
(2010) 05 OHC CK 0056

In the Orissa High Court

Case No : Writ Appeal (Civil) No. 204 of 2009

Arun Kumar Nahak and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 14-05-2010

Acts Referred:

Citation : (2010) 1 ILR (Ori) 15

Hon'ble Judges : V. Gopala Gowda, C.J;A.S. Naidu, J

Bench : Division Bench

Judgement

A.S. Naidu, J.—In this writ appeal the judgment dated 27.3.2009 passed by the learned Single Judge of this Court in W.P.(C) No. 13565 of 2008 is assailed.

2. The Appellants are admittedly working as Hindi Teachers, Classical Teachers and Physical Education Teachers in different aided educational institutions. Being aggrieved by the Clause 4-C of the admission brochure under Annexure-7 inviting applications from untrained graduate teachers for taking admission in B. Ed. course for the session 2008-09, a writ petition bearing W.P. (C) No. 13565 of 2008 was filed calling in question the said clause and also Clause 2.3 of the corresponding advertisement. Admittedly, in consonance with the aforesaid clause, the Appellants had opted to take admission as in-service candidates and after their names were sponsored, they took admission and prosecuted B. Ed. course. Respondent No. 6, as Petitioner, filed the aforesaid writ petition, inter alia, challenging the brochure condition mainly on the ground that granting permission to in-service Hindi Teachers, Classical Teachers and Physical Education Teachers to take B. Ed. training was unwarranted and contrary to the rules and notifications issued by the Government. It is further contended that seats in B. Ed. course being limited, granting such privilege to Hindi Teachers, Classical Teachers and Physical Education Teachers infringes upon the rights of the Graduate teachers holding Training Graduate posts. It is also stated that training qualification was a must for a Graduate who holds the post of Trained Graduate teacher, where as such qualification is not necessary to persons holding

the posts of Hindi/Sanskrit and Physical Education Teachers. Considering the fact that only Graduates with B. Ed. training are eligible to hold the post meant for Trained Graduate Teachers, the Government had fixed the dead-line and issued a notification that continuance of untrained graduate teachers bereft of B. Ed. training against Trained Graduate posts would entail de-recognition of the institution in question. Further, being conscious of the fact that many untrained teachers are holding Trained Graduate posts, the Government took a further decision to give them opportunity to undergo B. Ed. training on being sponsored by their employees, of course on seniority basis. Unfortunately, however while issuing the advertisement inviting applications for admission to B. Ed. course issued for the year 2008-09 the said decision of the Government was not kept in mind. It stipulated that un-trained teachers posted against sanctioned yardstick post in Government/Government aided/recognized High Schools appointed on regular basis and teachers appointed regular post in elementary schools, would be eligible to prosecute B. Ed. training as in-service teachers. Such a condition, it was submitted, is not tenable in law and was contrary to the object sought to be achieved. Consequently a prayer was made to quash the said broacher condition as well as the corresponding clause in the advertisement issued for taking admission in B. Ed. course as in-service candidates for the year 2008-09.

3. A perusal of the advertisement reveals that only two qualifying conditions were stipulated to avail the opportunity; (i) a person has to be an untrained teacher, (ii) he must have been posted against a sanctioned yardstick post. Taking advantage of the said condition in the advertisement and similar conditions existing in the brochure, the Appellants, who were not holding Trained Graduate post, but were appointed against Hindi, Sanskrit or Physical Education Teacher, which were sanctioned yardstick posts applied and took admission as in-service candidates. The said conditions in the advertisement and the brochure as stated earlier were assailed before this Court in the writ petition.

4. Hon''ble Single Judge after discussing the relevant provisions of the Education Act and other notifications/clarifications issued time and again by the Government, came to the conclusion that graduate teachers teaching Sanskrit, Hindi and graduate physical Education Teachers are not required to possess B. Ed. qualification to hold such posts whereas untrained teachers, who are holding the post of Trained Graduate post either in Science or in Arts subjects, as per the sanctioned yardstick, were required to possess B. Ed. training to continue in such post as well as to receive grant-in-aid. It was further held that the object to be achieved by allowing in-service candidates to take admission to B. Ed. course was, therefore, very loud and clear. In other words, only those teachers, who were holding Trained Graduate posts, as per the sanctioned yardstick on regular basis and did not possess B. Ed. training were to be given opportunity take admission in B. Ed. course, as in-service candidates in order to facilitate them to continue in such posts.

5. On the basis of such discussions, Hon''ble Single Judge held that granting

permission to Classical Teachers, Hindi Teachers, Physical Education Teachers to take admission to B. Ed. course as in-service candidates was unreasonable.

6. It appears, by virtue of the interim order passed by this Court, the Appellants took admission in B. Ed. course as in-service candidates, but then, such admission was subject to the final result of the writ application. Hon''ble Single Judge further held that admission of Classical Teachers, Hindi Teachers, Physical Education Teachers being unconstitutional, such admission should be held to be null and void. Being aggrieved by the said order, this writ appeal has been filed.

7. Mr. Swain, learned Counsel appearing for the Appellants painstakingly placed before this Court the judgment as well as relevant provisions of the Act and Rules. According to Mr. Swain, as per the conditions of the brochure as well as advertisement issued in the year 2008-09, there was no bar for a Classical Teacher, Hindi Teacher, Physical Education Teacher to take admission as in-service candidates. It is reiterated that all the aforesaid three categories of teachers were holding the post against sanctioned yardstick and are untrained. Thus, Hon''ble Single Judge lost sight of the fact that admission of the Appellants was made in connotation with the terms of broacher and advertisement of the year 2008-09 and the conclusion that the Appellants were not entitled to any benefit was unjust and illegal. Further, Mr. Swain submitted that unless a Hindi or Sanskrit or Physical Education Teacher possesses training qualification, he shall not be considered for promotion to the higher post. Thus, training is a necessity and as such, the authorities rightly allowed them to take admission.

8. All these submissions are strongly repudiated by learned Counsel appearing for the opposite parties. According to him training is a must for an untrained graduate holding Trained Graduate post. Unless, he acquires qualification, his service was at stake. On the other hand, training was not a necessity for a Hindi, Sanskrit or Physical Education Teacher to hold the said post. Considering the said fact, the State Government had taken a decision to grant privilege of in-service training to untrained graduate teachers holding Trained Graduate Posts. Such benefit were never meant to be extended to the teachers appointed against Hindi, Sanskrit or P.E.T. posts. According to the learned Counsel Hon''ble Single Judge has vividly discussed the materials and the conclusions arrived at are just proper and in connotation with the provisions of law.

9. We have heard learned Counsel for the parties at length. We have also perused the pleadings and the documents annexed thereto meticulously. We have considered the submissions diligently. After considering all the facts and circumstances, we find that Hon''ble Single Judge has considered all the aspects and discussed the same vividly in his judgment. In fact, granting opportunity to untrained teachers holding Trained Graduate post to possess B. Ed. training was a necessity and therefore, such benefit was extended to the said class of teachers, whereas B. Ed. training is not required so far as the teachers imparting Hindi, Sanskrit and P.E.T. in Government/recognized Schools. Learned Single Judge has not only taken into consideration different provisions of the Act and

Rules but also has considered the notifications and clarifications issued time and again by the Government. A cumulative perusal of all the documents leads to an irresistible conclusion that the benefit of undergoing in-service B. Ed. training was aimed to grant some benefits to untrained teachers holding Trained Graduate post. It was never the intention of the Government to extend the said benefits to the Appellants, who are admittedly holding the posts of Hindi Teachers, Classical Teachers and Physical Education Teachers more so because B. Ed. training is not necessary for holding such posts.

10. In view of the aforesaid facts, we find no infirmity in the order passed by the Hon"ble Single Judge and decline to interfere with the same.

11. However, fact remains, for the reasons good, bad or indifferent, the Appellants were permitted to take admission in B. Ed. course for the session 2008-09. Admittedly, admission notice as well as brochure conditions did not make any distinction between the Appellants and the untrained teachers holding trained graduate posts. It also appears that the names of the Appellants were sponsored by different institutions according to their seniority. By virtue of an interim order passed in the writ petition, they were permitted to take admission and prosecute the training, subject to the result of the case. They have taken admission in the course and completed the same. Therefore, though we are not inclined to interfere with the decision of the Hon"ble Single Judge and confirm the finding that the admission of the Appellants in B. Ed. course at in-service candidates was not justified, considering the fact that the Appellants by virtue of the interim order have taken admission and completed the course, extending the principles of equity, this Court feels that they should be permitted to appear in the examination along with the students of the coming session, i.e., 2010-11 and their result may be declared as per the Rules. It is however, made clear that this direction has been issued in view of the peculiar facts and circumstances of the present case and shall not be treated as precedent in future.

12. With the aforesaid observation, the writ appeal is disposed of.