
(1997) 01 OHC CK 0013

In the Orissa High Court

Case No : Original Jurisdiction Case No. 2878 of 1992

Dr. Balakrishna Satapathy

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 17-01-1997

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (1997) 1 OLR 372

Hon'ble Judges : S.C. Datta, J; R.K. Patra, J

Bench : Division Bench

Advocate : B.K. Patnaik and R.C. Mohanty, for the Appellant; S.K. Das, A.S.C. for opp. parties 1 and 2 and D.K. Mohapatra and Minati Mishra for opp. party No. 3, for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—In this petitions under Article 226 of the Constitution the petitioner seeks for a direction to opp. parties and 2 to accord approval to his appointment as Principal in N. A. C. College, Burla with effect from 4-8-1979. He also assails the validity of the order dated 27-3-1992 (Arinexure-1) issued by the Director, Higher Education, Orissa permitting opp. party No. 5 to remain in charge of the Principal-cum-Secretary of the college till alternate arrangements are made.

2. Briefly narrated, the petitioner's case is that he passed M. A. (Oriya) in First Class from the Utkal University in 1964. He has also obtained Ph. D. degree in Oriya from the Sambalpur University in 1976. On 26-8-1964 he was appointed as a lecturer in Oriya in Nayagarh College which is an aided educational institution. After serving for some time he came to be appointed, as a lecturer in Rajasthan College, Cuttack, on 19-8-1966. Subsequently, on being selected by Orissa Public Service Commission, he joined as a lecturer in Class II of the Orissa Education Service in Fakir Mohan College, Balasore. In August, 1968, he was transferred to Vikram Dev College, Jeypore and continued there till 8-10-1969. Thereafter, he

was appointed as a lecturer in Oriya in the Post Graduate Department of the Sambalpur University from 10-10-1969 and continued there for about 10 years till he came to be appointed as Principal in the N. A. C. College, Burla as per the order dated 23-7-1979 (Annexure-3). After being relieved from the Sambalpur University, he joined as Principal of N. A. C. College, Burla on 4-8-1979. The Government in the Education and Youth Services Department letter dated 12-9-1980 (Annexure-4(a)) accorded concurrence to the college from the academic session 1979-80. The Sambalpur University in its letter dated 1-11-1980 Annexure-4(b)] accorded affiliation to the college subject to the condition that it should appoint full-time teaching staff including Principal. On 1-6-1984, the college was admitted to grant-in-aid. The Director in his office order dated 4-6-1987 (Annexure-8) approved the Governing Body of the college with the petitioner as the Principal. While serving as Principal, the petitioner made a representation to the Deputy Director (NGC-I) in the office of the Directorate Higher Education, Orissa on 9-11-1983 (Annexure-9 (a)] to regularise his appointment as Principal of the college from the date of his joining in the post. The Governing Body through its President in letter dated 25-7-1987 (Annexure-9(b)) requested the Government to accord necessary approval to the post of Principal of the college.

While the matter stood thus, the Government in its letter No. 26623 dated 13-6-1983 [Annexure-10 (a)] intimated the Director, Higher Education, Orissa that the Governing Body of an aided college cannot appoint Principal unless he holds a teaching post. Allegation of the petitioner is that although he deserves to be approved as Principal of the college, the Deputy Director (NGC-I), Orissa in his office letter No. 62539 dated 16-11-1991 [Annexure-10(b)] informed the President of the Governing Body of the college that the petitioner cannot be approved as the Principal of the college in view of the Government letter No. 26323 dated 13-6-1989 [Annexure-10(a)]. Thereafter, the impugned letter dated 27-3-1992 (Annexure-1) was issued permitting the opp. party No. 5 to remain in charge of the Principal-cum-Secretary of the college. The case of the petitioner is that the Governing Body having appointed him as the Principal of the college who fulfilled the conditions prescribed by the Government the opp. parties 1 and 2 ought to have approved his appointment as Principal.

3. The Governing Body-opp. party No. 3 has filed its counter affidavit and supported the case of the petitioner. The State represented through its Secretary in the Education Department and Director, Higher Education, Orissa (opp. parties and 2) have filed counter-affidavit resisting the claim of the petitioner. Their case is that the Government in letter No. 27765 dated 22-6-1939 (Annexure-A) decided that the post of Principal shall not be filled up by the Governing Body out of their own selection and-one of the teachers in the institution preferably the seniormost shall remain in charge of the Principal till the institution becomes aided. After the institution becomes aided, the post of Principal shall be filled up either by transfer from the common cadre or from the select list prepared by the Selection Board or by deputation from the Government or requisition from the

Governing Body. 1 he opposite parties 1 and 2 have further pleaded that the Government reiterated the aforesaid decision in their letter No. 44025(3)/E. dated 21-9-1991 (Annexure-B). According to them the petitioner cannot be approved as the Principal of the college because neither he was from the common cadre nor from the select list prepared by the Selection Board nor by deputation from the Government. As the petitioner was not entitled to continue as the Principal in view of the aforesaid Government decision, the impugned order was issued asking opp. party No. 5 to remain in charge of the post of Principal.

4. This Court while issuing notice in the matter on 21-4-1992, directed stay of operation of the impugned order at Annexure-1. The said order of stay is in operation.

5. Shri Patnaik, learned counsel for the petitioner raised the following contentions of the petition.

(i) The petitioner by the time of his appointment as the Principal, N. A. C. College, Burla possessed the requisite educational qualification and experience required for the post inasmuch as he has had the doctorate degree as well as 15 years of teaching experience as against 8 years teaching experience required for the post and as such, his appointment cannot be said to be invalid; and

(ii) The Government decision contained in the letter dated 22-6-1989 (Annexure-A) and letter dated 21-9-1991 (Annexure-B) cannot affect the petitioner inasmuch as prior to the said decision, the petitioner had been appointed as the Principal who had satisfied the requisite qualification and experience.

6. Let us now therefore proceed to consider the aforesaid contentions one by one. Contention No. (i)

Shri Patnaik, learned counsel for the petitioner by referring to Appendix-1 enclosed to the Orissa Higher Secondary Education Regulation, 1982 submits that the Principal of a junior college should have at least 8 years of teaching experience as a lecturer and the petitioner having had more than the requisite teaching experience as a lecturer, was validly appointed to a junior college, namely, N. A. C. College, Burla as the Principal. In this connection, he has referred to a judgment of this Court in O. J. C. No. 4074 of 1988 decided on 7-8-1992 (Sarat Ch. Mishra v. State of Orissa and Ors.).

From the bio-data of the petitioner, it would appear that he passed M. A. in the first class and got ph. D. degree in Oriya in 1976. Before he obtained doctorate degree he was first appointed as a lecturer on 26-8-1994 in Nayagarh College which is an aided educational institution. Thereafter, he served on being appointed as a lecturer in Rajasthan College, Cuttack on 19-8-1966, Later, on being selected by the Orissa Public Service Commission, he joined Government service as a lecturer under the Orissa Education Service Class-II . in Fakir Mohan College, Balasore. In August, 1968 he was transferred to Vikram Dev College,

Jeypore and continued there till 8-10-1969. After giving up the Government service, he joined as a lecturer in the Post Graduate Department of Sambalpur University from 10-10-1969 and continued there for about 10 years till he was appointed as Principal, N.A.C. College, Burla in July, 1979. The aforesaid facts indicate that the petitioner has had teaching experience of 15 years as a lecturer i.e. more than the requisite teaching experience of 8 years required for the post of Principal. Further, in view of the admitted fact that he has got Ph. D. degree, his eligibility for the post of Principal is beyond any doubt.

Contention No. (ii) :

On close and careful reading of the letter dated 22-6-1989 read with clarificatory letter dated 21-9-1997 (Annexures-A and B) it appears to us that it is prospective in nature. This is evident from the fact that both the letters unequivocally state that after the institution becomes aided, the post of Principal shall be filled up by a person either by transfer from the common cadre or from the select list prepared by Selection Board or by deputation from the Government. The petitioner who has/had requisite qualification and experience having been appointed much prior to the issuance of Annexures-A and B is not in any way affected by the restrictions contained therein. There is nothing in Annexures-A and B to indicate that it was intended to reopen cases in which appointments of persons having requisite qualification and experience had already been made. May it be stated that although the case at hand is not of a Government servant but in order to come to the correct conclusion, the law relating to retrospective operation of rules made under Article 309 of the Constitution may not be lost sight of. The rule-making authority has the power to make rules in exercise of powers conferred under Article 309 of the Constitution or to charge them with retrospective effect. This general rule, is however hedged in with a number of exceptions ; one of them, with which we are concerned, is the rights or benefits which have already been earned or acquired under the existing rules cannot be taken away by amending the rules retrospectively. (See AIR1972 SC 626 (Ex-Major N. C. Signal v. Director-General, Armed Forces Medical Services; New Delhi), Ex-Capt. K.C. Arora and Another Vs. State of Haryana and Others, , Raj Pal Sharma and Others Vs. State of Haryana and Others, , T.R. Kapur and Others Vs. State of Haryana and Others, and ILR 1976 Cutt 317 (Bamdev Mohapatra v. State of Orissa). This is the legal position with regard to rules made under Article 309 of the Constitution. Instructions of similar nature issued in exercise of executive power cannot have a higher status than the rules made under Article 309 of the Constitution or the aforesaid reasons, petitioner's right to hold the post of Principal cannot be defeated or taken away on the basis of Annexures-A and B.

7. In the result, the impugned letter dated 27-3-1992 (Annexure-1) Issued by the Director, Higher Education, Orissa asking opp. party No. 5 to remain in charge of the Principal of the college is quashed. The opp. parties 1 and 2 are directed to accord approval to the petitioner's appointment as Principal in N. A.

C. College Burla with effect from 4-8-1979. He would be, however, entitled to the grant-in-aid with effect from the date (1-6-1984) the college was admitted to the grant-in-aid fold. The opp. parties and 2 are further directed to sanction the arrears and release the same in favour of the petitioner within six months of the date of receipt of writ.

8. The writ petition is allowed. There would be no order as to costs.

S.C. Datta, J.

9. I agree.