

(1995) 01 OHC CK 0036
In the Orissa High Court
Case No : O.J.C. No. 368 of 1987

Dr. Hari Prasad Das and Others

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 18-01-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1995) 1 OLR 428

Hon'ble Judges : S.K. Mohanty, J;D.P. Mohapatra, J

Bench : Division Bench

Advocate : B. Misra, J. Panda and H.K. Mohanty, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Mohanty, J.—The petitioners are Lecturers two to non-Government colleges, having honours subjects. State Government by resolution dated 30-9-1977 (Annexure-1) determined the hierarchy of college teachers in both Government and non-Government colleges confining the posts to Lecturers. Professors, Principals of under-graduate colleges and Principals of Post-Graduate Colleges omitting the posts of Readers and designating the incumbents in the posts of Readers as Lecturers. Subsequently by resolution dated 1-5-1981 (Annexure-3), the State Government re-introduced to posts of Readers in Government " colleges having honours and post-graduate teachings declaring the eligibility criteria for promotion to such posts. But so far non-Government aided colleges are concerned, the posts of Readers were re-introduced by resolution dated 27-9-1985(Annexure-6; from the date of issue of the same declaring similar eligibility criteria for promotion to the posts of Readers, The petitioners contend that as per the stipulated criteria they were eligible for promotion as Readers by 1-5-1981 from which date Annexure-3 became effective. Their grievance is that they are discriminated because the resolution Annexure 6 fixed the date of taking effect as 27-9.1985. In the circumstances, they have prayed that

Annexure-6 may be quashed and opposite parties may be directed to consider their promotion as Readers with effect from 1. 5.1981.

2. State of Orissa and Director, Higher Education have joined issue by filing counter wherein it is contended that teachers in non-Government colleges stand on a separate footing constituting separate class distinct from teachers in Government colleges and consequently there can be no question of discrimination.

3. The factual Governments in the counter about the method of recruitment and conditions of service in non-Government colleges being different, are not controverted. Thus a teacher for appointment in a Government college is to compete in the test conducted by the Public Service Commission whereas in non-Government colleges a teacher is recruited mostly by the Governing Body and only in some cases through the Selection Board. The appointing authorities are different. On initial appointment a teacher in Government college draws salary in the prescribed scale of pay whereas in a nongovernment college when a teacher is appointed otherwise than through the Selection Board he draws salary as may be fixed by the Governing Body until the college becomes eligible to receive full grant-in aid under the direct payment scheme.

4. As to whether the concept of equal opportunity in matters of employment applies to variation in provisions as between members of different classes of employees under the State, the apex Court in *All India Station Masters' and Assistant Station Masters' Association, Delhi v. General Manager, Central Railway and others* AIR 1960 SC 385 have answered the question in the negative. It has been held that equality of opportunity in matters of promotion must mean equality as between members of the same class of employees, and not equality between members of separate, independent classes. In the facts of that case their Lordships have further held that as Road-side Station Masters and Guards are recruited separately and trained separately and have separate avenues of promotion, the conclusion is irresistible that they form two distinct and separate classes as between whom there is no scope for predicated equality Of inequality of opportunity in matters of promotion.

In *Sham Sunder Vs. Union of India (UOI) and Others*, . It has been held that equality of opportunity in matters of employment under Article 16(1) means equality as between members Of the same class of employees and not equality between members of separate and independent classes.

In *The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others*, it has been held that the equality of opportunity for purposes of seniority, promotion and like matters of employment Is available only for persons who fall, substantially within the same class or unit of service. The guarantee of equality is not applicable as between members distinct and different classes of the service. The Constitution does not command that in all matters of employment absolute symmetry be maintained.

5. In the facts before us, we find that the teachers in non-Government colleges form a class by themselves and they are distinct from the others in Government colleges and, therefore, applying the ratio in the aforesaid decisions, we find no merit in the application and the same is, therefore, dismissed. No costs.

D.P. Mohapatra, J.

6. I agree.