
(2005) 05 OHC CK 0031

In the Orissa High Court

Case No : Writ Petition (C) No. 6887 of 2004

Induprava Sarangi and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 19-05-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 — Rule 8, 8(1), 8(3)

Citation : (2005) 100 CLT 119

Hon'ble Judges : N. Prusty, J; I.M. Quddusi, J

Bench : Division Bench

Advocate : Budhadev Routray, for the Appellant; Addl. Stg. Counsel for O.P. Nos. 1 to 3, B.R. Sarangi, for O.P. No. 4, B.S. Mishra, for O.P. No. 5 and J.K. Rath, for O.P. Nos. 6 to 9, for the Respondent

Judgement

I.M. Quddusi, J.—By means of this Writ Petition, the five petitioners, who are working as Assistant Teachers of Sri Satyasai High School, Unit-III, Bhubaneswar have challenged the order dated 29.6.2004 passed by the Director of Secondary Education, Orissa and the consequential order dated 2.7.2004 of the Inspector of Schools, Khurda and have prayed for issuance of a Writ of Mandamus directing opposite parties 1 to 3 to give promotion to petitioner Nos. 1 and 2 to the post of Headmaster in Aided High Schools including the petitioners' school, keeping in view their seniority in the common cadre of the Trained graduate Teachers under the Inspector of Schools, Khurda Circle as per the provisions of Rule 8(3) of the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 (hereinafter referred to as "the 1974 Rules") within a stipulated time to be fixed by this Court. By the impugned order dated 29.6.2004, the Director, Secondary Education, Orissa posted one Sri Ekadasi Jena (Opposite Party No. 4 in the instant Writ Petition) as Headmaster in Sri Satyasai High School, Unit-III, Bhubaneswar on deployment basis. Consequently, the Inspector of Schools,

Khurda Circle, vide order dated 2.7.2004, directed opposite party No. 4 to proceed to the Institution in question and take over the charges from Smt. I. Sarangi, T.G. Teacher (Headmaster-in-charge) of the school, who is petitioner No. 1 in the present Writ Petition.

The Institution in question is an Aided School under the Direct Payment Scheme. The said institution was established in the year 1974 and came within the fold of grant-in-aid with effect from the academic session 1983-84. Petitioner Nos. 1 to 3 are all Trained Graduate Teachers and are working since 1984 and petitioner Nos. 4 and 5 are continuing as Asst. Teachers in the said school. The appointments of the petitioners have already been approved by the Inspector of Schools, Puri Circle, vide order dated 4.8.1986.

It is stated that one Smt. Hemabati the then Headmaster of the institution in question, retired from service in the month of February, 1991. Thereafter, the second seniormost Asst. Teacher, Smt. Manju Majumdar, while continuing as such, retired from service in the month of December, 1995. After retirement of the Headmaster, the seniormost Trained Graduate Teacher was petitioner No. 1. After retirement of Smt. Hemabati, one Smt. Kalika Biswal was allowed to continue as Headmaster of the institution, who was transferred from the school on or own representation on 8.5.1995. Thereafter, one L. Barik, who was working as Headmaster in another school, i.e., the Government High School, Jaleswar was posted on deputation to the school in question by the State Government. Petitioner No. 1 being the seniormost teacher became the in-charge Headmaster of the school in question after the above Headmaster on deputation, namely, L. Barik.

In the meantime, a Writ Application was filed before this Court by the petitioners, which was registered as OJC No. 2437 of 1998, challenging the deputation of Sri L. Barik as Headmaster of the institution in question. During the pendency of the Writ Application, the petitioners filed a Miscellaneous Case with a prayer that the post of Headmaster of Satyasai High School might be filled up by way of promotion either from the common cadre list of Khurda Education Circle or by giving promotion to the Seniormost Assistant Teacher of the same school.

The said Writ Application was disposed of by order dated 12.1.2000 by which this Court without expressing any opinion on the merits of the case and the claim made by the petitioners, directed opposite parties 1 and 2 to consider the representation of petitioner No. 1 and to fill up the post of Headmaster of the school in accordance with law within a period of four months of receipt of the said order.

It is not disputed that petitioner Nos. 1 and 2 are the Trained Graduate Teachers placed at SI. Nos. 1 and 3 in the cadre list. It is also not disputed that in Khurda Education District there are twenty three Aided High Schools including the petitioner's school and those are governed by the provisions of the 1974 Rules made under the Orissa Education Act, 1969.

2. Before proceeding further, it is necessary to peruse the provisions of Rule 8 of the 1974 Rules, which are quoted hereunder:

"8. Exceptions to Section by the Board: (1) Nothing in these rules shall apply to posts filled up by persons on deputation from Government.

(2) Notwithstanding anything to the contrary in these rules, it shall not be necessary to apply to or submit any appointment made by the Managing Committee of Governing Body to the Selection Board, If:

(a) The appointment made on ad hoc basis for a period not exceeding three months; or

(b) The vacancy in a post, carrying higher scale of pay, is filled up with prior approval of Government in case of a College and the concerned Director in the same institution who possesses the prescribed qualifications and experience and whose performance in respect of the post he holds, has been found satisfactory. Such appointment shall be treated as regular appointment from the date, the same is filled up on ad hoc basis by the Managing Committee or the Governing Body, as the case may be, in the event of its approval by the competent authority.

(3) Vacancies in the posts of Headmasters of Aided Boys' High Schools and Headmistress of Girls' High Schools and Readers, including Principals of Aided Colleges under the fold of the system of direct payment of full salary cost shall be filled up by the eligible trained graduate teachers of respective categories of High Schools and Headmasters and Headmistresses of respective categories of Middle English Schools, and by the lecturers belonging to the common cadre of the Aided Colleges, as the case may be, from the select list prepared by the Selection Board in the manner prescribed in the Regulation framed by the Selection Board for the purpose on the basis of the recommendation of a Committee to be constituted by the Government which shall be headed by the Director. The selection shall be made on the basis of seniority in the common feeding cadre and performance. The zone of consideration shall be thrice the number of vacancies :

Provided that ad hoc promotions to the posts of Readers which includes Principals of Aided Colleges. Headmasters of Aided Boys' High School and Headmistress of Aided Girls' High Schools under the fold of the system of "direct payment of full salary cost" may however, be made from the concerned common feeding cadre for a period of one year or till the date of receipt of select list from the Selection Board, whichever is earlier, with the prior approval of Government:

Provided further that in the absence of common feeding cadres, appointment to the posts of Headmasters of aided Boys' High Schools and Headmistresses of Aided Girls' High Schools of the State under the fold of the system of direct-payment-of-full salary cost can be made by the authority from amongst the eligible trained graduate teachers of the respective categories of Aided High Schools and Aided Middle English Schools, as the case may be, on the

recommendation of the Selection Board through an open advertisement. The Selection shall be on the basis of the length of service and performance as trained graduate teachers in Aided High Schools or Headmasters and Headmistresses in Aided Middle English Schools."

On perusal of Rule 8(1) of the 1974 Rules, it is revealed that if a post is filled up by a person on deputation, the provisions of the Rules would not be applicable in that case. However, it is to be considered, if in a given case Government decides to depute a person as Headmaster for an indefinite period, in such a situation the whole purpose of other provisions under the Rules regarding promotion of the regular teachers would be frustrated. Therefore, a person can be deputed to hold a post as an interim arrangement, and not on permanent or regular basis.

3. The stand of opposite parties 1 to 3 in the notes of submission is that the petitioners have no right to challenge the posting of opposite party No. 4 on deployment inasmuch as their right to be considered for the post of Headmaster is in no way affected and the posting of opposite party No. 4 does not amount to filling up a vacancy in the cadre of Headmaster. Further, the impugned order dated 29.6.2004 is not with regard to permanent posting, but by way of an interim arrangement. The petitioners have no right to the post, but they have a right to be considered for the post. As and when steps to fill up the vacancy in the cadre of Headmaster in the Aided Educational Institutions in the State shall be taken certainly, seniority of the petitioners shall be well looked into.

4. The opposite parties 1 to 3 have further averred in their notes of submission as well as in the counter affidavit filed by opposite party No. 3 that the common cadre has not been finalized so far and therefore, the prayer of the petitioner Nos. 1 and 2 for promotion to the post of Headmaster cannot be accepted. A senior most teacher in charge of the post of Headmaster of the School has no right to claim the post of Headmaster.

5. Opposite Party No. 4, who was holding the post of Headmaster of Balukeswar Bidyapitha, Khajuria, which is a Government School (earlier an aided School, but was taken over by the State Government on 7.6.1994 and is now a Government School) and has been posted as Headmaster in the institution in question on deployment basis, has put in appearance through counsel. According to opposite party No. 4 he is in no way concerned with the implementation or formation of common cadre under Rule 8(3) of the 1974 Rules. Further, the State is vested with the power to place any person to work on deputation as per Rule 8(1) of 1974 Rules. Therefore, the respective impugned orders passed by the Director and the Inspector of Schools were well within the competence of the State Government and its authorities and the same are as per the provision of Rule 8(1) of 1974 Rules. Further opposite party No. 4 submitted his joining report before the Managing Committee on 2.7.2004, which was accepted on 3.7.2004. His further contention is that in the decisions reported in Priti Ranjan Pradhan and Others Vs. State of Orissa and Others, ; Golakh Ch. Mohanty and Others Vs. State of Orissa and Others, and Special Bench decision reported in Priti Ranjan

Pradhan and Others Vs. State of Orissa and Others, , relied upon by opposite party No. 4, this Court only dealt with the provisions of Rule 8(3) of the 1974 Rules but the provisions of Rule 8(1) of the said Rules have nowhere been dealt with.

6. Opposite party No. 5, i.e., the Managing Committee of the Institution in question, has averred in its counter affidavit that the disciplinary proceedings were pending against petitioner No. 1 and vide resolutions dated 2.12.2002 and 25.1.2004, the Managing Committee requested the Government to post a Headmaster for smooth functioning of the school. In respect of good result of the school for the last 10 years, it has been averred that the same could happen not only for the sincerity and efficiency of the petitioners, but also due to effort of the entire staff of the school and also good management of the four former Headmasters, who were posted in the school during that time.

It is further averred that opposite party No. 4 joined the school on 3.7.2004 and is now functioning as the Headmaster, and thus petitioner No. 1 has ceased to be the Headmaster of the school from that date.

7. The intervenors who have been arrayed as opposite parties 6, 7 and 8 are in the cadre of Trained Graduate Teachers of Aided Educational Institutions of Khurda Education Circle have made their submission to the effect that their seniority in the cadre list prepared by Khurda Education Circle, are at serial Nos. 6, 8 and 49 respectively.

8. No counter affidavit has been filed on behalf of opposite parties 1 and 2. The Inspector of Schools, Khurda Education Circle, opposite party No. 3 has filed his counter affidavit. However, Learned Standing Counsel, School and Mass Education Department has filed his note of submission on behalf of opposite parties 1 to 3. It has been further averred on their behalf that the Headmasters as well as Trained Graduate Teachers are transferred from one School to another School by the competent authority in accordance with the Orissa Aided Educational Institution Employees (Common cadre and Intertransfer Ability) Rules, 1979 which inter alia prescribe transfer of an employee of Aided Institution is permissible only in the event of formation of common cadre of different categories of the employees, such as Headmasters, Trained Graduate Teachers, etc.

9. The plea taken by the State Counsel that there is no common cadre of Headmasters and Trained Graduate Teachers even after 17 years of amendment of Rules is certainly a serious lapse by which the purpose of the amendment itself has been frustrated. The action of deputing a person outside as Headmaster of an Aided Institution under Rule 8(1) of the Recruitment Rules is mala fide on the part of the State Government. To avoid implementation of Rule 8(3) of the said Rules is against the vires of the legislation. No doubt the State Government has jurisdiction to fill up the post of Headmaster by a person on deputation otherwise than in accordance with the Rules. But that cannot be

termed as a permanent or regular posting. The meaning of the word "deputing", according to the Chambers Dictionary is to appoint or send as a substitute or agent. The meaning of the word "deputation" has been given as an act of deputing the person or persons deputed or appointed to transact business for another. Therefore, for all purposes if a person is appointed as Headmaster in an Aided Institution on deputation such appointment cannot be termed as a regular appointment as the purpose of the same can only be for a temporary period to transact business of a regular Headmaster and thus the action of the State Government, in making appointment of a person on deputation cannot be such by which other provisions of Rule 8 of the 1974 Rules become redundant. It appears that in the institution in question the post of Headmaster was filled up by posting one L. Barik, on deputation as Headmaster after the transfer of Smt. Kalika Biswal on 8.5.1995. Thereafter petitioner No. 1 was appointed as in-charge Headmaster being the seniormost teacher of the institution. But within a short span of time again opposite party No. 4 was posted on deputation as Headmaster. Thus by posting an outsider on deputation, the State Government is depriving the petitioners of their promotion.

10. It is to be noted here that Rule 8(3) of the 1974 Rules was incorporated by way of amendment on 3.6.1988. According to Rule 8(3), vacancies in the posts of Headmasters including Principals of Aided Colleges within the fold of direct payment of full salary cost are to be filled up by Trained Graduate Teachers of respective categories of High Schools and Headmasters and Headmistress of respective categories of Middle English Schools and by the Lecturers belonging to the common cadre of the Aided Colleges, as the case may be, from the select list prepared by the Selection Board in the manner prescribed in the Regulation framed by the Selection Board for the purpose, on the basis of the recommendation of a Committee to be constituted by the Government, which shall be headed by a Director. It is also to be noted that the selection is to be made under Rule 8(3) of 1974 Rules which provides that such selection of Headmaster/Headmistress is to be made on the basis of seniority in the common feeding cadre and performance.

11. Opposite parties 1 to 3 have admitted that the common feeding cadre has not been finalized. If the same has not been finalized by the State Government so far, it can be termed nothing else except dereliction of duty or lethargic attitude on the part of the Government and this Court feels that the denial of right of promotion amounts to violation of Article 16 of the Constitution of India, as the right of promotion is a fundamental right which is normal incidence of service. It is always seen that stagnation reduces the efficiency of a person and increases inefficiency.

12. In the case of Dr. Ms. O.Z. Hussain Vs. Union of India and others, the Hon"ble Apex Court has observed as follows :

"This Court has on more than one occasion pointed out that provision for promotion increases efficiency of the public service while stagnation reduces

efficiency and makes the service ineffective. Promotion is thus a normal incidence of service. There too is no justification why while similarly placed officers in other Ministries would have the benefit of promotion, the non-medical "A" Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers. It is, therefore, necessary that on the model of rules framed by the Ministry of Science and Technology with such alterations as may be necessary, appropriate rules should be framed within four months from now providing promotional avenue for the "A" category scientists in the non-medical wing of the Directorate."

In the case of Union of India and others Vs. Hindustan Development Corpn. and others, the Hon"ble Apex Court held as under:

"Of late the doctrine of legitimate expectation is being pressed into service in many cases particularly in contractual sphere while canvassing the implications underlying the administrative law. Since we have not come across any pronouncement of this Court on this subject explaining the meaning and scope of the doctrine of legitimate expectation, we would like to examine the same a little more elaborately at this stage. Who is the expectant and what is the nature of the expectation ? When does such an expectation become a legitimate one and what is the foundation for the same ? What are the duties of the administrative authorities while taking a decision in cases attracting the doctrine of legitimate expectation ?"

In the case of Union of India (supra), the Hon"ble Apex Court while deciding the aforesaid case, relied the case of Council of Civil Service Unions v. Minister of Civil Service (1984) 3 All.E.R. 935 held as under:

"*** Administrative action is subject to control by judicial review under three heads : (1) illegality, where the decision making authority has been guilty of an error of law, e.g., by purporting to exercise a power it does not possess; (2) irrationality, where the decision making authority has acted so unreasonably that no reasonable authority could have made the decision; (3) procedural impropriety, where the decision making authority has failed in its duty to act fairly."

In the instant case the Government has failed in its duty to act fairly by not following the provisions of the 8(3), 1974 Rules, i.e., the State Govt. has not finalized the common cadre of the trained graduate teachers of the institutions even after sixteen years of framing of the Rules.

13. It is a matter of great concern that the statutory Rules providing the common cadre of trained graduate teachers had come into force on 3.6.1988, but the State Government could not finalize that common cadre even after 16 years and the whole purpose of the statutory Rules has been frustrated. The Legislature

make laws with an expectation that the same would be implemented in letter and the spirit and the Govt. was duty bound to implement the same and non-implementation thereof by the State Government even after lapse of 16 years amounts to gross violation of principles of natural justice attracting Articles 14 and 16 of the Constitution. As it can be said, non-finalizing the common feeding cadre of trained graduate teachers in the State of Orissa since last 16 years is in stagnation. The aforesaid teachers can never be promoted on regular basis due to non-finalization of their common feeding cadre.

14. In the facts and circumstances discussed above, this Writ Application is allowed in part. Issue Writ of Mandamus commanding the opposite parties Nos. 1 to 3 to finalize the common cadre of the trained graduate teachers of the Aided Institution under the 1974 Rules within a period of six months from the date of communication of this order and, in the meantime, to follow the second proviso to Rule 8(3) of 1974 Rules that in the absence of common feeding cadre, appointment to the posts of Headmasters of Aided High Schools of the State under the fold of direct payment of full salary cost can be made by the authority from amongst the eligible trained graduate teachers of the respective categories of Aided High Schools and Aided Middle English Schools as the case may be, on the recommendation of the Selection Board through an open advertisement. The selection shall be made under the second proviso to Rule 8(3) of 1974 Rules on the basis of the length of service and performance as trained graduate teachers and Aided High Schools or Headmasters in an Aided Middle English Schools.

15. With the above observation the Writ Petition disposed of.

N. Prusty, J.

16. I agree.