
(2015) 01 OHC CK 0012
In the Orissa High Court
Case No : OJC No. 9346 of 2000

Bijay Ketan Khatua

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 20-01-2015

Acts Referred:

Orissa Education Act, 1969 — Section 3 (b)

Citation : (2015) 120 CLT 98 : (2015) LabIC 2382 : (2015) 1 OLR 452

Hon'ble Judges : B.R. Sarangi, J.

Bench : Single Bench

Advocate : P.N. Mohanty and B. Jena, for the Appellant; Sangram Das, Addl. Stg. Counsel, Advocates for the Respondent

Final Decision : Allowed

Judgement

Dr. B.R. Sarangi, J.—The petitioner, who was appointed as an Instructor in Tailoring at Sidheswar College, Amarda Road, in the district of Balasore, has filed this application seeking a direction to the opposite parties to fix his pay in the scale of pay of Rs. 1400-2600/- which is meant for Instructor in Tailoring working in Government Colleges and for payment of arrear dues within a stipulated time.

2. The short fact of the case, in hand, is that Sidheswar College, Amarda Road, in the district of Balasore is an aided Educational institution within the meaning of Section 3 (b) of the Orissa Education Act, 1969 and conditions of service of the employee of the said institution are governed by the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institution) Rules, 1974 (hereinafter referred to as "1974 Rules"). By following due procedure of selection, the petitioner was appointed as an Instructor in Tailoring on 12.09.1981 vide Annexure-1, pursuant to which he joined on 14.09.1981 and has been discharging his duties assigned to him. The appointment of the petitioner was approved by the Director, Higher Education, Orissa vide office order dated 05.09.1992 in the scale of pay of Rs. 840-1240/-. The scale of pay has already been revised in terms of pay revision made in the

year 1989, i.e., w.e.f. 01.05.1989 Therefore, he was allowed to draw the scale of pay of Rs. 975-1660/-, which is the corresponding scale of pay of Rs. 840-1240/-. This benefit has been extended pursuant to the Government Resolution dated 23.01.1996. While allowing the petitioner to get the scale of pay of Rs. 975-1660/- pursuant to pay revision made in the year 1989, the Instructors in Tailoring in Government Colleges were allowed to draw the scale of pay of Rs. 1400-2600/-. Both the category of employees having been discharging the same duties, the petitioner claims that pay parity has to be maintained in conformity with the provisions of law. The said benefit having not been extended, this application has been filed.

3. Mr. P.N. Mohanty, learned counsel for the petitioner strenuously urged that as per the letter dated 17.06.1989, the scale of pay for Instructor in Tailoring in Government Colleges was Rs. 1005-1830/- as per the ORSP Rules, 1985, which was revised in the subsequent pay revision in the year 1989 to Rs. 1400-2600/- whereas the Instructors working in aided colleges who were getting the scale of pay of Rs. 840-1240/- as per ORSP Rules, 1985, have been granted the scale of pay of Rs. 975-1660/- as per the ORSP Rules, 1989, thereby it creates a disparity in the fixation of scale of pay between the same class of people working in the same working condition, which violates Rule 9 of the 1974 Rules. Therefore, the petitioner claims that he should be paid the scale of pay of Rs. 1400-2600/- at par with his counterparts in the Government Colleges. To substantiate his case, learned counsel for the petitioner has relied upon the order of this Court in OJC No. 1036 of 1995 disposed of on 28.01.2000 (Gajendra Kumar Mishra v. State of Orissa and others) wherein this Court has also held that the Instructor in Tailoring of aided educational institution is entitled to get the same scale of pay as available to the counterparts in Government Colleges. So far as the post of Instructor in Tailoring in Government Colleges is concerned, it is also equivalent to the post of Instructor in Tailoring of non-Government Colleges.

4. Mr. S. Das, learned Addl. Standing Counsel for the State while admitting the fact that the petitioner was appointed as Instructor in Tailoring in Sidheswar College, Amarda Road, in the district of Balasore, which was an aided educational institution, denied the claim of the petitioner for grant of equivalent scale of pay admissible to the Instructor in Tailoring at par with the Instructors working the Government Colleges, i.e. 1400-2600/-. It is alleged that the post of Instructor in Vocational subject was created by Government in different Government Colleges i.e. the post of "Craft Instructor for Tailoring, Wood Work, Spinning Weaving" etc. with prescribed qualification of H.S.C. pass with I.T.I. trained in the scale of pay of Rs. 400-750/- w.e.f. 01.01.1981 and the corresponding scale of pay of Rs. 1005-1830/- w.e.f. 01.01.1985 as per ORSP Rules, 1985. But the State Government has already prescribed the scale of pay of Rs. 840-1240/- w.e.f. 01.01.1985 and Rs. 975-1660/- w.e.f. 01.05.1989 in respect of Instructors in Tailoring in Non-Government Aided Colleges vide Government Resolution dated 25.01.1996 of the Department of Higher Education in Annexure-3. It is further

urged that the posts of Craft Instructor for Tailoring, wood work have been created in Government Colleges but the post held by the petitioner i.e. the post of Instructor in Tailoring are two separate posts carrying different qualification and different scale of pay. Therefore, the petitioner is not entitled to get the scale of pay, as claimed in the writ application, granted to their counterparts in the State Government. It is further urged that the Vocational courses have been abolished from the Higher Secondary general curriculum since 1990 pursuant to G.O. No. 8493/Eys. dated 14.03.1990 w.e.f. 01.01.1984. As the vocational courses have been abolished from the Higher Secondary Curriculum, the Vocational Instructors are getting idle Salary from 1990. Therefore, the Government has decided to deploy the Vocational Instructors to different Government Vocational Schools of the State against the ministerial posts. Accordingly, they are eligible to get the scale of pay meant for the ministerial staff.

5. Considering the contention raised by the learned counsel for the parties and after going through the records, there is no dispute that the petitioner is working as an Instructor in Tailoring in an aided Educational Institution, i.e. Sidheswar College, Amarda Road, in the district of Balasore and he has been allowed to draw the scale of pay of Rs. 840-1240/- as per the ORSP Rules, 1985 which has been subsequently revised to Rs. 975-1660/- as per ORSP Rules, 1989 pursuant to Resolution dated 23.01.1996 vide Annexure-3. Pursuant to Annexure-4 it appears that the Craft Instructors for Tailoring, Wood Work, Spinning and Weaving, have been extended with the benefit of scale of pay of Rs. 400-750/- w.e.f. 01.01.1981, which has been revised to RS: 1005-1830/- w.e.f. 01.01.1985 and to the scale of pay of Rs. 1400-2600/- w.e.f. 01.01.1989 and such Instructors have been appointed in Government Training Colleges and the Colleges where the Vocational teachings are imparted. Therefore, the Instructors in Tailoring, who were engaged in Government Colleges have been extended with the benefit of scale of pay of Rs. 1400-2600/- as per the ORSP Rules, 1989 whereas the scale of pay of their counterparts in aided Colleges has been fixed at Rs. 975-1660/-.

6. Rule 9(1) of 1974 Rules read as follows:

"9. Drawal of payment and allowances by employees of Aided Institutions.

(1) Every employee of an Aided Educational Institution shall draw the same pay, dearness allowance and subsistence allowance in case of suspension as is admissible to counterpart in the 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 Government or by any Officer or by any Agency authorized by Government." 7. From a bare reading of the above provision, it is evident that every employee of an aided educational institution shall draw the same pay, D.A. and subsistence allowance, in case of suspension, as is admissible to the counterparts in Government educational institution under the relevant rules applicable to him.

8. The connotation "pay" attached to Rule 9 of the 1974 Rules means, the amount drawn monthly by a Government servant as pay which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre. In *State Bank of India and Others Vs. K.P. Subbaiah and Others*, , the apex Court held that Pay is essentially a consideration for the services rendered by an employee and in the remuneration, which is payable to him. Remuneration is the recurring payment for the services rendered during tenure of employment. Pay and salary are necessarily not interchangeable concepts. Their meanings vary depending upon provisions providing for them.

9. As per Concise Oxford Dictionary, 8th Edn. (1990) the word "pay" in its ordinary significance in relation to services means "to give what is due for service done."

10. 1974 Rules has got its statutory force. Therefore, there should not be any deviation from the Rules. Rule 9(1) of 1974 Rules states that an employee of an aided educational institution shall draw the same pay and D.A. as is admissible to his counterpart in Government educational institutions and this benefit cannot be denied to the employee of aided educational institutions. When the facts are admitted that the petitioner is working as Instructor in Tailoring in aided educational institution in the scale of pay of Rs. 975-1660/- as per the ORSP Rules, 1989, the Instructors of the Government Colleges have been extended the benefit of scale of pay of Rs. 1400-2600/- as per the said pay Rules, the authorities could not have denied the pay scale admissible to the post Instructor in Tailoring in Government Colleges to such Tailoring Instructors working in aided Colleges, who are working in the same working condition. Similar question came up for consideration in the case of *Gajendra Kumar Mishra*. (supra) where this Court has already held by order dated 28.1.2000 that the Instructors in Tailoring in aided educational institutions are also entitled to get the same scale of pay as available to their counterparts in the Government colleges. So far as the post of Tailoring Instructors in Government Colleges is concerned, it is also equivalent to the Instructors in Tailoring in non-Govt. Colleges.

11. In view of the ratio of the decision in *Gajendra Kumar Mishra* (supra), the benefit admissible to the petitioner cannot and could not have been denied by the authorities. Therefore, this Court is of the considered opinion that the petitioner, who is working as Instructor in Tailoring in an aided educational institution is entitled to get the scale of pay admissible to his counterparts in the State Government as per Rule 9 of 1974 Rules. Accordingly, this Court directs the opposite parties to fix the scale of pay of the petitioner at Rs. 1400-2600/- as per ORSP Rules, 1989 and the corresponding revised Scale of Pay in the subsequent pay revisions which is the admissible to the Instructors in Tailoring in Government Colleges and extend all the consequential service and financial benefits within a period of four months from the date of receipt of a copy of the judgment.

12. The writ application is thus allowed. No cost.