

(1998) 12 OHC CK 0004

In the Orissa High Court

Case No : Original Jurisdiction Case No. 5395 of 1997

Harimohan Panigrahi

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 14-12-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1999) 1 OLR 234

Hon'ble Judges : Susanta Chatterji, J;D.M. Patnaik, J

Bench : Division Bench

Advocate : S. Panda, for the Appellant; K. Patnaik, Additional Government Advocate, for the Respondent

Judgement

Susanta Chatterji, J.—Hari Mohan Panigrahi, writ petitioner, has asked for the following reliefs :

".....to direct the opposite parties more specifically opposite party No. 3 to grant pensionary benefit to the petitioner computing the total period of service of the petitioner i.e. 28 years and give arrear and current revisional pension to the petitioner and pass further order/orders as deemed fit and proper in the facts and circumstances of the case....."

2. The petitioner, in fact, has challenged the illegal actions of the opposite parties for not granting the pensionary benefits to the petitioner with effect from 22.12.1962 to 11.7.1965 and 11.7.1967 to 9.11.1972 even though he had served in different aided Educational Institutions without any break during the said period as alleged. It is stated that his service book has been regularised by the Circle Inspector of Schools.

3. In details it is contended that the petitioner was appointed as an assistant teacher on 22.12.1962 in a Primary School at Jhadenkuli under the direct control of the District Inspector of Schools, Berhampur and continued in the said post till 16.3.1965. Thereafter he had been transferred to U.P.School, Palligumuda and

served there till 11.7.1965 and from that school he had been sent for C.T.training as an inservice candidate from 12.7.1965 to 31.3.1967. The authorities had regularised his service granting extra-ordinary leave including over stay period from 1.4.1967 to 10.4.1967 and from 6.2.1972 to 9.11.1972 as stated in the writ petition.

4. It is also contended that the petitioner was posted to J.B.School which is under the supervision of Berhampur Municipality. Thereafter the petitioner was again posted at Amalaguda L.P.School by the order of the D.I. of Schools, Berhampur dated 18.9.1979. The petitioner was relieved by the Executive Officer, Berhampur Municipality on 9.10.1979 and he joined on 16.10.1979 in the aforesaid school. He had continued there till 1.9.3 980 and was transferred as a Headmaster of U.P.School, Old Maulabhanja. Thereafter he had been transferred to different schools and finally he retired from service as Headmaster on 31.8.1993 from Primary School, Dherandi at Digapahandi. The petitioner claims that he is entitled to pension for the total period, i.e., from the date of his initial appointment till his retirement on 31.8.1993. The petitioner has made representation to grant pensionary benefit taking into account the total period of service rendered by him. The petitioner has complied with all the formalities but he is not getting the pensionary benefits and as such he is compelled to come to the writ Court for the reliefs stated earlier.

5. The writ petition is opposed by the State authorities by filing a counter affidavit. Besides controverting the allegations made in the writ petition, it is submitted that the petitioner was appointed and he joined on 22.12.1962 as an untrained teacher in Jhadenkuli Primary School under the administrative control of District Inspector of Schools, Berhampur and continued as such in different Primary Schools till 11.7.1965. He was deputed for C.T.training and relieved on 11.7.1965 afternoon as has been revealed from the service record. On completion of training he was appointed as an Assistant Teacher in an Aided M.E.School, Maulabhanja and he joined thereon 11.7.1967 and continued upto 9.11.1972. Thereafter he was posted at J.B.School, Berhampur under Berhampur Municipality and he joined there on 10.11.1972. Thereafter he was transferred to different Primary Schools and retired from service on 31.8.1993 on attaining the age of superannuation. His pension was fixed by the Controller of Accounts, Orissa, Bhubaneswar taking into account his service w.e.f. 10.11.1972 to 31.8.1993.

6. In the counter affidavit it is also disclosed that the petitioner has misrepresented the fact stating that he had worked continuously as a Primary School Teacher. In this regard it is pointed out that after completion of the training without waiting for adjustment under Primary Education he preferred to work in aided M.E.School, Maulabhanja w.e.f. 11.7.1967 under private Management and continued there upto 9.11.1972.

7. The Controller of Orissa, Bhubaneswar, opposite party No. 3, has finalised the pension of the petitioner w.e.f. 10.11.1972 without taking into consideration the

period from 22.12.1962 to 9.11.1972 since he had rendered his service under Aided M.E.School as the pensionary benefits to the employees are governed under Orissa Aided Educational Institutions (Employees Retirement Benefits) Rules, 1981. Admittedly, the petitioner has rendered his service from 11.7.1967 to 9.11.1972 as an Assistant Teacher in an Aided M.E.School. The order passed by the Controller of Accounts in rejecting his claim to reckon his service period from 22.12.1962 to 9.11.1972 as stated in the counter affidavit was legal and justified in view of the fact that Rule 3(1) of Orissa Aided Educational Institutions (Employees Retirement) Rules, 1986 is only meant for Primary School teachers. Rule 3 (1) of the said Rules is quoted as follows :

"3. Application of the Rules - (1) These rules shall apply to the teacher of all Non-government Primary School, fully aided by Government in the Education and Youth Service, Department directly or through Panchayat Samities constituted under the Orissa Panchayat Samities Act, 1956."

8. Upon perusal of the record, we find that a short point has arisen to be answered as to whether the petitioner is entitled to get pensionary benefit reckoning the entire period of service or there will be break for a specific period as found by the Controller of Accounts, Orissa, for his service period under the M.E.School. We have heard at length Miss Panda, learned Counsel for the petitioner and the learned Additional Government Advocate. The bone of contention as it surfaces as to whether the petitioner served an Institution in terms of 1981 and 1986 Rules. From the definition of "Institution" it transpires that it refers to a primary school. M.E.School has not been defined in the Education Code or any Circular or connected Rules and Regulations. On the contrary it is submitted that the Syllabi taught in M.E. School are equivalent to the Syllabi taught in upper Primary School. The institution referred as "primary" may not exclude upper primary. The Syllabi of upper Primary School are also covered within the Syllabi of M.E.School. Whether M.E.School can be called Upper Primary School or not is not answered by this Court as it needs further detailed examination and any answer to it may constitute as a precedent to decide other cases. Instead, we have considered the continuity of the service of the petitioner without any break and his service has been regularised by the Circle Inspector of Schools, Berhampur. We find that after retirement a person should not be denied the pensionary benefit while he served continuously under different Schools in different periods controlled by the State.

9. Regard being had to the peculiar facts and circumstances of the case, we find that equity is in favour of the petitioner and consequently we allow this writ petition commanding the opposite parties to take all effective steps to release the pensionary benefits of the petitioner reckoning the entire period of service i.e., from the date of his appointment till the date of retirement. The breaks, if any, have already been condoned as found from the materials on record. The benefit should be released within a period of three months from the date of communication of the order. We make it clear that this case shall not be

constituted as a precedent regarding status of M.E.School and/or Upper Primary School. There would be, however, no order as to costs.

D.M. Patnaik, J.

10. I agree.