
(1980) 12 OHC CK 0011
In the Orissa High Court
Case No : O.J.C. No. 1853 of 1978

Hrudananda Mahapatra and Others

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 19-12-1980

Acts Referred:

Orissa Revised Scale of Pay (for Gazetted Officers) Rules, 1974 — Rule 2(1), 2(2)
Orissa Service Code, 1939 — Rule 17

Citation : (1981) 51 CLT 174

Hon'ble Judges : R.N. Misra, Acting C.J.; N.K. Das, J

Bench : Division Bench

Advocate : R.C. Patnaik, for the Appellant; Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, A.C.J.

1. Petitioners who are graduate teachers in Post-Basic School challenge the administrative action of revision of their pay-scales in this writ application. There are five Post. Basic Schools being at Mendhasal and Berboi in the district of Puri, Tudigadia in the district of Balasore, Nowrangpur in the district of Koraput and Bari in the district of Cuttack. In these schools there are twelve classes and students on completion of the study join the Degree Course in the affiliated colleges of the University without undertaking study in the Pre-University Course. The minimum prescribed qualification for teacher ship in such schools is Post. Graduate Degree with a Diploma In Education and Petitioners possess such qualification. The Fourth Pay Committee set up by the State Government in 1974 recommended revision of the pay scale of these teachers from the existing Rs. 230-540/- to Rs. 525-1150/- Petitioners allege that Government accepted the report as per Annexure and communicated the same to the Joint Director of Public Instruction (Schools) who is the controlling officer. In his turn, the Joint Director communicated that fact to the Headmasters of the Post-Basic Schools as

per Annexure-2. After acceptance of the recommendations of the Fourth Pay Committee, two sets of statutory rules came into force, being the Orissa Revised Scales of Pay (for Gazetted Officers) Rules, 1974 and the Orissa Revised Scales of Pay Rules, 1974. Both the Rules were given effect from 1st January, 1974. On 1-9-1977, as per Annexure-3, the State Government published a resolution of the Finance Department to the effect that Petitioners' case had been omitted from the Revised Scales of Pay introduced from 1st January, 1974 and accordingly for teachers in Post-Basic Schools as against the earlier scale of Rs. 230-540/-, a revised pay scale of Rs. 510-825/- was prescribed with effect from 1st of January, 1974. Challenge to this application is to this notification and the ground of attack is that Petitioners' case had been covered by the statutory Rules and administrative action contrary to the Rules is not maintainable.

2. The stand taken in the counter affidavit is that it was really a case of omission inasmuch as Petitioners were not Gazetted Officers and the Revised Scales of Pay (for Gazetted Officers) Rules had no application to them. Therefore, on the basis that the Petitioners' claim for revised pay had not been dealt with by the statutory Rules, administrative action conferring higher benefits on them has been taken.

3. There is no dispute before us that if Petitioners' case is covered by the statutory Rules, the administrative action under Annexure-3 is without jurisdiction. The only question for consideration therefore is as to whether Petitioners' case for revised pay scale had been dealt with by the statutory Rules or it was a case of an omission which could be dealt with in exercise of administrative powers.

Rule 2(1) of the Orissa Revised Scales of Pay (for Gazetted Officers) Rules, 1974, provides:

Save as otherwise provided by or under these rules shall apply to persons in whole time employment of Government in posts/services in respect of which revised scales are specified in the First Schedule appended to these rules....

Sub-rule (2) makes an exception in regard to categories of employees who would not be covered by the Rules. Item 42 in the Schedule attached to the Rules provides (at page 15 of the Orissa Gazette, Extraordinary, No. 1649 dated 19-10-1974):

Sl. No.	Name of the Post	Existing Revised scale of Pay	scale of Pay	Remarks
41.	x			
	Post Basic School	Post-Graduate Teacher	525-1,150	230-540
	Minimum qualification for future recruitment: Second Class Master's Degree in respective discipline with B. Ed. Degree.			

It is conceded that the Schedule under the Orissa Revised Scale of Pay Rules, 1974, does not contain an entry of this type with reference to Post-Basic School Teachers.

The Pay Committee with reference to the Post-Basic School Teachers had stated

m paragraph 18 of their Report Thus:

At present the Headmasters of these schools are enjoying Rs. 260-780/- scale of pay and they belong to Orissa Education Service (Class-II). In these schools the students studying in higher secondary class on completion of their course directly go to attend three years Degree Course in affiliated colleges. The level of teaching in higher secondary classes is treated at par with the level of study given at the Pre-University level in other colleges. The minimum qualification prescribed for teachers in these schools teaching classes at the Higher Secondary level is M. A. Considering these issues we are of the view that the teachers having Post. Graduate qualification and taking classes at higher secondary level should be placed on Rs. 525-1150 scale of pay which is incidentally the same scale suggested by us for the teachers attached to the affiliated college. For maintaining quality of teaching and standard of teachers, we would, however, record that hence forth candidates with III Class M.A. should not be entertained and minimum qualification to be prescribed for the P.G. Teachers in these institutions should be a Second Class M.A. Degree. Since the Headmasters of these institutions have a supervisory role and exercise administrative control over all the teachers including P.G. Teachers, we recommend Rs. 850-1400 scale of pay for them.

The assertion of the Petitioners that on the basis of this recommendation, the Post. Basic Schools and its teachers were dealt with under the Revised Pay Rules for Gazetted Officers has not been specifically challenged. The only contention advanced by learned Government Advocate at the hearing is that such teachers do not possess Gazetted status. Rule 17 of the Orissa Service Code defines a Gazetted Servant to mean:

- (i) a member of any State Civil Service, Class I or Class II or General State Service, Class I or Class II within the meaning of the Orissa Civil Services (Classification, Control & Appeal) Rules, 1962; and
- (ii) any other Government servant who may be specially declared by the State Government to be a Gazetted Government servant.

Petitioners do not challenge the stand taken by the State that they have not been specifically notified to be Gazetted servants. But inclusion of Post-Basic Schools and their teachers in the Schedule of the Orissa Revised Scales of Pay (for Gazetted Officers) Rules, 1974 and the provision in Rule 2(1) that the pay scale shall be as given in the First Schedule, go a long way to indicate that the real intention of the State Government in framing the Rules was to provide the teachers their pay scale as indicated therein. Real support for this conclusion is available from the recommendation of the Pay Committee which has been accepted by the State Government. Further support is available from the fact that Post-Basic School teachers have not been included in the Orissa Revised Scales of Pay Rules intended for other classifications of Non-Gazetted Officers. We find force in the submission of the Petitioners that their case was really

covered by the Rules intended for Gazetted Officers and there was no vacuum which could be filled up by administrative action. In action of Government in revising the Rules on the basis that it was a mistake is also a point in support of this conclusion. We are impressed by the logic of the Pay Committee as indicated in paragraph 18 of their Report that there should be equality of pay with references to job requirements. Taking a sum total view of the matter, we accept the submission advanced by the Petitioners and hold that the Petitioners' case was covered by the statutory rules and there was no scope for the administrative action. Accordingly, the resolution of the Finance Department under Annexure-3 so far as teachers in Post-Basic Schools are concerned is quashed.

The writ application succeeds. We, however, make no order for costs.

N.K. Das, J.

4. I agree.