issue of legitimate expectation was considered observing that the State actions must be fair & reasonable. Non-arbitrariness on its part is significant in the field of governance. The discretion should not be exercised by the State instrumentality whimsically or capriciously but a change in policy decision, if found to be valid in law, any action taken pursuant thereto or in furtherance thereof should not be invalidated.

Similarly in *Ashoka Smokeless Coal Ind. P. Ltd. and Others Vs. Union of India (UOI) and Others*, , the Court held as under:

Principles of natural justice will apply in cases where there is some right which is likely to be affected by an act of-administration. Good administration, however, demands observance of doctrine of reasonableness in other situations also where the citizens may legitimately expect to be treated fairly. Doctrine of legitimate expectation has been developed in the context of principles of natural justice.

8. Applying the above principles & the ratio laid down by the Apex Court, to the facts of the present case, it is amply clear that the decision of the Government in withdrawing reservation of seats for in service candidates in B.Ed. course for the session 2009-2010 has not only been done in a casual manner but on judicial review, it is found that the same is arbitrary & unreasonable as well as contrary to the enforceable legitimate expectation of the Petitioners. There is also absence of any overriding public interest for which such deviation of the policy could have been made. The principles of natural justice has been manifestly violated as the change in the policy was made without giving an opportunity to the affected persons & the same was resulted in unfairness which is .not in conformity with Article 14 of the Constitution.

9. On the above analysis, this Court has no hesitation to quash the said approval of the guidelines as well as the consequential decision of the Government for eliminating reservation of seats for in service candidates in B.Ed. Course. 2009-2010 & the same is accordingly quashed. In the result, therefore, the impugned advertisement also stands quashed.

10. Since it is found, as a matter of fact, that the total number of seats available for admission to B.Ed. Course 2009-2010 has remained unchanged from the previous year, when 171 seats out of the total number of seats were reserved for in-service candidates in the said course, the Opposite Parties are directed to reserve 171 number of seats for in-service candidates in B.Ed, course for the Session 2009-2010, which has been directed not to be filled up by the interim Order Dated 25.8.2009.

11. (sic) The State is directed to fill up the said vacant 171 seats for in-service candidates in B.Ed. course for the session 2009-2010, if not already done pursuant to the interim order passed by this Court by following the principles laid down in the Judgment passed in W.P.(C) No. 13565 of 2008 on 27.3.2009 in the

case of Prafulla Behera v. Commissioner-cum-Secretary, School & Mass Education Department and Ors. As the matter has been delayed, the entire procedure should be completed within a period of two months hence.

The Writ Petition is, accordingly, allowed but in the circumstances, without cost.

12. A copy of the Judgment be handed over to the Learned Counsel appearing for the school & Mass Education Department for being implemented.