

(1992) 09 OHC CK 0007

In the Orissa High Court

Case No : Original Jurisdiction Case No. 3487 of 1988

Brundaban Padhy

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 04-09-1992

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1993) 1 OLR 193

Hon'ble Judges : S.C. Mohapatra, J;A.K. Padhi, J

Bench : Division Bench

Advocate : G.A.R. Dora, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

S.C. Mohapatra, J.—Headmaster of an aided educational institution is petitioner in this application under Art. 226 of the Constitution of India for getting pay in the revised scale with periodical increments and Dearness Allowance and Additional Dearness Allowance as admissible on it for the period between 1st January, 1974 and 30th June, 1982 when he retired as Headmaster.

2. Petitioner was Headmaster of a Government High School. He retired on superannuation on 28-12-1969 on attaining the age of 55 years. After retirement he was appointed as Headmaster in Biswanath High School, an aided educational institution on 1-4-1970. While petitioner was continuing as Headmaster of the Aided High School, State Government issued an executive instruction in G. O. No. 5361 /E, dated 21-2-1973 where under pay scales of teachers of aided non-Government schools and colleges were equalised with those of their counterparts in similar Government educational institutions with effect from 1-4-1972. Accordingly, petitioner was allowed pay in the scale of pay of Rs. 250/- 425/- with effect from 1-4-1972, Although the school in which petitioner came under direct payment scheme with effect from 1-3-1974 and the pay scale of similar Government teachers was revised petitioner got his pay in the minimum of the

scale. There was again revision of pay scale with effect from 1-1-1981 and petitioner was not given benefit of the same. In this background as per CO. No. 13233/EY3 dated 3-4-1,982, petitioner left his employment on 30-6-1982. Six years after, petitioner has filed this application for the benefits due during his employment in the aided educational institution.

3. There was dispute in respect of eligibility of retired teachers from Government Schools who were employed after retirement in an aided educational institution, to get the service benefits during continuance in Aided Educational Institutions. Two such Headmasters were not allowed pay in revised scale on the ground that their engagement was in aided educational institutions after retirement amounted to re-employment. When they approached this Court, it has now been held by common judgment in O.J.C. No. 433 of 1983 (Sitaram Choudhury v. State of Orissa) and O. J.C. No. 1486 of 1983 (Ramanath Misra v. State of Orissa) decided on 21-8-1987 that employment of a person retired from Government service as teacher in an Aided Educational Institution is not re-employment. For this purpose, earlier unreported decision of this Court in O.J.C. No.1197 of 1976 (Governing Body of Teacher College and Ors. v. Kirtan Bihari Patnaik and Ors.) decided on 9-1-1979 was relied upon. On that basis it was held that both the petitioners were entitled to get benefits of the scales of pay revised in 1974 and 1981 applicable to the posts held by them and to enhance D. A. and A.D.A. as admissible.

In view of the above, petitioner is also entitled to the aforesaid benefits.

4. Mr. G.A.R. Dora, learned counsel for the petitioner submitted that on the same principle, petitioner is entitled to increments in the scales of pay. Increments are of two categories. They are normal increments and those permitted after crossing efficiency bar after considering the efficiency. It is difficult to find out the efficiency after ten years of leaving the employment. Besides, efficiency since after 1974 of different periods are to be considered. Those in the Managing Committees would not be available to sit together and decide the question. In that view, we are not inclined to permit the petitioner to get his increments by crossing the efficiency bar. Normal annual increments which are part of the scale of pay, however, would be available to petitioner. Thus, the salary on 1-1-1974 paid to petitioner shall be considered and it shall be treated that he opted for the revised scale of pay. On that basis his pay shall be determined from 1-1-1974 to 1-1-1982. In case, there would be any efficiency bar in between, pay of petitioner till the remaining period shall remain arrested at that stage. On the pay as determined, petitioner shall be paid the admissible D.A. and A.D.A. Deducting the amounts already paid, petitioner shall be paid the balance. On the basis of pay as determined in 1974 revised scale, pay of petitioner in the year 1981 revised scale shall be fixed and he would be entitled to increment, D.A. and A.D.A. in the aforesaid principle.

5. Petitioner is now aged about 80 years. Unless a time limit to work out and pay the balance to petitioner is fixed, he may not be able to enjoy the fruits of this

order. Accordingly, we direct the opposite parties to complete the exercise within six months of the date of receipt of the writ from this Court. Opposite party No. 1 shall direct its subordinate authorities accordingly.

6. In result, writ application is allowed. There shall be no order as to costs. Requisites for issue of writs shall be filed within one week.

A.K. Padhi, J.

7. I agree.