

(2016) 12 OHC CK 0002

In the Orissa High Court

Case No : Writ Petition (C) No. 24724 of 2013

Aruna Kumar Satapathy

APPELLANT

Vs

State of Odisha

RESPONDENT

Date of Decision : 20-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 123 CutLT 845

Hon'ble Judges : Dr. D.P. Choudhury, J.

Bench : Single Bench

Advocate : M/s. J. Gupta, T.B. Mohapatra and P. Padmavati Rao, Advocates, for the Petitioner; Mr. Ajit Kumar Mohanty, Standing Counsel, School and Mass Education Department, for the Opposite Parties

Final Decision : Disposed Off

Judgement

Dr. D.P. Choudhury, J.—Challenge has been made to the order of rejection of the representation made by the petitioner to the opposite party No.1.

2. The factual matrix leading to the case of the petitioner is that the petitioner was appointed as a Hindi Teacher with effect from 21.11.1988 by the then Managing Committee of Malati Devi Girls' High School, At-Padmapur, in the district of Bhadrak. The said School got permission in the year 1989 and subsequently recognised in the year 1992 under the relevant provisions of the Education Act (hereinafter called "the Act") and the Rules made thereunder. The staff of the School including the present petitioner were duly approved by the Director of Secondary Education, Odisha vide office order No.8118 dated 29.11.2007. Be it stated, vide Government Gazette Notification dated 27.9.1991 the Hindi Teacher who had acquired B.A., Kovida and Hindi training was allowed to draw the revised scale of pay of Rs.1,400-2,300/- but at the time of approval of the post of the petitioner vide Annexure-1 his pay was wrongly fixed at Rs.975-1,660/- instead of said scale of pay. As per the 6th Pay Commission, scale of pay of Hindi Teachers have also been revised according to their

qualification, i.e., Rs.4,500-7,000/- and Rs.5,000-8,000/-. The petitioner drawing the attention of the authorities made representation to disburse the arrear revised salary in the scale of pay of Rs.1,400-2,300/- by illustrating the case of one Hindi Teacher in Balasore Circle who being in the similar footing has been sanctioned the said revised scale of pay vide office order No.10508 dated 21.11.2009.

3. It is the case of the petitioner that since no action was taken on the representation of the petitioner, the petitioner filed a writ petition bearing W.P.(C) No.28085 of 2011 before this Court and such case was disposed of on 25.6.2013 directing the opposite party No.1 to finalise the claim of the petitioner on the basis of 1991 resolution. The opposite party No.1 without considering the case of the petitioner with proper prospective, rejected his representation showing the main reason that the petitioner is not entitled to Trained Graduate scale, i.e., Rs.1,400-2,600/- as he has no basic qualification of bachelor degree with Ratna from Rastrabhasa, Wardha. It is asserted by the petitioner that he has not claimed his qualification equivalent to the Trained Graduate scale and he has made the claim on the basis of the gazette notification 1991 to receive the scale of pay not as Trained Graduate Teacher but as Hindi Teacher. On the other hand, it is stated that the petitioner had acquired qualification B.A., Kovida with training (Praveen) before appointment for which he claims the scale of pay as prevalent from 1991 to be effective from 1989. But the opposite parties without understanding his case approved the scale of pay of Rs.975-1,660/- which has been given to the Intermediate with Kovida or Metric with Kovida but upon the qualification acquired by the petitioner. The opposite parties without analysing the facts of the case have resorted to wrong path by dismissing his representation. Besides, 100 Girls' High Schools including the School of the petitioner got grant-in-aid where also he has been shown with qualification B.A. with Kovida and training which obviously shows he has possessed same by the time he got appointment. According to the petitioner the appointment being made in accordance with Sub-Section (2) of Section 7-B of the Act and the Rules made thereunder and being duly approved by the Government in 2007 with effect from 1998, he prayed to quash Annexure-7 and grant the scale of pay of Rs.1,400- 2,300/- as per the resolution 1991.

4. Per contra, the opposite party No.3 filed counter stating that the petitioner's School was allowed to avail grant-in-aid with effect from 22.9.2007 being re-notified under 100 Girls' High Schools Scheme to receive such benefit. Be it stated, the Government of Odisha in the Department of School and Mass Education in the Order No.3935 dated 21.2.2006 have fixed one scale of pay of Rs.1,350-2,200/- (pre-revised) in respect of Hindi Teachers of Aided/Block Grant High Schools who have acquired B.A. with Hindi or B.A. with Rastrabhasa Ratna or its equivalent qualification and fixed scale of pay of Rs.975-1,660/- (pre5 revised) for persons who have Metric + Kovida qualification. It is further averred that the petitioner having not purportedly possessed B.A. with Ratna qualification at the time of his appointment, he was allowed the scale of pay of Rs.975-1660/-

(pre-revised) as per the guidelines issued in the aforesaid letter. Since the scale of pay of Hindi Teachers were based on their qualification and the State Government has taken the policy decision in the aforesaid manner, the petitioner was not allowed to draw the scale of pay @ Rs.1,400-2,300/- and as such justifiably rejected his representation.

Submissions :

5. Mr. J. Gupta, learned counsel for the petitioner submitted that since the petitioner having educational qualification of B.A. with Kovida was appointed by the Managing Committee under due selection, his scale of pay should have been fixed as per the resolution dated 28.6.1991 issued by the Government of Orissa in Education Department. According to him the scale of pay was made applicable from 1st May 1989 and at para-8 of the said resolution with regard to Hindi Teacher, the scale of pay from 1989 was fixed at Rs.1,400-2,300/- for the teachers who have B.A. with Kovida and Hindi trained and the opposite parties have not uttered a single word with regard to such resolution. It is further submitted that the notification dated 21.2.2006 of the State Government makes it clear that the scale of pay of Rs.1,350-2,200/- (pre-revised) would be applicable to the Hindi Teachers of Block Grant High Schools with effect from 23.8.1994. He also drew the attention of the Court to the information supplied by the Inspector of Schools as to acquiring of the qualification by the petitioner and from that it appears that petitioner had got B.A. with Kovida by the date of joining and got training in Hindi on 24.8.1994 for which he is entitled to higher scale at least from 24.8.1994.

6. Mr. J. Gupta, learned counsel for the petitioner further submitted that in similar situation one Hindi Teacher, namely, Sudhakar Behera from Block Grant Girls' High School was given benefit of revised scale of pay under the 6th Pay Commission and the opposite parties having made serious discrimination between him and similarly situated employee, failed to award the arrear salary and current salary in the revised scale of pay. So, he submitted to quash the order of rejection of the representation and direct the opposite parties to fix up his pay in the scale of pay of Rs.1,400-2,300/- instead of RS.975-1,660/- and pay such arrear and current salary.

7. Mr. Ajit Kumar Mohanty, learned Standing Counsel for the School and Mass Education Department submitted that since the petitioner has not acquired the requisite qualification equivalent to B.T. or B.Ed. degree of an Indian University in terms of order dated 25.11.2003 and also the qualification under Annexures-2 and 3, the petitioner was allowed to draw the scale of pay of Rs.975-1,660/- (pre-revised) under 1989-1990 scale of pay. He further submitted that he has not entered to service with the qualification of B.A. with Rastrabhasa Ratna for which he is not entitled the scale of pay as prayed for. Therefore, there is no discrimination in awarding the scale of pay to the petitioner and rightly the opposite parties have considered the case of the petitioner vide Annexure-7. So, he submitted to reject the claim of the petitioner.

Point For Determination :

8. The sole point for determination as to whether the petitioner is entitled to the scale of pay of Rs.1,400-2,300/- instead of RS.975-1660/- from 24.8.1994 ?

Discussion :

9. It is admitted fact that the petitioner was appointed as Hindi teacher in Malati Devi Girls' High School, Padmapur, in the district of Bhadrak on 21.11.1988. It is admitted fact that the said School was availing block grant and the appointments of the staff including the petitioner were approved to avail Grant-in-aid (hereinafter called "GIA") vide Annexure-1. It is not also in dispute that as a policy decision of the Government the scale of pay for the Hindi Teachers depend on the qualification they have acquired.

10. The dispute arise between the parties with regard to the acquisition of qualification by the petitioner because learned counsel for the petitioner submitted that the petitioner has entered to service having qualification B.A., Kovida and training in Hindi whereas the learned Standing Counsel for the School and Mass Education Department submitted relying on the counter that the petitioner had not entered to service with requisite qualification, i.e., B.A. with Hindi or B.A. with Rastrabhasa Ratna or its equivalent qualification as per the Government order dated 21.2.2006. Now the petitioner has to prove that he has entered into service with requisite qualification under which he would be entitled to the scale of pay of Rs.1,400-2,300/- instead of Rs.975-1,660/-.

11. Petitioner in order to satisfy the Court about his qualification while entering into service has produced the information supplied by the Inspector of Schools when the Director of Secondary Education sought clarification regarding allowing higher scale of pay in respect of Hindi Teachers in High Schools under 100 Girls' High School scheme. In that format vide Annexure-4 at serial No.1, the name of the petitioner appears. It reveals from that format that the petitioner has acquired B.A. qualification on 1.8.1988, Kovida on 12.11.1988 and training on 24.8.1994 and his date of joining is 21.11.1988. It is also clear from the format supplied by the Inspector of Schools to the Directorate that petitioner is entitled for higher scale to be sanctioned from 24.8.1994. There is no challenge to such document in the counter. So, undoubtedly the erstwhile Inspector of Schools now the District Education Officer-opposite party No.3 who is the custodian of the service records and immediate supervisory authority of the teachers admitted that the petitioner has entered to service having B.A. with Kovida and acquired training of course later to entry to service. Not only this but also the Inspector of Schools admitted vide office order No.8118 dated 29.11.2007 while approving the concerned School under Grant-in-aid scheme that the petitioner had educational qualification B.A., Kovida with training. So, it is clear that the petitioner has entered to service with B.A., Kovida but later on acquired training.

12. Annexure-2 is a Gazette notification issued by the Government of Odisha in Education Department on 28.6.1991 which is effective from 1.5.1989 where

under the State Government has revised the scale of pay of teaching and nonteaching posts in Educational Institutions under the Orissa Revised Scales of Pay Rules, 1989 and Orissa Revised Scales of Pay (Amendment) Rules, 1990. Para-8 of the said notification speaks about scales of pay of Hindi Teacher:

8. Hindi Teacher

Existing scale of pay

Revised scale of pay

Rs.1,005-1,830

Rs.1,400-2,300

(B.A. Kovid and Hindi trained)

Rs.935-1,530

Rs.1,350-2,200

(I.A./Matric and Kovid and Hindi trained/B.A. or any other higher qualification+ Kovid or any other high qualification without Hindi training/Sastri+Kovid or equivalent or any other higher qualification in Hindi).

Rs.840-1,240

Rs.975-1,660

Metric with Hindi trained and Metric with Kovid)

Rs.840-1,240

Rs.975-1,660

Intermediate+Kovid or equivalent or any other higher qualification in Hindi without Hindi training/Non-Matric Kovida or equivalent or any other Higher qualification in Hindi+Hindi training.

Rs.780-1,160

Rs.950-1,500

(Non-Metric+Kovida or equivalent qualification without Hindi training).

From the aforesaid table it is clear that the petitioner has not been given the revised scale of pay of Rs.1,400-2,300/- as that scale of pay was meant for B.A., Kovida with Hindi trained. Instead both the parties admitted that the scale of pay of the petitioner has been fixed at Rs.975-1,660/- which is meant for Metric with Hindi Trained and Metric with Kovida. When it is admitted fact that the scale of pay is fixed according to the qualification acquired by the petitioner, the scale of pay of Rs.975-1,660/- is not appropriate as he has entered to service B.A. with Kovida, of course without training in Hindi. But from the above table there is a scale of pay for the qualification acquired by the petitioner because in the same

table it appears that the Hindi Teacher with I.A./Metric and Kovida and Hindi trained/B.A. or any other higher qualification + Kovida or any other higher qualification without Hindi training/Sastri + Kovida or equivalent or any other higher qualification in Hindi to get the scale of pay of Rs.1,350-2,200/-. When petitioner had entered to service B.A. with Kovida in 1988, the revision of pay as underling above in Annexure-2 would be squarely applicable to him. The opposite parties have never whispered a single word in the counter about the Revised Scales of Pay Rules 1989-1990. When the petitioner got entry into service in 1988, admittedly there is no bar to apply the said Rules which is preferred to the resolution of the State Government inasmuch as the Orissa Revised Scales of Pay Rules framed by the legislator should be always preferred to the resolution issued by the State Government.

13. Learned counsel for the opposite parties submitted that vide Annexure-3 there is only one scale of pay for Hindi Teacher, i.e., Rs.1,350-2,200/- (pre-revised) and that would be only available for the qualification B.A. with Hindi or B.A. with Rastrabhasa Ratna or its equivalent and will be effective to the Block Grant High Schools from 23.8.1994. He also submitted that as per Clause 3 of the said order vide Annexure-3, a Hindi Teacher who is appointed on or after 23.8.1994 having Metric with Kovida qualification shall be paid in the scale of pay of Rs.975-1,660/- (pre-revised) and the Inspector of Schools has mentioned such scale of pay for the petitioner in Annexure-1. Learned counsel for the petitioner, with rival submission maintained that the petitioner being appointed prior to 23.8.1994, such order vide Annexure-3 shall not be applicable to him. He also submitted that petitioner having acquired the training from 24.8.1994 is eligible to the scale of pay of Rs.1,400-2,300/- meant for Hindi Teacher having B.A., Kovida with training from the date he acquired the qualification. He relied upon the ORSP Rules 1989-1990 vide Annexure-2.

14. The notification dated 21.2.2006 vide Annexure-3 is placed below for better appreciation :

"Government of Orissa

School and Mass Education Department

No.3935/SME Dated 21.2.2006

IX/SME(P)17/05

ORDER

Sub: Fixation of qualification and pay scale of Hindi Teachers of Secondary Schools.

On the demands of the Orissa Secondary School Teachers Association (OSSTA) and Hindi Teachers Association, Orissa, Govt. in School and Mass Education Department after careful consideration, of the decisions taken in the meeting held under the Chairmanship of the Special Secretary to Govt. School and Mass

Education Department held on 22.11.2006. The following decisions are taken.

(I) The qualification B.A. with Hindi or B.A. with Rastravasa Ratna or its equivalent as prescribed in Notification No.24530 dated 30.7.1994 for Hindi Teacher post in both Aided and on aided High Schools shall be retained all through and strictly adhered to w.e.f.23.8.1994.

(II) There shall be only one scale of pay i.e. Rs.1350/- to 2200/- (pre-revised) applicable to the Hindi Teachers of Block Grant High Schools with above qualification w.e.f. 23.8.1994.

(III) The Hindi Teachers of Aided High Schools appointed on or after 23.8.1994 in High Schools receiving block grant and having metric + Kovida qualification shall be paid in the scale of pay of Rs.975/- to Rs.1660 (pre-revised) and they shall acquire B.A. with Rastrabhasa Ratna or its equivalent qualification within 5(five) years commencing from April, 2008 at their own cost failing which steps shall be taken to disengage them following due procedure.

(IV) The Director, Secondary Education, Orissa shall furnish the list of such under qualified Hindi Teachers with detail information like name, date of birth, qualification, date of appointment, date of joining with their School name etc. to Government.

(V) The Principal Hindi Training Institution, Cuttack will chalk out the programme for imparting to those under qualified Hindi teachers in consultation with Government.

Sd/- G.K. Dhal

Commissioner-cum-Secretary, Govt."

From the aforesaid notification, it is clear that those who have qualification B.A. with Hindi or B.A. with Rastrabhasa Ratna would be receiving the scale of pay of Rs.1,350-2,200/- with effect from 23.8.1994. It also appears that those teachers who are appointed on or after 23.8.1994 in the Schools with less qualification would be receiving the scale of pay of Rs.975- 1,660/- (pre-revised) but they have been given option to acquire the higher qualification within five years commencing from April, 2008. In none of the category the case of the petitioner is covered because petitioner got appointment in 1988 with B.A. Kovida and his scale of pay is absolutely covered under the ORSP Rules, 1989-1990. But it remains from the aforesaid notification the Government has considered the demand of the Hindi Teachers and is giving one scale of pay which is effective from 23.8.1994.

15. Petitioner has made representation vide Annexure-5 to award him the scale of pay as per ORSP Rules vide Annexure-2 as he has acquired the training. He has also mentioned therein that similarly situated Hindi Teacher in Balasore district has also got revised scale vide Annexure-4(a) which shows that one Sudhakar Behera having entered into service on 15.2.1990 with M.A. Kovida and

Pravin being a Hindi Teacher under Gandhi Seva Sangha Girls High School, Soro which is under the 100 notified Girls' High School duly approved from 1.4.2008 to receive grant-in-aid under the 6th Pay Commission. At the same time, Annexure-7 shows that in pursuance of the order of this Court passed in W.P.(C) No.28086 of 2011 the opposite party No.1 considered such representation vide Annexure-5 but rejected same only showing the reason that the petitioner did not have the training equivalent to B.T. and B.Ed. degree of an Indian University for which he is not entitled the scale of pay asked for and relief on the notification of 21.2.2006. It has been already discussed above that such notification dated 21.2.2006 since not applicable to the case of the petitioner and in fact he has not asked for any sort of scale of pay as applicable as equivalent to B.T./B.Ed. degree. He has asked for the scale of pay as per ORSP Rules, 1989 vide Annexure-2. This order vide Annexure-3 of the opposite party No.1 has been misdirected and has not considered the case of the petitioner with proper perspective. However, since the petitioner has got training in 1994 subsequent to his service, his scale of pay under the ORSP Rules, 1989-1990 should have been Rs.1,350-2,200/- (pre-revised) and subsequently acquiring the training qualification in 1994 which ought to have been Rs.1,400-2,300/- (pre-revised) but such scale of pay has been revised from time to time to which the petitioner is also entitled to. The policy of the State Government is always available from the Rules framed by the Government. When Rules allowing the petitioner to avail the benefit, subsequent resolution which is not meant for the petitioner's case, should not stand on the way for awarding proper benefit to the petitioner. Thus, the Court is of the view that as per Annexure-2 the petitioner is entitled to the scale of pay of Rs.1,350-2,200/- (pre-revised) and from 24.8.1994 he is entitled to the scale of pay of Rs.1,400-2,300/- (pre-revised). The issue is answered accordingly.

Conclusion :

16. From the foregoing discussions, it is clear that the disposal of the representation made by the petitioner having been misdirected, same has landed in wrong conclusion. On the other hand, the petitioner is entitled to get the scale of pay of Rs.1,350-2,200/- under ORSP Rules 1989-1990 till he acquires the training and after acquiring the training on 24.8.1994 he is entitled to the scale of pay of Rs.1,400-2,300/- (pre-revised). Therefore, the order of rejection of the representation vide Annexure-7 being not in consonance with law, is liable to be quashed and the Court do so. At the same time, opposite parties are directed to fix up the pay of the petitioner at Rs.1,350- 2,200/- (pre-revised) instead of Rs.975-1,660/- (pre-revised) with effect from 1.5.1989 and Rs.1,400-2,300/- (pre-revised) from 24.8.1994 onwards and accordingly again to fix up his pay as revised from time to time under the successive ORSP Rules. It is further directed that the opposite parties should calculate the arrear salary and current salary and make payment of the same. The entire exercise shall be completed within a period of three months failing which the opposite parties shall pay the same with interest @ 9% per annum from the date of this order till the date of actual

payment.

17. The writ petition is disposed of accordingly.