
(2008) 12 OHC CK 0095
In the Orissa High Court

Girija Shankar Dash

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 04-12-2008

Acts Referred:

Citation : (2009) 1 OLR 472

Hon'ble Judges : I. Mahanty, J;B.P. Das, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.P. Das, J.—This writ application is of the year 1994. Though objection was raised that this matter should be left to the discretion of the Tribunal, looking at the fact that it being an old matter and pleadings are complete in this case and only question of law is required to be decided in the proceeding instead of transferring to Orissa Education Tribunal, this matter is taken up for final disposal.

2. The petitioner, who is working as Lecturer in English in Mahima Mahavidyalaya, Joranda, in the district of Dhenkanal, has filed this writ application with a prayer to direct the opposite parties to pay him full salary as grant-in-aid from June, 1982 in U.G.C. Scale of Pay and allow him the revised U.G.C. Scale of Pay with effect from 1.1.1986. A further prayer is also made to quash Annexure-10, i.e., order dated 28.4.1988 passed by the Director, Higher Education in Annexure-10.

3. A counter affidavit has been filed by O.Ps.1 & 2, in paragraph-5 of which it is stated that the petitioner's college received government concurrence and CHSE affiliation from the academic session 1977-78 for opening of a Higher Secondary stream and the petitioner was appointed as a Lecturer in English (First Post) from 10.11.1980 when the college had not received any grant-in-aid. According to the O.Ps., the petitioner's college came to the grant-in-aid fold from the Academic Session 1982-83 by order of the Government dated 24.1.1984, but the petitioner was not allowed grant-in-aid along with others, as he was under-qualified, i.e.,

secured only 50.6% marks against 54% marks required for the post. However, the petitioner received grant-in-aid after completion of five years from his date of joining from the Academic Session 1985-86 being his date of joining is 10.11.1980.

But the petitioner's claim is for U.G.C. Scale of Pay from June, 1982 in the first post of English matured for payment of grant-in-aid after five years of its creation, i.e., from Academic Session 1976-77.

4. Mr. S.S. Das, learned Counsel for the petitioner, submits that the principle of eligibility to get grant-in-aid has already been decided in our judgment in *Sudarsan Mishra v. State of Orissa and Ors.* (O.J.C. NO.6476/2001 disposed of on 12.2.2008), which is squarely applicable to the case of the petitioner.

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5. Now let us examine whether the petitioner is entitled to get the benefit, which has been claimed. Admittedly, the petitioner has a deficiency in qualification, as he has secured only 50.6% marks as against 54% marks. This point is no more *res integra*, as it was given rise and decided in the cases of *Bharat Chandra Behera and Anr. v. State of Orissa and Ors.* (O.J.C. No.6101/ 1995 disposed of on 24.7.1996) and *Kalidas Mohapatra and Ors. v. State of Orissa and Ors.* (O.J.C. Nos. 15062 and 15063 of 1996 and 243 and 254 of 1997 disposed of on 21.12.2000) and the same are stated to have been upheld by the apex Court. In the case of *Kalidas Mohapatra (supra)*, it was held that the petitioners, who admittedly did not secure 54% marks at P.G. level examination, had been appointed as Lecturers and their under-qualifications having been condoned by the University and their appointments being approved prior to 1.4.1989, they were entitled to get U.G.C. Scale of Pay. The case of the present petitioner is also that his appointment was approved prior to 1.4.1989 and his deficiency in qualification has already been condoned by the University. So the argument of the learned Counsel for the State fails on this score and the petitioner cannot be held to be disqualified to get the benefit of U.G.C. Scale of Pay as well as full salary cost.

6. Now the question arises whether the petitioner is entitled to get full salary as grant-in-aid from June, 1982 in U.G.C. Scale of Pay and as per the order dated 28.4. 1988 in Annexure-10, i.e., 1/3rd grant from 1.3.1987 to 9.11.1987 and 2/3rd grant from 10.11.1987 and full salary cost from 10.11.1989.

We make it very clear that the post, in which the petitioner was appointed on 10.11.1980, was created in the year 1977 and five years have completed by June, 1982. By then the post was eligible to get direct payment, i.e., full cost of salary. In this regard, we may refer the judgment of this Court rendered in *Madhab Chandra Mishra and Ors. v. State of Orissa and Ors.* (O.J.C. No.3205/1987 disposed of on 9.8,1991), where a similar question came to this Court for decision and this Court in paragraph-3 of the said judgment incorporating the very Notification dated 27.5.1978 held as follows:

Because of what is stated above, we are satisfied that the petitioners are entitled to full pay and dearness allowance admissible to their counterparts in Government colleges with effect from completion of five years from the academic session 1977-78.

7. In view of such, we allow this writ application and quash Annexure-10, i.e., order dated 28.4.1988 passed by the Director, Higher Education, to the extent that the petitioner is entitled to direct payment on and from completion of five years from July, 1977 when the post was created in the college and got government concurrence. The O.Ps. are directed to modify the order in Annexure-10 within a period of three months from the date of communication of this order.

I. Mahanty, J.

I agree.