

(1977) 08 OHC CK 0032

In the Orissa High Court

Case No : O.J.C. No"s. 284 and 285 of 1975

Chintamani Acharya and Another

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 18-08-1977

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : AIR 1978 Ori 87

Hon'ble Judges : R.N. Misra, J;K.B. Panda, J

Bench : Division Bench

Advocate : S.L. Rath, J.K. Rath, A.K. Misra and B.S. Misra, for the Appellant; Additional Government Advocate, S.C. Mohapatra, A.K. Patnaik, Satyabadi Misra, C. Sibaram Dash, B.M. Patnaik, K.N. Jena, R.K. Mohapatra, A.B. Misra and K.N. Sinha, for the Respondent

Judgement

R.N. Misra, J.—The Orissa Subordinate Education Service consists of two cadres -- Assistant Teachers in Government Schools form the Junior Cadre while Headmasters and Deputy Inspectors of Schools form, the Senior Cadre. Petitioner in O. J. C. 284 of 1975 was recruited as an Assistant Teacher in the Orissa Subordinate Education Service on 4-8-1955 and was promoted as a Headmaster in the Senior "Cadre of the service on 23-8-1971, while petitioner in O. J. C. No. 285 of 1975 was recruited as an Assistant Teacher on 13-2-1960 and still continues to be an Assistant Teacher. The State Government decided in 1969 to convert the management of 142 High Schools in the State which were by then receiving full net deficit grants from Government into regular Government Schools. Thus with effect from 1st of March, 1969, these 142 schools became regular Government Schools and the teachers and Headmasters employed in these schools were treated as Government servants. Accordingly the Assistant Teachers were taken over to the Junior Cadre while Headmasters were taken over to the Senior Cadre of the Orissa Subordinate Education Service. On 20th of Sept., 1970, Government by Resolution in the Education Department formulated the service conditions of the teachers in these schools. In these applications we

are concerned with the following conditions:--

(i) Employees who do not possess the requisite qualifications to hold the post they have been holding shall be allowed three years' time from the date of issue of this Resolution to acquire these qualifications failing which they shall be reverted to posts or grades to their qualifications.

(ii) Those who held the posts of headmasters of the taken-over schools on the date of their conversion shall, if they are trained Graduates and have a minimum teaching experience of seven years in a High School, continue as such. Those who do not have seven years' experience on the 1st March, 1969, their pay shall be fixed in the Government scale of pay for trained Graduates in accordance with the principle referred to under (a) above and if the pay they drew on the above date was higher than the maximum of the Government scale of pay for trained Graduates, the differences shall be treated as personal pay.

(See Annexure A/1)

In 1974 (vide Annexure 2) Government again decided the principles for determination of seniority of all the teachers and Headmasters of the 142 taken-over High Schools vis-a-vis those of regular Government Secondary Schools. The Government order ran thus:--

"..... The principles for determination of seniority of all the teachers and Headmasters of 142 taken-over High Schools vis-a-vis those of Government Secondary School teachers and Inspecting Officers are given below:--

(i) In case of trained Graduate Teachers of 142 Schools, they will be deemed to have entered into S.E.S. on 1-3-69 and their rank in the Gradation List of S.E.S. will be determined accordingly.

(ii) The inter se seniority of such taken over school teachers will be determined according to their continuous service as trained Graduate Teachers.

(iii) Those who would be holding the posts of Headmasters of taken over schools on the date of their conversion shall, if they are trained Graduates and have a minimum experience of 7 years in a High School be deemed to have entered into senior S.E.S. on 1-3-1969 and their rank in the Gradation List of senior S.E.S. will be after the regular Officers of Government in the Cadre.

(iv) The inter se seniority of such taken over school Headmasters will be determined according to the length of their continuous service as Headmaster in a High School."

Government directed the drawing up of a gradation list of teachers in the light of the principles indicated above.

Petitioner in each of the writ applications has asked for a direction to the State and the Director of Public Instruction (Schools) (opposite parties 1 and 2) not to treat the other opposite parties as Headmasters in the senior S.E.S. from

1-3-1969 and for a declaration that petitioner is senior to those opposite parties and on that basis his claim for promotion as Headmaster with effect from 1st of March, 1969, be considered afresh.

2. Opposite parties 1 and 2 have filed a common counter-affidavit and some of the Headmasters who have been added as opposite parties have also appeared and filed counter-affidavits in each of the cases. Opposite parties 1 and 2 have taken the stand that Government have power to lay down service conditions as also principles for fixation of inter se seniority, in the absence of any statutory rules. It was open to them in the public interest to take over the schools and convert the service of teachers employed therein into Government service and thereby bring the teachers in the employment in the taken over schools into Government service. Many of the Headmasters-opposite parties have claimed that they are senior to the respective petitioner. All the opposite parties have justified the guidelines for fixation of inter se seniority.

3. Three contentions in the main have been raised by Mr. Rath, learned counsel for both the petitioners:--

(i) Seniority is a condition of service. On 1-3-1969, petitioners had certain position in the gradation list. That could not be varied to his prejudice by bringing outsiders into the cadre;

(ii) The Government decision that vacancies existing on 1-3-1969 in the posts of Headmasters in these 142 High Schools could be filled out of Assistant Teachers employed therein, contravenes Articles 14 and 16 of the Constitution; posts which were not vacant on 1st of March, 1969, have also been filled up from out of the Assistant Teachers in the taken over schools which ran contrary to the scheme; and

(iii) Some of the Headmasters did not have the requisite qualification under the scheme and yet have been accepted as Headmasters."

4. Mr. Rath has not been able to satisfy us by any cogent argument that Government do not have the power to take over new High Schools and acting in the public interest to accept the teachers employed in the said schools as Government teachers. Admittedly the Subordinate Education Service is meant for teachers of Government Secondary Schools. As already indicated, the service is divided into two cadres -- Junior Cadre and Senior Cadre. While Assistant Teachers in the schools belong to the Junior Cadre, Headmasters belong to the other Cadre. Once the 142 schools were treated as Government Schools and there was a fusion, the teachers in the taken over schools were entitled to come into the Subordinate Education Service. By the impugned decisions, the fusion has taken place and the teachers who were not in the Cadres from before have been made to enter into the Cadres and have been given their ranking. On the one hand this has resulted in expansion of the cadre strength and 142 posts of Headmasters have now been brought into Senior Cadre of the Subordinate Education Service. Chances of promotion of Assistant Teachers as Headmasters

shall become bright. Along with it the process of fusion has brought in certain disadvantages. When in public interest Government decide to take over new schools and for administrative convenience as a matter of policy the teachers employed in the taken over schools are brought into the cadre meant for Government teachers, such a situation is bound to arise. The scheme would bring in advantages and disadvantages at the same time and such a situation cannot be meticulously examined with reference to rights of any individual teacher. We are inclined to agree with learned counsel for the State and the appearing opposite parties that the petitioners are not entitled to challenge the scheme. Nor are they entitled to make grievance that the process of fusion has brought in some disadvantages in their service prospects. The first contention raised by Mr. Rath must, therefore, be rejected.

5. Government decided that the existing vacancies in the posts of Headmasters of the 142 schools on the date of takeover should be reserved to be filled up by Assistant Teachers of those schools. On principle, we find nothing objectionable in it because the vacancies should have been normally filled up from out of the Assistant Teachers in the said schools .and had not been filled up for some reason or the other. Since those were the posts meant to be filled up out of the teachers of the taken over schools, Mr. Rath also does not seriously object to it. He, however, disputes the Govt. decision as contained in a Resolution of 26th March, 1977, wherein it had been stated:--

"The 142 ex-Government-managed High Schools were converted into full-fledged Government High Schools with effect from 1-3-69. At the time of conversion of those schools no orders were issued regarding the age of retirement of the employees working in such schools. Subsequently, Government issued an order bearing No. 12796 dated 14-5-1969 that the teachers of the said schools who attained the age of 58 years on or by 1-3-1969 should be retired immediately. As a result, some of the Headmasters, Assistant Teachers and Class IV employees of these schools who were found to have continued beyond the age of 58 years after the conversion of the schools on 1-3-69 were retired. Such retirement, in fact, was made after 14-5-69.

The decision of the Government regarding fixation of pay and retirement benefits of the employees of the said converted schools who continued in Government service beyond 1-3-69 was issued in the Education Department Resolution No. 31191-E, dated 20-10-70. But the employees who were retired by Government Orders No. 12796/EYs, dated 14-5-69 were not eligible to get the benefits as contained in the Resolution dated 20-10-70 for the reason that they had already crossed the age of superannuation by 1-3-69. Subsequently a question regarding regularisation of service of such teachers with effect from 1-3-69 till the actual date of their retirement was raised and it was decided to treat the period of service in question as service under re-employment in G.O No. 16399-E, dated 22-5-1973.

....."

On the basis of the aforesaid decision, the Headmasters who had become liable to superannuate on 1-3-1969 on account of they being already 58 years of age were made to retire after 14-5-1969, but in respect of them Government took the decision that they had never joined Government service and, therefore, the vacancies caused by their retirement have also been reserved to be filled up by Assistant Teachers of the taken over schools. Mr. Rath for the petitioners asks us to proceed on the basis of the date of retirement while learned Additional Government Advocate, has taken the stand that once the age of superannuation has been fixed, the Headmasters who were already 58 on the date of take over could not be allowed to cross the threshold and enter into Government service. In respect of the posts of Headmasters which such persons held, Government, therefore, were justified in holding that there was a deemed vacancy on that date. Meticulously examined, petitioners may have some force in their contention, but we are not prepared to interfere in the arrangement taking a broader view of the matter.

6. Next comes the question of those Headmasters who do not possess the requisite qualification of seven years" experience as Headmasters. It is the common case of parties that to be a full-fledged Headmaster under the Regulations framed by the Board of Secondary Education, seven years" experience is necessary. Government also categorically fixed that period as the basic experience to be accepted as Headmaster of a Government High School. Petitioner in O.J.C. No. 285 of 1975 has claimed that opposite parties 17 to 28 did not possess the requisite qualification of seven years. It has been brought to our notice during hearing of the applications that opposite parties 19 and 23 are already dead. From the counter-affidavits filed, we find that opposite parties 17, 19, 21, 24, 26, 27 and 28 have the requisite qualification while opposite parties 18, 20, 22 and 25 do not have that qualification. Though initially learned Additional Government Advocate appearing for opposite parties 1 and 2 and Mr. R. K. Mohapatra appearing for some of the Headmasters-opposite parties took the stand that seven years" experience as a qualification was not a must, ultimately it was agreed by learned counsel that seven years" experience as a qualification was one of the prescriptions. It was contended by them that since these opposite parties-Headmasters did not have the requisite qualification their being taken over as Headmasters was bad and as such it must be held that so far as they are concerned, their posts were vacant on 1-3-1969. We do not think that would be a correct approach. These opposite parties have already rendered service from 1-3-1969 until now -- a period of about eight years and to wipe out their service by saying that they never functioned as Headmasters would not be appropriate. We think, on the other hand, that it would be appropriate to hold that they did not have the requisite qualification and, therefore, the vacancies that may be caused on account of they not being accepted as Headmasters would be put into the common hotchpot and recruitment thereto would be open to the fused cadre, namely Assistant Teachers in existing Government High Schools as also the Assistant Teachers of the taken over High School. Since these

opposite parties, namely opposite parties 18, 20, 22 and 25 have not appeared before us and we do not propose to prejudice them by deciding finally that they do not have the requisite qualification, we call upon opposite parties 1 and 2 to decide afresh within three months from today as to whether they had the requisite qualification of seven years" experience as Headmasters on the date of take-over and in case it turns out that they do not have the qualification, the vacancies should be left open to be filled from the fused cadre.

7. The writ applications are accordingly disposed of. Opposite parties 1 and 2 are directed to examine the cases of opposite parties 18, 20, 22 and 25 for the purpose of deciding whether they had the requisite qualification of seven years" experience as Headmaster on the date of take-over within three months from today. In case it is found that they do not have the requisite qualification, those four vacancies should be filled up from out of the common cadre formed after the fusion. Subject to this direction, all other reliefs claimed in the writ applications are negatived. There will be no order for costs.

Panda, J.

I agree.