
(1997) 02 OHC CK 0012

In the Orissa High Court

Case No : Original Jurisdiction Case No. 5595 of 1995

Banamali Behera

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 26-02-1997

Acts Referred:

Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 — Rule 9

Citation : (1997) 84 CLT 471 : (1997) 1 OLR 555

Hon'ble Judges : S. Chatterji, J; Dipak Misra, J

Bench : Division Bench

Advocate : P. Acharya, for the Appellant; M.R. Mohanty, Additional Government Advocate and B. Mohanty, (for O.P. 3), for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.—In this writ application under Article. 226 and 227 of the Constitution of India the petitioner has sought for issuance of a writ of mandamus directing the opp. parties 1 to 3 to pay his salary in accordance with the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 (in short, "the Rules").

2. The factual backdrop as has been depicted by the petitioner is that on being selected by the State Selection Board in pursuance of an advertisement the petitioner was appointed as a lecturer in Political Science against the-3rd post (MP) at S. G. College in the District of Jajpur. As stated in the petition the advertisement clearly stipulated that the petitioner would be paid in the prescribed scale of pay. The Director of Higher Education, Orissa on the basis of the recommendation of the State Selection Board asked the Governing Body of S. G. College to issue Setter of appointment in favour of the petitioner and accordingly the petitioner was appointed Though the advertisement had stipulated the pay scale of Rs. 1350-2975/-the Governing Body issued the order

of appointment In a consolidated salary of . Rs. 1000/- per month.- It has been further put forth by the writ petitioner t at the 3rd post of Political Science at S. G. College was created by the Government vide order No. 48512/EYS dated 25-10-1991 with effect from 1-3-1986 and, therefore, the said post would be eligible to get 1/3rd grant-in-aid after five years, 2/3rd after seven years and full salary cost after completion of nine years. As the petitioner had joined against the said post in December, 1931 he would be entitled to get 1/3rd till 1-3-1993, 2/3rd with effect from 1-3-1993 and full salary cost with effect from 1-3-1995. Reference has been made to Rule 9 of the Rules which provides that every employee of an aided educational institution is entitled to draw pay,, D. A. and subsistence allowance in case of suspension as is admissible to his counterparts serving in Government educational institutions under the relevant Rules applicable to him and shall ordinarily be paid in the month following the month to which the claim relates directly by the Government or by any officer or by any agency authorised by the Government. As the Rules have been given a go-bye and the petitioner has not been paid his salary he has approached this Court for redressal of his grievance.

3. A counter-affidavit has been filed by opp. party No. 1 contending, inter alia, that as per the provisions of the Orissa Non-Government Colleges, Junior Colleges. Higher Secondary Schools) Grant-in-aid Order, 1994 the Governing Body of the petitioner's college is required to submit an application in the prescribed pro forma for approval of the post held by the petitioner and other eligible teaching and non-teaching posts as eligible for grant-in-aid. It is stated therein that the aforesaid Grant-in-aid Order. 1994 has come into force on 6-12-1994 and time for application in the aforesaid Order was extended till 1-5-1995. If the petitioner's college has submitted an application in the prescribed pro forma that would be considered after due scrutiny of the application. It has been stated in paragraph 10 of the counter-affidavit that a person appointed in an aided college will qualify for approval for the purpose of grant-in-aid provided that he has been recruited on the basis of recommendation of the Selection Board and the candidate possesses requisite qualification if the Governing Body has followed required procedure. It is also stated therein that it is for the Governing Body to take steps for disbursement of salary due and admissible to the person appointed against a management post. The claim of the petitioner is also resisted on the ground that Section 7-C (4) of the Orissa Education Act which came into force from 4-7-1994 and the same has to govern the field and the earlier executive instructions issued from time to time would have no applicability. In essence, emphasis is laid on the conditions stipulated in the Grant-in-aid Order, 1994 and to get the salary. The Governing Body of the college has also filed a counter-affidavit indicating that the post in question was created and approved during the financial year 1983 vide G. O. No. 50272 dated.2-11-1983 and the said approval was extended from time to time. Reference has also been made to a Government letter dated 18-8-1935. The orders of extension of approval have also been brought on record as Annexures-

A/3 to D/3.

4. We have heard. Mr. Pitambar Acharya, learned counsel for the petitioner, Mr. M. R. Mohanty for opp. parties 1 and 2 and Mr. R. Mohapatra for opp. party No. 3. Mr. Acharya while reiterating the facts in his oral argument has referred to Annexure-5, the Government order dated 25-10-1991 wherein the Joint Secretary to Government of Orissa in the Education and Youth Services Department had communicated to the Director of Higher Education approving certain posts in 3S aided colleges in the State. The documents annexed to the said letter clearly indicate that the 3rd post in Political Science in S, G. College, Cast J-jpur has been approved since 1-3-1986. Mr. Acharya has also relied on a judgment passed on 5-4-1995 by this Court in OJC No. 5631/94 (Ashish Mitra v. State of Orissa). In the said writ application the stand of the State Government was that in view of the amended provision of the Orissa Education Act and the revised grant-in-aid order of the year 94 the State Government was considering the matter. Considering the stand of the State Government a bench of this Court presided by Hon"ble G. B. Patnaik, J. (as his Lordship then was) held thus :

"On examining the aforesaid amended provisions of the Act and the revised grant-in-aid order, we have no doubt in our mind that the said order does not govern the petitioners' case, inasmuch as the institution where the petitioners have been continuing has already been admitted to grant-in-aid since 1989 and in respect of the employees of the said institution, grant-in-aid principles of the year 1985 should apply. In that view of the matter and on the conceded position that the petitioners' appointment as lecturers has been validated by the competent authority in accordance with the Validation Act, their right to get grant-in-aid cannot be denied. We accordingly allow these applications and direct that necessary grant-in-aid in respect of the petitioners be released within a period of three months from the date of receipt of the order in accordance with the grant-in-aid principles of 1985. In view of the validation order, the petitioners' services must be held to be regular from the dates of their respective appointments and as such they will be entitled to annual increments."

In that case the right to grant-in-aid of lecturers whose appointments had been validated by the competent authority in accordance with the Validation Act was the question in issue. In the case in hand, the petitioner was selected by the State Selection Board as per the 1974 Rules. It is not a case which can be cited where the Managing Committee is seeking for approval of the post because of the enhancement of roll strength or for any reason where a post has to get approval. Here the State Government not only recommended the candidate but later on approved the post from a particular date i. e., 1-3-1986 as per Annexure-5 and, therefore, the post became eligible to get 1/3rd grant-in-aid after completion of five years, 2/3rd after seven years and full deficit of the salary cost after nine years. Mr. M.R. Mohanty, learned Addl. Government Advocate has laboured hard to impress upon us that a fresh requisition has to be sent in the prescribed proforma (B) to the State Government for grant-in-aid in

respect of the petitioner. Though he has referred to us various provisions of the Grant-in-aid Order, 1994, we are convinced that the case of the present petitioner would not come within the ambit or sweep of the said Order. The Proforma (8) provided in the Order in fact does not cover or deal with a case like that of the petitioner. The stand taken in the counter-affidavit that a lecturer who has been properly selected by the State Selection Board and appointed in an aided college would qualify for approval for the purpose of grant-in-aid if the Governing Body has followed requisite procedure. This stand taken in paragraph 10 of the counter is in a way self-contradictory. A candidate who has been selected by the State Selection Board has to have requisite qualification otherwise he cannot be selected. A Selection Board candidate being recommended by the State Government authorities joins in an aided college. True it is, in some cases the college may have the responsibilities for payment of full salary. But when the post has been sanctioned and approved by the Government from time to time commencing from 1-3-1986 onwards and thereafter in a clear-cut order with effect from 1-3-1986 there is no justification for not extending the benefit of grant-in-aid to the petitioner solely on the ground that the Governing Body has to follow the requisite procedure. We are of the considered view that in the present Case the Governing Body has nothing to do because every requisite action has already been done by the State Government, in our considered opinion, the petitioner is entitled to receive from the State Government authorities 1/3rd salary cost with effect from 1-3-1991, 2/3rd from 1-3-1993 and full salary cost with effect from 1-3-1995. With regard to the proportionate balance salary from the date of his appointment till 1-3-1995 the post becomes eligible to be covered by full salary cost and the management has to pay under the rules. This Court in the case of Smt. Kamala Behera v. State of Orissa, represented through its Secretary of Education and Youth Services Department of Orissa, 76 (1993) CLT 1035 has held as follows :

"The institution which is concededly an aided educational institution is governed by the Orissa Education Act and the rules framed thereunder. The Recruitment Rules, 1974 particularly Rule 9 provides that a lecturer appointed in an aided educational institution will get the same salary as his counterpart in Government College. Therefore, the petitioner cannot be denied salary to which she is legally entitled on the plea that the State Government had not paid the amount to the management."

(Quoted from the placitum)

In view of the aforesaid enunciation of law the Managing Committee is obliged to pay the balance salary to the petitioner and we accordingly so direct.

5. In the result, the writ application is allowed to the extent indicated above. However, there shall be no order as to costs.

Sushanta Chatterji, J.

6. I agree.