
(1990) 04 OHC CK 0049
In the Orissa High Court
Case No : O.J.C. No. 3196 of 1985

Banabehari Das

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 24-04-1990

Acts Referred:

Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Act, 1974 — Section 1(3)
Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 — Rule 16, 16(2)

Citation : (1990) 70 CLT 354

Hon'ble Judges : R.C. Patnaik, J;G.B. Patnaik, J

Bench : Division Bench

Advocate : M.M. Sahu and A. Samantarai, for the Appellant; R.K. Patra, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.C. Patnaik, J.—The Petitioner-a primary school teacher -has filed this writ application for a declaration that he was entitled to continue in service till he attained the age of 60 years and to the: scale of pay of a trained non-Matric teacher.

2. The first relief sought is now concluded by a Full Bench decision of this Court in Rama Chandra Das and Ors. v. State of Orissa 65 (1988) C.L.T. 253 : 1988 (1) O.L.R. 216. In accordance with the said decision, the Petitioner was entitled to continue tin 31-3-1986. He was superannuated on 31-1-1986. Hence., he would be entitled to salary for two months, i.e. February and March, 1986.

3. For the second limb of the contentions, the Petitioner has relied upon a Division Bench decision of this Court in Narottam Mishra Vs. The State of Orissa and Others, , where this Court relying upon a letter addressed by the Joint, Director of Public Instruction (Schools) to the Inspector of Schools, Cuttack I Circle, held that the primary school teachers who had completed 45 years of age

on 1-4-1975 were entitled to higher scale of pay prescribed for trained non-matric teachers. Learned Counsel for the State as asked us not to follow the said decision as having been rendered per incuriam inasmuch as the instructions contained in the letter which formed the basis of the judgment did not relate to a primary schoolteacher but to a teacher in aided school. As there was some confusion in some quarters as to the application of Rule 16, clarification had been sought by the Inspector of Schools, Cuttack, vide Annexure C/I dated 22-5-1976 and the letter relied upon in the judgment has been annexed as Annexure-D/1. The Bench referred to paragraph-1 of the letter omitting paragraph-2 which made the purport of the letter clear. We quote the whole of it:

From:

Thee Jt. Director of Public Instruction (Schools) Orissa.

To

The Inspector of Schools, Cuttack I Circle.

Sub: Extension of service benefits of a trained teacher to untrained one.

Ref: Your letter No. 6790, dt. 22-6-1976. Clarification sought for in your letter under reference are given below:

1. An untrained teacher who is 45 years of age on 1-4-1975 is eligible to get all facilities as has been prescribed for a trained, teacher and he/she may be treated as trained one.
2. Sub-clause 2 of Rule 16 says that a teacher who has completed 10 years of service as an untrained hand is eligible to undergo condensed, course training to be organised by Government and after completion of his training course and after publication of the training result he will be treated as a trained teacher, and win enjoy the facilities of trained teachers.

Sd/Illegible For Jt. Director of Public

Insttuction(S), Orissa

In the context the letter emanated from the Joint Director by way of clarification with reference to castes of teachers covered by Sub-clause (2) of Rule 16 of the Orissa. Education (Recruitment and conditions of service of teachers and members of Staff of Aided Educational Institution) Rules, 1974. The second proviso of Rule 16(2) reads as under:

Provided further that a teacher who has attained the age of 45 years On the date of enforcement of these rules shall be exempted from undergoing the training and shall be entitled to service benefits of a, trained teacher.

So the teacher coming within the sweep of the said proviso was the teacher of an aided institution governed by the 1974 Rules which came into force with effect from 1-4-1975. But it is worth while to note that the said Rules by virtue of

Section 1(3) did not apply to primary schools. Sub-section (3) of Section 1 read as under:

(3) These rules shall not apply to Primary Schools and Schools established and maintained by Municipalities and N.A.Cs.

Hence, the letter of the Joint Director of Public Instruction (Schools) Orissa as per Annexure-D/I referred to and relied upon in Narottam's case (supra) had no application to a teacher in the primary school. Paragraph-2 of the letter itself made the position very clear. In view of the categorical provision contained in Sub-Section 3 of Section 1 of the 1974 Rules; it is unnecessary to refer to the Government decision but nevertheless the Government had issued an instruction as per Annexure-D/I dated 23-8-1979 that untrained teachers who have completed 45 years of age on 1-4-1975 shall not be entitled to the scale of pay of a trained teacher under the provisions of the 1974 Rules as those rules had no application to primary school teachers. Hence, the second contention urged on behalf of the Petitioner has no force and is not tenable.

4. While, therefore, allowing the writ application in part directing the opposite parties to pay the Petitioner salary for two months, i.e., for the month of February and March, 1986, we negative the plea that he was entitled to the scale of pay of a trained non-matric teacher. In the result, the writ application is allowed in part. There would be no order as to costs."

G.B. Patnaik, J.

I agree.

Application partly allowed.