
(2002) 10 OHC CK 0067

In the Orissa High Court

Case No : Original Jurisdiction Case No. 17333 of 1998

Balabhadra Sarangi

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 30-10-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2003) 1 OLR 24

Hon'ble Judges : R.K. Patra, J; Pradip Mohanty, J

Bench : Division Bench

Advocate : B. Parida, P.K. Mohapatra, N.C. Das and P.K. Mishra, for the Appellant; S.N. Misra, Standing Counsellor for the School and Mass Education Department, for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—The claim of the petitioner to the benefit of 15 years time bound advancement scale of pay having been not acceded to by the Inspector of Schools, he has filed this writ petition for appropriate direction.

2. Case of the petitioner is that he has been working as a Classical Teacher in Garh Bankilo High School, an aided educational institution, in the district of Nayagarh since 1.8.1970 after completing Sahitya Shastri, With effect from 22.9.1979 he was adjusted against the post of Sahityacharya. Government of Orissa in the Finance Department Office memorandum dated 17.5.1986 issued instruction regulating the movement of eligibility categories of employees to the advancement pay scales. It stipulated that the employees who have completed 15 years of service in a particular grade or post shall be eligible for consideration to have the benefit of advancement pay scales. This has been further clarified by the Finance Department Office Memorandum dated 29.12-1987 (Annexure-2). Since doubt arose whether such benefit could be availed by employees of non-Government M. E. Schools, the Director. Elementary Education, Orissa, in his letter dated 20.6.1991 clarified the position by stating as follows :

"Therefore, the employees of aided M.E. Schools who have completed 15 years of continuous service in a particular post or grade during the period from 1.1.1985 to 2.10.1989 are eligible to enjoy the benefit from the date on which 15 years service was completed riot being earlier than 1.1.1985. This means that if an employee has completed 15 years of service in a particular post or grade prior to 1.1.85. he will be eligible to enjoy the benefit from 1.1 85 only and those employees who are found to be so eligible after continuous service of 15 years by 2.10.89 are also eligible from the date following the date of completion of 15 years of continuous service."

The aforesaid benefit has also been extended to employees of non-Government aided High Schools. According to the petitioner, he having joined as a Classical Teacher on 1-8.1970 In the aforesaid High School has completed 15 years of continuous service in the post on 1.8.1985 and since he is continuing as a Classical Teacher in the school, he is eligible to get 15 years time bound advancement scale of pay with effect from 1.8.1985, He made several representations to the Inspector of Schools in this regard but his grievance was not considered.

3. The Inspector of Schools - opposite party No. 3 has filed counter affidavit. According to him, the petitioner joined the High School as Classical Teacher on 1.8.1970 with qualification Sahitya Shastri in the scale of pay of Rs. 90-130/-. He passed Sahityacharya and was adjusted in Sahityacharya post and has been allowed to draw higher scale with effect from 22,9.1979. Since he is drawing higher scale of pay with effect from 22.9,1979, he has not completed 15 years of service in a particular scale as on 2.10.1989, and. as such, he is not eligible to get the benefit of time-bound advancement scale of pay.

4. he point involved in this writ petition is no more res integra. The first decision of this Court on this point is that of Bata Krishna Sahu v. State of Orissa (OJC No. 115 of 1992 disposed of on 5.5.1994). Chief Justice Nanavati speaking for the Bench held :

"There is nothing on record to show that as a result of the petitioner acquiring higher qualification, namely, the degree of B.A. the became entitled to a higher grade or that his post was regarded as a higher post, It is, therefore, difficult to appreciate how the period of 15 years is to be counted not from the date of appointment as a Hindi teacher but from the date he was given some benefit as a result of his passing B.A. examination. The petitioner having completed 15 years of service in the same grade or post prior to ,1.1,1985, he became entitled to the benefit of advancement pay scale,"

The aforesaid ratio was subsequently followed in Sanatan Barik v. State of Orissa (OJC No. 124of 1992 disposed of on 2.5.1995), Karunakar Biswal v. State of Orissa. 82 (1996) CUT 666 as well as in Jyostna Mayee Behera Vs. State of Orissa and Others, It has been consistently held in all the cases that 15 years of service has to be counted from the date of appointment for the purpose of

granting advancement scale of pay because the benefit is intended to be given irrespective of other benefit that could have been granted on acquiring higher educational qualification. Emphasis had been laid on the words "grade or post" and npt.ptvs.c4ie of pay which an employee had been drawing. The scale of pay may undergo, changes during the tenure of service of an employee following revision of pay scale from time to time or on the employee's acquiring higher academic qualification. As per the Finance Department office memorandum, referred to above, an employee who has held the same post or grade for 15 years is to be considered for the advancement scale of pay.

5. Since the petitioner has been holding the post of Classical Teacher with effect from 1.8.1970 and his drawal of higher scale of pay on account of acquisition of Sahityacharya qualification being immaterial, he is eligible to enjoy the benefit of time bound advancement scale of pay on completion of 15 years of service from that day in accordance with the Finance Department memoranda.

6. In the result, the writ petition is allowed. The opposite parties are directed to pay the differential amount to the petitioner by the end of February, 2003.