
(2008) 08 OHC CK 0012
In the Orissa High Court
Case No : Writ Petition (C) No. 3326 of 2008

Haripada Bhuyan and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 29-08-2008

Acts Referred:

Citation : (2008) 08 OHC CK 0012

Hon'ble Judges : N. Prusty, J

Bench : Single Bench

Advocate : K.K. Swain, P.N. Mohanty and S.C.D. Dash, for the Appellant; S.K. Jee, for the Respondent

Final Decision : Dismissed

Judgement

N. Prusty, J.—The Petitioners, who are trained Graduates of Balasore district and are aspirants to be engaged as Sikhya Sahayak have filed this writ petition challenging, inter alia, the Resolution dated 16.02.2008 of the Government of Orissa in the School and Mass Education Department, whereby a new Scheme has been formulated and introduced by the Government to engage/reinstate/rehabilitate the Education Volunteers, who were earlier working in E.G.S. Centres and have been disengaged and to be disengaged due to upgradation of E.G.S. Centres to regular Primary Schools, as Gana Sikhyak under Sarba Sikhya Abhijan.

2. The Petitioners' case in this writ petition is that by introducing the Resolution dated 16.02.2008 of the Government of Orissa in the School and Mass Education Department, relating to engagement of Gana Sikhyak, Government have contravened the Statutory provisions i.e. the provisions contained in the Orissa Elementary Education (Method of Recruitment and Conditions of Service of Teachers and Officers) Rules, 1997, which, inter alia, provides that the qualification prescribed for the post of Primary School Teacher is Matric C.T. and they have made the unequals as equals and also given preference to untrained persons only because at some point of time they served as Education Volunteers under a different Scheme. As such the Petitioners have challenged the vires of

such Resolution, more particularly Clause-3 of the Resolution, wherein the Government has not only relaxed the training qualification, but also the qualification prescribed for such post and accordingly prayed to quash Resolution dated 16.02.2008.

3. Heard Mr. K.K. Swain, learned Counsel for the Petitioners and Mr. Jee, learned Standing Counsel for the School and Mass Education Department.

4. Mr. Swain, learned Counsel submits that by formulating a Scheme for engagement of Gana Sikhyak, the Government has encroached upon the rights of the persons, who are qualified to be engaged as Sikhya Sahayak. As such in implementing the Resolution dated 16.02.2008, untrained persons without having proper training to teach the students in Primary School level i.e. C.T./REd. qualification, shall be engaged in any primary Schools to teach the students as against the vacancies of Sikhya Sahayak. As such this Policy decision of the State Government is completely arbitrary and contrary to the statutory provisions as well as the Constitutional provisions. Learned Counsel also submits that as per Resolution dated 10.01.2008 the Government has already provided relaxation of upper age limit and directed to take the past experience of the disengaged Education Volunteers having requisite qualifications to be engaged as Sikhya Sahayak. The only benefit of Sikhya Sahayak Scheme has not been extended and made available to those disengaged Education Volunteers, who are not having proper training qualification, i.e. C.T. or REd, to be engaged as such. If untrained persons will be engaged as against the newly created posts of Gana Sikhyak in Primary Schools, it will be ultra vires to the Statute, i.e. the provisions contained in the Orissa Elementary Education (Method of Recruitment and Conditions of Service of Teachers and Officers) Rules, 1997. The learned Counsel further submits that Right to Education has become a Fundamental Right after the judgment of the Supreme Court in Unikrishnan case reported in AIR 1993 Supreme Court 2178 and such Right cannot be curtailed/circumvented by the State Government by issuing Resolution dated 16.02.2008 and thereby appointing untrained/under qualified persons as against the posts meant for trained persons in Government Primary Schools and also the same being at the cost of thousands of trained hands available in the State. As such Clause-3 of the Resolution dated 16.02.2008 (Annexure-3) is not only ultra vires to the Statute but also to the Constitutional provisions.

5. Mr. Jee, learned Standing Counsel for the School & Mass Education Department, on the other hand, submits that the Resolution dated 10.01.2008 (Annexure-2) of the Government of Orissa, Department of School and Mass Education with regard to engagement of Sikhya Sahayak is completely different than the scheme introduced vide Resolution dated 16.02.2008 (Annexure-3) for engagement of Gana Sikhyak. As per Resolution dated 10.01.2008, the applicants who are having matriculation/ +2 and C.T. and B.A/ B. Sc./ B. Com and REd. qualification shall only be considered to be engaged as Sikhya Sahayaks. The persons selected as Sikhya Sahayaks are to be assigned mainly

the duties of teaching in the schools along with other duties as has been prescribed under Clause-9 of the Resolution and their salary will be Rs. 3000/- per month. Clause-10 of the Resolution indicates that after completion of three years continuous satisfactory engagement as Sikhya Sahayak, they will be eligible for appointment as Junior Teachers with consolidated remuneration of Rs. 3,500/- per month with the other conditions as have been prescribed therein. The Junior Teachers after completion of three years of continuous satisfactory engagement shall be eligible for appointment as regular Primary School Teacher. For such selection also there are certain preconditions as have been prescribed under Clause 12.1 of the said Resolution. In Clause-19 of the Resolution, it has been specifically mentioned that for the purpose of Universalisation of Elementary Education, persons engaged by the Government in different Schemes (under EGS Scheme) having requisite qualification may be considered for engagement as Sikhya Sahayak by relaxing their upper age limit wherever necessary and their past experience will be taken into consideration for the purpose. Whereas Resolution dated 16.02.2008 has been adopted by the Government considering the problems of hundreds of Education Volunteers who had rendered their services under the Education Guarantee Scheme and disengaged or facing disengagement due to up gradation of EGS Centres to regular primary Schools, with the purpose of rehabilitation of such Education Volunteers as Gana Sikhyak under Sarba Sikhya Abhijan. As per the said Resolution disengaged Education Volunteers who are trained (Matric, 10th (HSC)/+2 with CT, BA/BSc/B. Com with B. Ed) will be engaged as Gana Sikhyak with a consolidated remuneration of Rs. 2000/ per month and who are untrained (minimum qualification of matric, 10th (HSCE)/+2) will be engaged with a consolidated remuneration of Rs. 1750/ per month. The responsibility of Gana Sikhyak will be for making enrolment drive in the particular educational institution, check drop out rate of the students, bring the out of School children to the School, assist the regular teachers in teaching work, besides other works as would be entrusted by the Headmaster of the School from time to time. The Gana Sikhyaks will continue to avail all the benefits in the process of selection for engagement of Sikhya Sahayak as extended in the Government in School and Mass Education Department Office Order dated 04.12.2007. Their engagement is co-terminus with that of SSA Scheme or other schemes as would be decided by the Government. As such, the duty/responsibility, which is to be assigned and discharged by the Sikhya Sahayaks shall not be performed by the Gana Sikhyaks. Since the Gana Sikhyaks are not engaged to teach the students directly as in the case of Sikhya Sahayaks and Primary School Teachers, their engagement is in no way violative of the Orissa Elementary Education (Method of Recruitment and Conditions of Service of the Teachers and Officers) Rules, 1997. Furthermore, the above Rule is prescribed for recruitment and conditions of Service of Regular Teachers in Primary Schools, who will teach the students in the class, whereas in the case of Gana Sikhyaks they are only to assist the teachers in teaching work and making the enrolment drive for the educational institution, check drop out rate of the students, bring the out of school children

to the School, besides other works as would be entrusted by the Headmaster of the School as per the Resolution dated 16.02.2008, as stated above. In view of the above, the ratio of the decision relating to policy decision and in Unnikrishnan's case, as has been relied upon by the learned Counsel for the Petitioner cannot be made applicable to the present case. As such the Government has not in any way violated the existing statutory provisions as well as the constitutional provisions in adopting the resolution-dated 16.02.2008.

6. The Petitioners are aspirants to be engaged as Sikhya Sahayak pursuant to the Resolution of the Government of Orissa, Department of School & Mass Education dated 10.01.2008. As per the said Resolution, all the functions of elementary education will be transferred in phases to Zilla Parishad and other Panchayati Raj Institutions. All Swechhasevi Sikshya Sahayak (SSS) including the existing one and the new recruits shall be called as Sikshya Sahayaks (S.S). The engagement of all new Sikshya Sahayakas (SS) will be made by Zilla Parishads as per requirement under the programme of Elementary Education and Sarva Sikshya Abhijan (SSA). The services of S.S will be placed under Village Education Committee (VEC). Sikshya Sahayak (SS) will be engaged Block Unit wise by Zilla Parishad by a Selection Committee to be headed by the Collector-cum-Chief Executive Officer, Zilla Parishad as Chairman and Circle Inspector of Schools, District Inspector of Schools, District Project Coordinator (SSA), District Employment Officer and the District Welfare Officer as members. 70% of the vacant posts of each Block unit will be for candidates having Matric/+2 with C.T. Qualification and 30% for candidates having BA/B. Sc/B. Com with B. Ed qualification. If candidates of anyone of the categories are not available, it will be filled up through candidates of other category. The engagement will be on an annual contract basis and contract will be renewed in subsequent years depending on the performance of the candidates. The applicant to be engaged as Sikhya Sahayak must have passed HSC/+2 examination and C.T. Examination or B.A./B. Sc/B. Com examination and B. Ed examination and shall not be below 18 years and above 42 years of age. However, upper age limit shall be relaxed in case of SC/ST, Women and Ex-Servicemen candidates. The ORV Act and other principles of reservation as prescribed by Government from time to time shall be followed and 33.113% posts will be reserved for women candidates. The main duty of Sikhya Sahayak shall be teaching in the schools. They must ensure minimum level of learning for the students as prescribed by the Competent Authority. They must ensure at least 90% attendance of the children in respective schools in all classes. They shall reduce the dropout of the children in school below 10%. They shall motivate the children or the guardians of the children in which primary school is situated for enrolment of children within the age group of 6 to 14 years and also contact parents/guardians of the students, in case the children fail to attend classes regularly and get back such children to the classes. The Sikhya Sahayaks will get remuneration of Rs. 3000/- per month. Their engagement shall be on annual contract basis. The Sikhya Sahayaks after completion of three years of contract shall be eligible for

appointment as Junior Teachers by the Zilla Parishad on contractual basis with consolidated remuneration of Rs. 3500/- per month. The Sikhya Sahayaks who are engaged as Junior Teachers after completion of three years of continuous engagement as such, will be eligible for appointment as regular primary school teachers, on the basis of number of vacancies available. For the purpose of Universalisation of Elementary Education, persons engaged by the Government in different schemes such as District Primary Education Programme (DPEP), Education For All (EFA), Non Formal Education (NFE), Educational Volunteer (EV) under EGS having requisite qualification may be considered for engagement as SS by relaxing their upper age limit wherever necessary and their past experience will be taken into consideration for the purpose.

7. Keeping in view the problems Volunteers, working in E.G.S. Centres under of disengaged Education the Education Guarantee Scheme/Sarba Sikshya Abhijan, because of up gradation of EGS Centres to regular Primary Schools, Government decided to reinstate/rehabilitate them as "Gana Sikhyakas" under Sarba Sikhya Abhijan. Clauses 2,3,5,6 and 11 of the Scheme/Resolution dated 16.02.2008 runs as follows:

2. Such disengaged Education Volunteers who are trained (Matric," 10th (H.S.C.)/+2 with C.T., B.A./B. Sc./B. Com with B. Ed) will be engaged as Gana Sikshyaka with a consolidated remuneration of Rs. 2000/per month. Those who are untrained (Minimum qualification of Matric, 10th (H.S.C.E)/+2) will be engaged with a consolidated remuneration of Rs. 1750/-per month.

3. Such disengaged Education Volunteers who are having 10th qualification (H.S.C. Examination) will have to acquire +2 qualification within a period of 3 years from their engagement as "Gana Sikshyaka" to be considered eligible for C.T. Training. Those who are having +2 minimum qualification will be allowed to complete C.T. Training on a distance mode either through IGNOU or from the Directorate of TE & SCERT within a period of 3 years. and after completion of C.T. Training the "Gana Sikshyaka" will be eligible to get consolidated remuneration of Rs. 2000/- from the date of passing C.T. Training.

5. The Gana Sikshyak will be engaged against the existing created vacancies of Sikhya Sahayak and their consolidated remuneration etc. will be borne out of S.S.A. budget. They will be engaged in Government Primary Schools.

6. The Gana Sikshyak: will be responsible for making enrolment drive in the particular educational institution. Check drop out rate of the students, bring the out of school children to the school, assist the regular teachers in teaching work, besides other works as would be entrusted by the Headmaster of the school from time to time.

11. The Gana Sikshyak will continue to avail of the benefits in the process of selection for engagement of Sikshya Sahayak as extended in the Government in School & Mass Education Department Office Order No. 23845/SME dt. 04.12.07.

As such, as per the Resolution dated 16.02.2008, the erstwhile Education Volunteers, who are trained (Matric, 10th (H.S.C.), +2 with C.T., B.A./B. Sc./B. Com. with REd) will be engaged as Gana Sikshyak with a consolidated remuneration of Rs. 2000/- per month and who are untrained (minimum qualification of Matric, 10th (H.S.C.E.) +2) will be engaged with a consolidated remuneration of Rs. 1750/- per month; who are having 10th Qualification (HSC Examination) will have to acquire +2 qualification within a period of three years from their engagement as "Gana Sikshyaka to be considered eligible for C.T. Training; those who are having +2 minimum qualification will be allowed to complete C.T. Training on a distance mode either through IGNOU or from the Directorate of TE & SCERT within a period of 3 years and after completion of C.T. Training the "Gana Sikshyaka" will be eligible to get consolidated remuneration of Rs. 2000/- from the date of passing C.T. Training. The newly engaged Gana Sikshyak will be responsible for making enrolment drive in the particular educational institution, check drop out rate of students, bring the out of school children to the school, assist the regular teachers in teaching work, besides other works as would be entrusted by the Headmaster of the school from time to time. The Gana Sikshyak will continue to avail of the benefits in the process of selection for engagement of Sikhya Sahayak as extended in the Government in School and Mass Education Department Office Order dated 04.12.2007. As per Clause-12 of the Resolution, the engagement of Gana Sikshyak is Co-terminus with that of S.S.A. Schemes or other scheme as would be decided by Government.

8. Considering the submissions made by learned Counsel for both the parties, I am of the considered view that by introducing resolution dated 16.02.2008, the State Government has only made provisions for reengagement/rehabilitation of qualified/under-qualified candidates earlier working in EGS Centres as Education Volunteers under Sarba Sikhya Abhijan and disengaged due to upgradation of those EGS Centres to Primary Schools and could not be selected to be engaged as Sikhya Sahayak as per Resolution dated 10.01.2008. The work assigned to Sikhya Sahayak is completely different than that of Gana Sikshyak. The candidates having matriculation/+2 with CT and B.A/B. Sc/B. Com with REd qualification can only be engaged as Sikhya Sahayak, whose primary and main duty shall be to teach the students in the Schools along with other works such as to ensure minimum level of learning (MIL) for the students, ensure at least 90% attendance of the children in the respective School in all classes, to reduce the drop out rate of the children in the School below 10%, to motivate the parents/guardians of the students for enrollment within the age group of 14 to 16 years, to contact the parents/guardians in case the children failed to attend classes regularly and get back such students to the School and to perform such other duties as assigned to them by the competent authority as and when required. Under the Scheme for engagement of Sikhya Sahayak as per Resolution dated 10.01.2008 the persons who were earlier engaged in different Schemes such as District Primary Education Programme (DPEP), Education For All (EFA),

NonFormal Education (NFE), Education Volunteer (EV) under Education Guarantee Scheme having requisite qualification shall be considered for engagement as Sikhya Sahayak by relaxing their upper age limit wherever necessary and their past experience will be taken into consideration for the purpose. As such this scheme is partly for engagement of unemployed trained Matric/+2 C.T. and Trained Graduate persons as well as partly for the persons who were earlier engaged under D.P.E.P., E.F.A., N.F.E and E.V. under Education Guarantee Scheme having requisite qualification. Since nothing was provided in the Resolution dated 10.01.2008 to rehabilitate the untrained matriculates/+2 or untrained graduates i.e. not having C.T. or B. Ed qualification and were earlier working as Education Volunteers under Education Guarantee Scheme and disengaged on upgradation of E.G.S. centers to regular Primary Schools, the Government has adopted the present Resolution dated 16.02.2008 for the purpose of rehabilitation of those untrained as well as the trained persons, who could not be engaged as Sikhya Sahayak. As per the scheme, the under qualified Education Volunteers shall be engaged with much less remuneration than the trained persons as well as the Sikhya Sahayaks and they will be given chance to acquire +2 qualification as well as C.T. training after completion of their engagement for certain number of years as Gana Sikhyaks. The purpose of their engagement is ultimately to facilitate them to acquire training qualification and to get themselves engaged as Sikhya Sahayaks as per Government in School and Mass Education Department office order dated 04.12.2007 and finally to bring them to the main stream for availing the benefit of Resolution dated 10.01.2008. The main duty assigned to Gana Sikhyaks is that they will be responsible for making the enrolment drive in the particular educational institution, check drop out rate of the students, bring the out of school children to the School, assist regular teachers in teaching work, besides other work as would be entrusted by the Headmaster of the school from time to time. As such, since they are not properly qualified, they are not supposed to teach the students and they will only to assist the teachers in teaching work, where as the candidates engaged as Sikhya Sahayak shall be assigned mainly with the duty of teaching in the school and to ensure minimum level of learning for the students as prescribed by the Competent Authority along with certain other work as has been prescribed under Clause-9 of the Resolution dated 10.01.2008. As such the work assigned to Gana Sikhyak is completely different than that of Sikhya Sahayak.

9. Furthermore, the resolution-dated 16.02.2008 is a policy decision of the Government with a specific purpose as narrated above, as a rehabilitation package for the Education volunteers, who cannot be and could not be engaged as Sikhya Sahayak. The ratio of the decision relied upon and cited by learned Counsel for the Petitioners, such as Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , Devi Prasad and Ors. v. Government of Andhrapradesh and Ors. reported in 1980 S.C. 1185, The Director, Lift Irrigation Corporation Ltd. and Ors., etc. v. Pravat Kiran Mohanty and Ors. reported in 1991 (2) SLR 121, Union of India (UOI) and Another Vs. International Trading Co. and

Another, and Basic Education Board, U.P. Upendra Rai and Ors. reported in AIR 2008 SCW 1560 cannot be made applicable to the instant case, since the facts and circumstances of those cases are completely different than the present case at hand.

So far as the case of Unnikrishnan (supra) is concerned, the Supreme Court has observed that:

xxx right to education is implicit in and flows from right to life guaranteed by Article 21. That the Right to Education has been treated as one of transcendental importance in the life of an individual has been recognised not only in this country since thousand years, but allover the world.

In the instant case, Mr. Swain, learned Counsel submits that since Right to Education is a Fundamental Right after the above said judgment of the Supreme Court, such right cannot be curtailed/ circumvented by the State by issuing Resolution dated 16.02.2008 and by appointing untrained/under qualified persons as against trained post in Government Primary Schools. Since in the Resolution dated 16.02.2008 itself, it has been mentioned that responsibility of Gana Sikhyaks will be for making enrolment drive in a particular educational institution, check drop out rate of the students, bring the out of school children to the school, assist the regular teachers in teaching work, besides other works, ratio of the decision in the case of Unnikrishnan (supra) may not be applicable to this case so far as it relates to the arguments advanced by the learned Counsel for the Petitioners, as because they have not been assigned with the job of teaching the students and they are only to assist the regular teachers in teaching work.

In the case of Devi Prasad and Ors. (supra) at paragraph-7, the Supreme Court has observed as follows:

Ultimately, it is matter of Government Policy to decide what weightage should be given as between two categories of government servants rendering somewhat similar kind of service. Xx xx xx xx. But mere hardship without anything arbitrary in the rule does not call for judicial intervention, especially when it flows out of a policy which is not basically illegal.

In the case of the Director, Lift Irrigation Corporation Ltd. (Supra), at paragraph-4, it has been observed that:

The decision to amalgamate the existing cadre by reorganizing into two cadres was a policy decision taken on administrative exigencies. The policy decision is not open to judicial review unless it is mala fide, arbitrary or bereft of any discernible principle.

As such both the above decisions of the Supreme Court are rather in support of the Resolution dated 16.02.2008, whereby the Government as a matter of policy decided to rehabilitate all the ex- Education Volunteers as Gana Sikhyaks.

10. So far as the case of Basic Education Board, U.P. (*supra*) is concerned, it is relating to appointment of teachers, who shall be engaged for teaching the students of the school and for their engagement as teachers, proper training in teachers' training institution is a must, since it is an essential/required educational qualification for such engagement. As such for engagement of teachers training such as C.T.B. Ed is a must, but for the purpose of engagement as Gana Sikhyaks teacher training may not be a must, since they are not engaged to teach the students and engaged only for the purpose of making enrolment drive, check drop out rate of the students, bring the out of school children to the school, assist the regular teachers in teaching work, besides other works and in that view of the matter, the ratio of the said decision cannot be made applicable to this case.

11. So far as the case of Union of India (UOI) and Another Vs. International Trading Co. and Another, is concerned, the facts and circumstances of the case is completely different than the present case. As such the ratio of that decision, shall not be applicable to this case.

12. Some of the decisions relied upon and cited by the learned Counsel for the Petitioners clearly indicates that a policy decision is not open for judicial review unless it is mala fide, arbitrary or bereft of any discernible principle. The Resolution dated 16.02.2008, introduced by the Government in the School and Mass Education Department, is a policy decision for the purpose of rehabilitation of the disengaged/to be disengaged Education Volunteers as Gana Sikhyaks, who are under qualified to be engaged as Sikhya Sahayak as well as qualified but could not be engaged as such availing the benefit of the Resolution dated 10.01.2008. Keeping in view the discussions made above, this beneficial policy decision of the Government can never be said to be against any statutory Provision, settled principles of law, mala fide, arbitrary or bereft of any discernible principle. As such by introducing Resolution dated 16.02.2008 and engaging disengaged Education Volunteers as Gana Sikhyaks as per the said Resolution, no illegality or irregularity has been committed by the Government, which would call for any interference by this Court in such policy decision.

13. In view of the above, I am not inclined to entertain this writ petition and the same is accordingly dismissed.