
(2014) 11 OHC CK 0082
In the Orissa High Court
Case No : F.A.O. No. 486 of 2012

Girija Prasanna Pattnaik

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 18-11-2014

Acts Referred:

Orissa Aided Educational Institutions (Appointment of Lecturers Validation) Act, 1998
— Section 3(1)
Orissa Education Act, 1969 — Section 24B, 3(b)

Citation : (2015) LabIC 523

Hon'ble Judges : B.R. Sarangi, J

Bench : Single Bench

Judgement

B.R. Sarangi, J.—This appeal is directed against the judgment dated 8.5.2012 passed by learned Presiding Officer, State Education Tribunal, Orissa, Bhubaneswar in GIA Case No. 61 of 2011 (Annexure-19), dismissing the claim of the appellant for validation of his services under the Orissa Aided Educational Institutions (Appointment of Lecturers Validation) Act, 1998.

2. Mr. S. Patra, learned counsel for the appellant, strenuously urged that the appellant applied for appointment as Lecturer in Political Science pursuant to the advertisement (Annexure-6) dated 26.7.1992. By following due procedure of selection, he was appointed on 12.8.1992 vide Annexure-8 and he joined the appointment on 13.8.1992 vide Annexure-9. While he was so continuing, the Orissa Aided Educational Institutions (Appointment of Lecturers Validation) Act, 1998, hereinafter referred to as "Validation Act, 1998" came into force on 17.10.1998 for validating the appointment of lecturers. As per the provisions contained in Section 3(1) of the Validation Act, 1998, the lecturers appointed against the approved or admissible posts between 1.1.1985 and 31.12.1992 and continuing in service having requisite qualification were to be deemed to have been validly appointed. As the appellant was appointed on 12.8.1992 before the cut-off date, as per the Validation Act, 1998 his service was to be validated. Consequently recommendation was made by the Director, Higher Education,

Orissa to the State Government for validating the services of the appellant, but instead of validating the services of the appellant in accordance with the Validation Act, 1998, without proper application of mind, the State Govt. ordered for payment of salary to the appellant from Block Grant. The appellant therefore, approached the State Education Tribunal by invoking jurisdiction under Section 24B of the Orissa Education Act claiming validation of his services under the Validation Act, 1998 and release of grant-in-aid admissible to the post, which was dismissed by the Tribunal as per judgment dated 8.5.2012, Annexure-19. It is further submitted that the appellant having been appointed as Lecturer in Political Science against 4th post in a composite college, the benefits of the said post could not have been denied to him and the contention that the appellant was appointed as against the post of Lecturer in Political Science in +3 wing of the college was thoroughly misconceived. It is specifically urged that while dismissing the appellant's Appeal, the learned Tribunal did not apply its mind to the provisions of law. The appellant therefore seeks to quash the said judgment of the Tribunal and direct the State Govt. to validate the services of the petitioner under the Validation Act, 1988 and release his salary by way of grant-in-aid.

3. Mr. S. Das, learned Addl. Standing Counsel appearing for the State urged that the learned Tribunal has not committed any error, calling for interference by this Court and whatever entitlement is there by way of release of Block Grant has already been extended to the appellant. He further urged that the appellant having been appointed against the +3 Wing of the college, he is not entitled to the relief sought in the appeal. Therefore, there being no apparent error on the face of record, this Court may not exercise the appellate power to set aside the judgment impugned.

4. Considering the contentions raised by the learned counsel for the parties and going through the records, it appears that admittedly Sukinda College, Sukinda in the district of Jajpur is an aided educational institution within the meaning of Section 3(b) of the Orissa Education Act and Rules framed thereunder receiving Government concurrence since 7.3.1981, vide Annexure-1. Sri D. Behera and Sri M. Sahoo were appointed as Lecturers in Political Science against 1st post and 2nd post on 14.5.1981 and 7.7.1983 respectively. The Government of Orissa in Higher Education Department framed a yardstick on 8.8.1983. Accordingly, the services of Sri D. Behera were approved and he was allowed grant-in-aid with effect from 1.6.1985 on 31.5.1986 vide Annexure-2. Thereafter in 1987 the college was accorded concurrence for opening of +3 Degree Course to which the Utkal University also accorded affiliation. Accordingly, one Dillip Kumar Mohanty was appointed as Lecturer in Political Science as against 1st post on 31.3.1981. By virtue of the resolution of the Government of Orissa in Education and Youth Services Department dated 6.11.1990, "college" meant "Aided Colleges", which have been given Government concurrence and University affiliation for opening +3 Degree Courses by 01.04.1989. The Government further granted concurrence/promotion to the College for opening of Honours course in Political Science in the year 1992 vide Annexure-4. The workload statement being then

about 83 classes, as per the yardstick dated 8.8.1983 another post of Lecturer in Political Science became admissible with effect from 1992-93, vide Annexure-5. Due to availability of 4 posts of Lecturer in Political Science pursuant to the yardstick dated 8.8.1983, advertisement was issued for appointment of Lecturers in Political Science against four posts on 26.7.1992, vide Annexure-6. Pursuant to such advertisement the appellant applied for the situation. On selection, he having stood First vide Annexure-7, dated 09.09.1992, he was issued appointment letter on 12.08.1992, vide Annexure-8 and he joined on 13.08.1992, vide Annexure-9. The services of Mr. D.K. Mohanty, who was continuing against the 3rd post, were approved on 31.03.1997, vide Annexure-10. At that point of time, Validation Act, 1998 came into force in order to validate the appointment of Lecturers appointed against the approved or admissible posts between 01.01.1985 and 31.12.1992 and continuing having requisite qualification for treating them as deemed to have been validly appointed.

5. Section 3(1) of the Validation Act, 1998 reads as follows:

"Validation of certain appointment- (1) Notwithstanding anything contained in the Education Act or in the rules framed thereunder, the Lecturers of Aided Colleges and aided Junior Colleges who have been appointed on temporary basis against approved or admissible post by the concerned Governing Bodies during the period between the 1st January, 1985 and the 31st December, 1992 and are continuing as such, having the requisite qualification prescribed to hold such post and are in pay roll of the concerned College against the said approved or admissible post, as the case may be, shall be deemed to have been validly and regularly appointed, and no such appointment shall be challenged in any Court of law merely on the ground that such appointment was made otherwise than in accordance with the procedure laid down in the Educational Act or the rules framed thereunder:

Provided that the validation of the appointments as aforesaid shall not put persons already appointed regularly and validly or persons who may be appointed on the basis of the recommendation made by the Selection Board prior to the commencement of this Act, in a disadvantageous position in any manner whatsoever."

6. As the appellant satisfied all the conditions stipulated in Validation Act, 1998, his service particulars were sent to the Deputy Secretary to Govt. of Orissa, Higher Education Department on 07.05.1999, vide Annexure-11 and further records were also furnished to the Deputy Director, NGC-1 on 07.05.1999 vide Annexure-12. At that point of time the case of the appellant had been duly recommended by the Director, Higher Education on 12.05.2008 to the Government for validation of the services of the lecturers like the appellant, vide Annexure-15. It is stated that all the eligible College employees (teaching and non-teaching) appointed against the admissible post on the basis of the composite workload in +2 and +3 wings by 31.12.1992 as per the yardstick

prescribed during 1977 (non-teaching) and during 1983 (teaching) in 255 non-Government Aided Colleges (Category-1) were to be considered for grant-in-aid benefits. The Directorate further recommended that most of the employees of category-1 colleges, who were eligible by 01.06.1994 were receiving grant-in-aid but some employees of the same colleges during the same period were receiving Block Grant w.e.f. 01.01.2004 which was a discrimination to them. As it appears, Sri M. Sahoo, and Sri D.K. Mohanty, who were appointed against the 1st and 2nd posts of Lecturer in Political Science were transferred in 2003 and 2004 respectively, but none of them had joined at their places between 2004 and 23.08.2012. Sri D. Behera and the appellant had worked as Lecturers in Political Science. Admittedly, they had been appointed against the 3rd and 4th post of Lecturer in Political Science. Taking into account the composite status of the college, the workload justified a 4th post of Lecturer in Political Science against which the appellant was continuing prior to the cut-off date, i.e. 31.12.1992, having joined on 13.08.1992.

7. The sole contention raised by Mr. S. Das, learned Addl. Standing Counsel for the State, on the basis of the counter affidavit filed in the Tribunal is that at the time of appointment of the appellant, the 4th post of Lecturer in Political Science was not admissible to the college against the +2 wing since the +3 wing had been notified as an aided educational institution on 01.16.1994, i.e., after the cut-off date "31.12.1992". It is further submitted that as per the Validation Act, 1998, the appellant was not entitled to the benefits provided thereunder and as such, his case was not covered under the purview of the Grant-in-Aid Order, 1994 as his services had been approved as per the Grant-in-Aid Order, 2009. But the aforesaid contention of Mr. Das is belied by the materials available on record that the +3 wing of the college was opened by getting due concurrence and affiliation by the State Government and Utkal University in the year 1987.

8. Section 3(1) of the Validation Act, 1998 clearly envisaged that the services of the lecturers, who had been appointed against approved or admissible posts between 1.1.1985 to 31.12.1992 and were continuing having requisite qualification, were to be deemed to have been validly appointed.

9. There is no dispute that the appellant had not been appointed prior to the aforesaid cut-off date, i.e., 31.12.1992. Admittedly also there is no dispute that the appellant had not been appointed validly by following due procedure of law having no requisite qualification and there is also no dispute that taking into consideration the workload, the appellant was allowed to continue against the admissible post by the time the Validation Act, 1998 came into force. Accordingly, the college in question being categorized as category-1 college, Grant-in-aid Order, 1994 was applicable. Therefore, while recommending the case of the appellant, the Director specifically mentioned that all the eligible employees (teaching and non-teaching) appointed against the admissible posts on the basis of composite workload of +2 wing and +3 wing by 31.12.1992 as per the yardstick prescribed during 1977 (non-teaching) and 1983 (teaching) in

255 non-Government colleges (category-1) were to be considered for GIA benefits. It was further clarified that most of the employees of category-1 colleges were eligible by 1.6.1994 for receiving grant-in-aid, but some other eligible employees of the same college during the same period were receiving Block Grant with effect from 1.1.2004, which was a matter of discrimination.

10. Admittedly, the appellant was put within discrimination category. Though he was receiving Block Grant, he was entitled to grant-in-aid as he had been validly appointed having requisite qualification prior to 31.12.1992 taking into account the composite workload of +2 Wing and +3 Wing and as per 1983 yardstick and he was continuing in a category-1 college.

11. It is submitted that the learned Tribunal committed gross error without appreciating the facts available on record in proper perspective by holding that the institution in question being an aided one with effect from 1.6.1994 after the cut-off date, i.e., 31.12.1992 prescribed under the Validation Act, 1998, the appellant was not entitled to validation of his service, which was thoroughly misconceived. It appears, the college became aided with effect from 31.5.1986 and it received Govt. concurrence and University affiliation in the year 1987 for opening of +3 wings of the college, thereby having composite status of +2 and +3. The college became an aided one with effect from 1986 and as such, pursuant to the Government resolution dated 6.11.1990 since +3 Degree Course had already been opened by 1.4.1989, the aided status of the institution is continuing. Therefore, considering the factual backdrop of the case in hand, the Director recommended the case of the appellant vide Annexure-15 along with other similarly situated persons on 12.5.2008 but the Government instead of extending the benefits of the Validation Act, 1998, extended the benefits of Block Grant, which amounted to discrimination as suggested by the Director in his letter Annexure-15.

12. The learned Tribunal without delving into the above factual aspects of the matter came to an erroneous conclusion that as per the Govt. notification, the institution in question being an aided one w.e.f. 1.6.1994 after the cut-off date i.e. 31.12.1992 prescribed under the Validation Act, 1998, the appellant was not entitled to validation of his services under the Validation Act, 1998, which suffered from non-application of mind to the materials available on record. Therefore, the impugned judgment passed by the learned Tribunal cannot be sustained.

13. In view of the foregoing discussion on the basis of the materials available on record, the impugned judgment dated 8.5.2012 passed by the learned State Education Tribunal, Orissa, Bhubaneswar is hereby set aside and the matter is remitted back to the learned Tribunal for re-adjudication taking the factual matrix available on record into account in the interest of justice, equity and fair play and to conclude the same as expeditiously as possible.

14. With the above observation, the appeal stands disposed of.