

(1998) 11 OHC CK 0011
In the Orissa High Court
Case No : O.J.C. No. 3955 of 1996
Bishnu Charan Mishra

Date of Decision : 13-11-1998

Acts Referred:

Citation : (1999) 87 CLT 46

Hon'ble Judges : Susanta Chatterji, J; D.M. Patnaik, J

Bench : Division Bench

Advocate : Sachidananda Sahoo and B.R. Nayak, for the Appellant; Sanatan Muduli, for o.p. No.3, for the Respondent

Final Decision : Allowed

Judgement

D.M. Patnaik, J.—Aggrieved by the non-approval of the services of the Petitioner against the Second post of Instructor in Secretarial practice so as to avail the grant-in-aid, the Petitioner has approached this Court for appropriate relief.

2. Admittedly, the Petitioner was appointed on 18-8-1983 against the 2nd post of Instructor in Secretarial Practice of Biranchi Narayan Madhab Arjun College, Paliabindha in the district of Bhadrak where he is continuing till date. It is his case that though under Annexure-2 dated 3-3-1993 the Director of Higher Education, Orissa, recommended to the Government for approval of the post held by the Petitioner along with others but the matter was not attended to by the Government and for this inaction, the Petitioner along with 7 others approached this Court in O.J.C. No. 6793 of 1994 for approval and release of the salary under the grant-in-aid scheme. This Court by order dated 1-3-1995 disposed of the writ petition directing the Secretary, Education Department to take an appropriate decision in regard to approval of grant-in-aid of the Petitioner's salary pursuant to the recommendation made by the Director Higher Education, within three months from the date of receipt of this order. The matter remained with the State Government for some time and thereafter, Government under Annexure-5 dated 11-3-1996 accorded approval of various posts including the Instructor in Secretarial Practice, 1st post, but did not approve the 2nd post held by the Petitioner.

3. The Government through the Director of Higher Education filed a counter taking various grounds. But the main ground taken being that the Government by order dated 14-3-1990 abolished the vocational subject posts and therefore there was no question of approving the 2nd post held by the Petitioner.

4. Heard Mr. Sachidanda Sahoo, learned Counsel for the Petitioner who has drawn our attention to various Annexures particularly Annexure-2 the recommendation of the Director dated 3-3-1993 to show that during 1983-84 a 2nd post for the Instructor in Secretarial Training was admissible as the strength of the students was 256.

5. Mr. P.K. Ray, learned Counsel for the State on the other hand has strenuously urged that the recommendation of the Director was erroneous firstly on the ground that the Government did not prescribe any yardstick for appointment of incumbents to the vocational training post and secondly, by 3-3-1993 the post of Instructor for Secretarial Practice had been abolished from 14-3-1990. To counter this argument of Mr. Ray. Mr. Sahoo has drawn our attention to Annexure-7 dated 14-3-1990 relating to the Government's decision for discontinuance of the vocational subjects of the + 2 Arts stream from 1990-91 academic session onwards the same reads as follows:

(ii) Instructors and teachers appointed for these vocational subjects prior to 1-1-84 may be admitted to grant-in-aid and then transfer to avoid undue hardship to them. Proposals for grant-in-aid in respect of such employees may be submitted, if not already done.

Reading this clause, we have no doubt that the Petitioner's date of appointment admittedly being 18-8-1983 under Annexure-7, this circular should not have been made applicable to his case. It is all the more clear that proposals for grant-in-aid in respect of such employees appointed prior to 1-1-1984 could be submitted.

Therefore, we do not find anything wrong in the recommendation of the Deputy Director, for approval of the Petitioner's post under Annexure-2. We are unable to accept the contention of Mr. Ray that the staffing pattern did not permit, a 2nd post for which the Deputy Director has committed an error in recommending the Petitioner's case. It is too late for the State Government to take such a stand particularly when this Court while passing the order in O.J. C. No. 6792 of 1994 on 1-3-1995, accepted the Petitioner's case holding that there was such recommendation by the Director. This contention of Mr. Ray therefore rejected and we find that there is no sufficient reason to exclude the case of the Petitioner from approving the post held by him.

6. In the result, we allow the writ petition and direct the State Government to issue an order approving the post held by the Petitioner and also accord sanction for grant-in-aid for the said post from the date as permissible under the Rules. No costs.

Susanta Chatterji, J.

I agree.

Writ petition allowed.