
(2004) 10 OHC CK 0019

In the Orissa High Court

Case No : Original Jurisdiction Case No. 11219 of 1996

Dr. Lata Kumari Bhol

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 14-10-2004

Acts Referred:

Orissa Education Act, 1969 — Section 3

Citation : (2005) 99 CLT 125 : (2004) 2 OLR 538

Hon'ble Judges : R.N. Biswal, J;P.K. Mohanty, J

Bench : Division Bench

Advocate : J.K. Rath, K.K. Jena, R.N. Mishra and S.K. Das, for the Appellant; Additional Government Advocate (For Opp. Parties 1 and 2), G.A.R. Dora, N. Narsingh and J.K. Lenka and Jagannath Das, G.B. Jena, S.C. Dash and S. Das (For Opp. Party No. 3), for the Respondent

Final Decision : Dismissed

Judgement

R.N. Biswal, J.—The petitioner seeks issuance of a Writ of mandamus quashing the Order/letter dated 30.5.1996 vide Annexure-6 and to direct the Opp. Parties 1 and 2 to approve her against the first post of Lecturer in Oriya as decided by the Governing Body vide Annexure-5 and to release the Grant-in-aid in her favour for the same post.

2. As per her case, Opp. Party No. 3 established a College in the year 1984 in the name of Udala Womens" College which was subsequently re-named as Indira Gandhi Mahila Mahavidyalaya. The College got recognition in the year 1988 by the Educational Authorities and got affiliation by the Council of Higher Secondary Education for the Session 1987-88. Though the College was eligible to receive the grant-in-aid with effect from 1991-92 academic session as per the Grant-in-aid Order principle of the State Government, it has not received the same as yet. As such, the said College which is a private recognized institution within the meaning of Section 3(p) of the Orissa Education Act, 1969 as amended from time to time.

3. Pursuant to the advertisement published by the Governing Body of Udala Womens" College (subsequently re-named as Indira Gandhi Mahila Mahavidyalaya) the petitioner applied for the post of Principal and on being selected by the Governing Body, was appointed as such vide Annexure-1. She joined in the post on 4.11.1985 vide Annexure 2. The petitioner is a Post-Graduate in Oriya having M. Phil and Ph. D. degree to her credit. She has been taking classes in Oriya in different classes. Therefore, for all purposes, she is to be taken as a Lecturer in Oriya functioning as Principal of Opp. Party No. 3's College. Though the post of Principal carries a higher scale of pay than that of Lecturer, the petitioner was never paid the scale of pay as prescribed for the Principal since the Competent Educational Authorities have yet to approve her as a regular Principal. The petitioner had seven years of experience as a Lecturer in Oriya including two years of experience as Principal before she joined in the Opp. Party No. 3's College. Opp. Party No. 4 who was only an M.A. in Oriya was appointed as a Lecturer in Oriya prior to the appointment of the petitioner. The Opp. Party No. 3 vide Resolution No. 3 dated 27.12.1992 considering the past experience of the petitioner and her high academic qualification, placed her as a Lecturer in Oriya against the first post for the purpose of salary component and allowed her to remain in charge of Principal of the College vide Annexure-5. As per the Grant-in-aid Order Rule, 1994 application along with the documents were submitted before the Opp. Party No. 2 for consideration and recommendation to the Opp. Party No. 1 for sanction of Grant-in-aid. The Opp. Party No. 2 on enquiry and verification of relevant documents, was satisfied that the College was eligible for grant of Grant-in-aid by taking the petitioner against the first post of Lecturer in Oriya and accordingly, recommended the same in letter No. 3002 dated 3.5.1996 to Opp. Party No. 1 for approval. But the Opp. Party No. 1 in letter dated 30.8.1996 intimated to the Opp. Party No. 2 that the College had adopted unethical practice in terms of the illustration given below Sub-rule (i) of Paragraph 5(2) of the Grant-in-aid order and directed him to submit fresh grant-in-aid proposal as indicated in the letter vide Annexure-6. Being aggrieved with this order/letter the petitioner has preferred this Writ Petition with the prayer as mentioned earlier.

4. In her counter affidavit Opp. Party No. 4 stated that the Opp. Party No. 3 made an advertisement in daily "The Samaj" dated 6.7.1984 (Annexure-A/4) for recruitment of Principal and Lecturers in different disciplines. The eligibility criteria for both Lecturers and Principal was M.A. with 54% of marks. At the time of selection the petitioner was a mere M.A. in Oriya with only 50% of marks and as such, was ineligible for appointment as Principal or Lecturer. On the other hand, this Opp. Party No. 4 passed M.A. in Oriya in First Division securing 61% of marks. She applied for the post of Lecturer in Oriya and having been selected by the Selection Committee, joined in that post on 22.8.1984. The petitioner who was serving in P.S. College, Badasahi resigned from that College and was relieved on 9.12.1985. She joined in the College on 4.11.1985. After a College gets aid, the Principal post is filled up on the basis of deputation and till then the

incharge arrangement use to be made with the approval of the Director, therefore, the petitioner's appointment as Principal when the College was unrecognised and unaffiliated is of no purpose. When this opp. Party joined, there was only one post of Lecturer in Oriya. The second post in the same subject came in the year 1991 and 1/3rd Grant-in-aid was due in the year 1993. The petitioner was specifically recruited to the post of Principal, whereas Opp. Party No. 4 was recruited to the only post of Lecturer in Oriya about 15 months prior to the joining of the petitioner as Principal. The petitioner had no teaching experience in Oriya and was taking classes occasionally in that stream. So she cannot be treated as a Lecturer in Oriya. She acquired M. Phil and P. Hd. long after joining as Principal. Moreover, 54% marks in Oriya being the basic qualification, holding of M. Phil and P. Hd. would not cure the ineligibility. Only because her appointment as Principal has not been approved, she cannot claim the post of Lecturer in Oriya held by Opp. Party No. 4. Her past experience in a different college may be considered for experience, but not for seniority in the Opp. Party No. 3's college, particularly, when she resigned from the post in the former institution.

5. This Opp. Party No. 4 protested Annexure-5 the Resolution of the Governing Body treating the petitioner as Lecturer in Oriya against the first post in her representation dated 11.1.1993 vide Annexure-C/4 as it was tainted with favoritism. According to this Opp. Party if the petitioner is so desirous for the post of Lecturer, she may be adjusted in the second post of Oriya. Under such grounds, Opp. Party No. 4 prays to dismiss the Writ Petition.

6. Opp. Parties No. 1 and 2 in their joint counter averred that when the service of Opp. Party No. 4 was terminated by the Opp. Party No. 3 she appealed against the said order to the Director, Higher Education on 17.12.1994. During pendency of the appeal, the letter of termination was withdrawn by the College vide their letter dated 7.2.1995. The Director, Higher Education upheld the continuity of service of Opp. Party No. 4 from her date of joining i.e., 12.8.1984 and accordingly, the Opp. Party No. 3 regularised her services. While submitting application for Grant-in-aid the college placed the petitioner as Lecturer in Oriya against the first post. The Government considered such action of the College as unethical. So, the Director, Higher Education, was directed vide Annexure-6 to submit fresh Grant-in-aid proposal in respect of the college. The Government in the Department of Higher Education vide their letter No. 27765 dated 22.6.1989 have decided that the post of Principal/ Headmaster/Headmistress in Non-Government Educational Institutions shall not be filled up by the Governing Body/ Managing Committee out of their own selection as per Annexure-B. One of the teachers of the institution preferably the seniormost one shall remain incharge of the said post till the institution becomes an aided one. After the institution gets aid, the said post shall be filled up either by transfer from common cadre or from the select list prepared by the Selection Board or by deputation from Government on requisition from the Governing Body/Managing Committee, as the case may be. In view of the above stated facts, the appointment of the

petitioner as Principal made by the Governing Body of the College is illegal. The past teaching experience of seven years of the petitioner is of no avail to her present appointment. So, the Governing Body has committed wrong in its action in treating the appointment of the petitioner as a Lecturer in Oriya against the first post for the purpose of Grant-in-aid when Opp. Party No. 4 had joined the college prior to her and that too when there was only one post of Lecturer in Oriya as per the yardstick. Moreover, the seniority of Opp. Party No. 4 vis-a-vis the petitioner does not arise because the petitioner was never appointed as Lecturer in Oriya. Admittedly, there is no provision in the Grant-in-aid Order 1994 for payment of Grant-in-aid for the post of Principal as has been averred by the petitioner. But absence of such provision for sanction of Grant-in-aid for the post of Principal does not mean that the petitioner would get the Grant-in-aid against the first post of Lecturer in Oriya even though she was appointed much after Opp. Party No. 4.

7. The Opp. Party No. 3 in its counter, supported the case of the petitioner. According to it, Annexure-6 issued by the Opp. Parties No. 1 and 2 was based on extraneous consideration inasmuch as it lacks due consideration of relevant factors like the past teaching experience of the petitioner and her high educational qualification. The Governing Body as an employer is competent to determine the inter se seniority of the employees on consideration of their respective qualification and experience etc. in absence of any statutory Rules to that effect. The State Government cannot alter it unless there is a patent injustice in the decision of the Governing Body. In the instant case, before receiving the Grant-in-aid the College took the decision as per Annexure-5 in the year 1992 and the same was implemented. As such, the petitioner acquired a valuable right which could not have been altered to the detriment of her interest without hearing her. The petitioner has been working in the Opp. Party No. 3's College all through as Principal and Head of the Department in Oriya. She is preparing the routine and allotting work to Opp. Party No. 4 and the later has been carrying out the same. The decision of the Governing Body as per Annexure-5 has not yet been challenged by Opp. Party No. 4 although it was communicated to her on 28.12.1992 and as such, she is estopped from challenging the same at this stage. The appointment of Opp. Party No. 4 in the college has never been confirmed/approved by the Governing Body at any time against the first post in Oriya. As per the Resolution dated 27.12.1992, her posting against the second post in Oriya was approved, but the appointment of the petitioner was confirmed on 10.10.1985 by the Governing Body. Moreover, the petitioner had filed OJC No. 3022 of 1992 inter alia challenging the inaction of the authorities in releasing the salaries component, of the petitioner regularly. In the said Writ Petition, the State of Orissa represented through the Secretary, Education and Youth Services Department, Director of Higher Education, Orissa, the college in question and the Governing Body of the said college were made opposite parties. The Writ Petition was disposed of on 21.1.1993 with the direction that the arrears as claimed by the petitioner should be disbursed to her

by the opposite parties within three months. Therefore, it is not open to the opp. parties No. 1 and 2 to alter that position by treating/adjusting opp. party No. 4 against the first post in Oriya and treating the Principal (petitioner) as subordinate to her. According to this Opp. party they have rightly placed the petitioner against the first post of Lecturer in Oriya for approval and sanction of Grant-in-aid.

8. The Government in Higher Education Department held that the Governing Body (Opp. Party No. 3) adopted unethical practice in terms of Illustration (1) and (2) to Sub-rule (j) of Paragraph 5(2) of the Grant-in-aid Order by placing the petitioner against the first post and Opp. Party No. 4 in the second post, which is under challenge by the petitioner as mentioned earlier. The illustration reads as follows :

"(1) A College appoints "X" a duly qualified candidate as a Lecturer after due selection and in accordance with the prevalent rules and instructions. His services are terminated without valid or lawful reasons just before the post held by him acquires eligibility for receiving Grant-in-aid. Such an action of the Governing Body would be treated as an unethical practice.

(2) "A" is appointed as a Lecturer in College after due process of selection, Two years later "B" is appointed as Lecturer in the same subject. On assessment of work- load, in is found that only one post is admissible in that subject. The college does not recommend the name of "A" but recommends the name of "B" for receiving Grant-in-aid against the admissible and eligible post. Such a practice would be treated as unethical."

Mr. J. K. Rath, Learned Counsel for the petitioner submitted that since the College in question is a private un-aided College, determination of seniority of its employees including Lecturers is the managerial function of the Governing Body. The Government cannot impose a decision on it. In support of his submission he relied on the decision in Sri Sarat Kumar Misra Vs. Managing Committee of Teisipur High School and Others, where this Court held :

"There is no statutory rule or administrative instruction for fixation of inter se seniority among the teachers. It is, therefore within the discretion of the appointing authority to determine the inter se seniority by general consideration of merit, educational qualifications, age, past experience and serval other factors..."

Mr. Rath, also relied on the decision in Gadadhar Pradhan v. State of Orissa and Ors. 1989 (I) OLR 438 wherein this Court in a Division Bench held :

"The question of seniority or promotion is a matter within the jurisdiction of the Managing Committee. It is not open to the Government to impose a decision on the Managing Committee under the provisions of the law as exterminating"

From these decisions it is crystal clear that determination of inter se seniority among the Lecturers in a private unaided college is within the domain of the

Governing Body. The Government cannot impose any decision on it.

9. With regard to the allegation of adoption of unethical practice by Opp. Party No. 3-Mr. J. Das contended that taking into consideration the past experience and high academic distinction of the petitioner, Opp. Party No. 3 placed her against the first post in Oriya and Opp. Party No. 4 against the second post. So it cannot be said that Opp. Party No. 3 adopted unethical practice.

10. On the other hand Mr. G. A. R. Dora, Learned Counsel for Opp. Party No. 4 submitted that the Governing Body (Opp. Party No. 3) adopted unethical practice by adjusting the petitioner against the first post in Oriya. According to him since the petitioner resigned from P.S. College, Badasahi her teaching experience in that college ought not have been added to her experience in Indira Gandhi Mahila Mahavidyalaya. Opp. Party No. 4 having secured more marks than the petitioner joined more than one year before latter. While Opp. Party No. 4 had secured 61 % of marks, petitioner had secured only 50% as against the requisite minimum marks of 54% fixed by the Governing Body (Opp. Party No. 3) to be eligible for applying for the post of Lecturers/Principal. Moreover, the petitioner joined as Principal while the Opp. Party No. 4 as a lecturer in Oriya against the only existing post. So according to Mr. Dora, Opp. Party No. 3 adopted unethical practice in terms of Illustration (2) to Sub-rule (j) of Paragraph 5(2) of the Grant-in-aid Order by adjusting the petitioner against the first post in Oriya.

11. Admittedly Opp. Party No. 4 joined as Lecturer in Indira Gandhi Mahila Mahavidyalaya against the only existing post in Oriya on 22.8.1984 while the petitioner joined as Principal of the same College on 4.11.1985. The second post in Oriya was sanctioned in the year 1991. Since there was only one post in Oriya against which Opp. Party No. 4 was appointed the petitioner in no circumstance can be treated as Lecturer in Oriya at least till the second post in that subject was sanctioned. The plea of the petitioner that she has been taking classes in Oriya since her appointment as Principal cannot clothe her as Lecturer against the first post. Admittedly, petitioner passed M. Phil and acquired Ph. D. in Oriya subsequent to her appointment as Principal in Indira Gandhi Mahila Mahavidyalaya. Taking her past experience and high academic distinction, she may be adjusted against the second post in Oriya. But her adjustment against the first post is unethical in terms of the illustrations cited above. Opp. Party No. 4 having been appointed as Lecturer in Oriya after due process of selection that too prior to the appointment of the petitioner as Principal, she shall be placed against the first post in Oriya for sanction of Grant-in-aid.

In the result, we dismiss the Writ Application being devoid of merit.

P.K. Mohanty, J.

12. I agree.