

(2005) 09 OHC CK 0047

In the Orissa High Court

Case No : Writ Petition (C) No's. 3411, 3412, 3413, 3414, 3415, 3416, 3417, 3418, 3572, 3641, 3840, 4748, 4772, 5042, 5070, 5087, 5089, 5092, 5596, 5796 of 2002 and W.P. (C) No's. 421 and 650 of 2003

Jagannath Dhal and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 02-09-2005

Acts Referred:

Orissa Education Act, 1969 — Section 7C

Citation : (2005) 2 OLR 701

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : Sameer Ku. Das and R.N. Mishra-II, for the Appellant; M.R. Panda, M.K. Nayak, R. Panda, B.P.B. Bahali and C. Mohapatra for O.P. No. 1, for the Respondent

Final Decision : Allowed

Judgement

L. Mohapatra, J.—These writ applications were heard analogously since they involve the same questions of law.

2. The petitioners in all these cases are lecturers working in different aided educational institutions in different places and their prayer is for a direction to the opposite parties to disburse their arrear salary for the period from 17.10.1998 to February, 2001 and from August, 2001 to February, 2002. All the petitioners were appointed between 1.1.1985 and 31.12.1992 against approved posts of lecturers in different aided colleges. These colleges come under category I as defined in Para 4-A of the Orissa (Non-Government Colleges, Junior Colleges and Higher Secondary Schools) Grant-in-Aid Order, 1994. The case of the petitioners is that under the provisions of the Orissa Education (Recruitment and Conditions of Services of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974, the Governing Bodies are prohibited from filling up vacancies as the same are to be filled up from out of the candidates selected by

the State Selection Board and this rule applies immediately after the institution gets aid. However, the Governing Body can fill up the posts on ad hoc basis for a period of six months or till posts are filled up by candidates selected by the State Selection Board. The petitioners' appointments were on ad hoc basis and they have been allowed to continue from time to time as no State Selection Board candidates had been sponsored to fill up the posts. Such ad hoc arrangements are made to cater to the need of the college as per the workload. While the petitioners were continuing as such, the Validation Act of 1998 came into force and the State Government directed the aided colleges to submit necessary proposals to validate all such lecturers whose appointments were made between 1.1.1985 and 31.12.1992 and are continuing to hold the posts. Proposals were submitted by different institutions and so far as the petitioners are concerned, proposals were also submitted for validation of their appointment. The further case of the petitioners is that u/s 3(2) of the Validation Act, 1998, lecturers so validated are to get salary out of the grant-in-aid from 17.10.1998 irrespective of their dates of entitlement in the Grant-in-Aid Order, 1994. However, in view of the provisions contained in the Validation Act, 1998, the petitioners are only entitled to their salary components from out of grant-in-aid with effect from 17.10.1998. The proposals submitted by the institutions for validation of appointment of the petitioners having been accepted and the appointments of the petitioners having been validated, there was no reason on the part of the opposite parties not to pay their salary components from grant-in-aid. The petitioners having no other remedy available to them had approached this Court and this Court disposed of those cases directing the opposite parties to consider the case of the petitioners. The matter ultimately went to the Apex Court in the case of State of Orissa and Anr. v. Pratap Kumar Nayak and Anr. 93(2002) CLT 79 SC and after the decision of the Apex Court in the said case, the records of appointment of the petitioners were scrutinized and after approval of their appointment, respective colleges were directed to submit the arrear and current bills. Pursuant to the said order, the arrear and current bills were submitted and the salary components of the petitioners were released. However, arrear salary components for the period from 17.10.1998 to February, 2001 and August, 2001 to February, 2002 were not paid, though the bills had been submitted. Therefore, the petitioners having waited for a long time approached this Court in these writ applications again for payment of their arrear salary for the aforesaid periods.

3. Referring to the counter-affidavit, it was contended by the learned counsel appearing on behalf of the State authorities that Section 7-C of the Orissa Education Act, 1969 brought into the Statute by way of amendment lays down that the fiscal policy in budgetary process should be kept in tact and grant-in-aid should not create a pressure upon the Government. It is further stated that the conditions laid down in the Grant-in-Aid Order, 1994 would be valid provided the conditions prescribed therein are satisfied. The Grant-in-Aid Order, 1994 contains classification, eligibility of teachers and several other factors which are to be scrutinized and only after scrutiny of the same, appointment is to be validated.

The further case in the counter-affidavit is that the institutions receiving grant-in-aid were directed to produce such records but there was no co-operation from their side. It is therefore necessary now to direct the institutions to produce the records of appointment of all the petitioners as well as the records concerning the other requirements to fulfil the conditions laid down in the Grant-in-Aid Order, 1994 so that the State Government shall be in a position to find out which of the petitioners' appointments would be validated under the Validation Act, 1998 and who do not conform to the requirements for the purpose of validation.

4. Some decisions were cited by the learned counsel for both the parties in this regard and I will deal with the same at a later stage. There is no dispute that the petitioners were appointed as lecturers in different disciplines in different aided institutions on ad hoc basis. Such appointments were permissible in absence of candidates being sponsored by the State Selection Board for appointment. There is also no dispute that the petitioners continued to work as lecturers on ad hoc basis till the Validation Act, 1998 came into force. The only objection raised by the learned counsel appearing on behalf of the State authorities is that though appointments of the petitioners are required to be scrutinized to find out as to whether they conform to the requirements of the Validation Act, 1998 or not, there was no co-operation from the side of the respective Governing Bodies and therefore, the State is not under any obligation to pay the salary components from grant-in-aid.

5. Be that as it may, it appears that salary component from out of grant-in-aid has already been paid to the petitioners for certain period and therefore it cannot be said that without scrutinizing the records the State authorities allowed grant-in-aid to the petitioners. Having paid the petitioners from out of grant-in-aid, is it now open for the State authorities to ask the institutions to produce the records for scrutiny again and stop payment of salary of the petitioners from out of grant-in-aid ? The answer is obviously "No". In this connection, reference may be made to a decision of this Court in the case of Sanjib Kumar Pattnaik v. State of Orissa and Ors. (Batch), 2001 (I) OLR 58 In a batch of writ applications, a similar question arose and this Court in the aforesaid decision held that the lecturers whose appointments are validated under the Validation Act, 1998 are entitled to receive grant-in-aid towards their salary and arrear salary with effect from the date of commencement of the Validation Act, 1998. A similar view has also been taken by a Division Bench of this Court in the case of Pradip Kumar Patra Vs. State of Orissa and Others, In the case of State of Orissa and Anr. v. Pratap Kumar Nayak and Anr. 93(2002) CLT 79 (SC) the Apex Court held that the employees whose services stood validated ipso facto are not entitled to get grant-in-aid. Their cases are to be considered as per the Grant-in-Aid Order, 1994 and Section 7-C of the Orissa Education Act, 1969. Much reliance was placed by the learned counsel appearing on behalf of the State authorities on the aforesaid decision to say that the cases of the present petitioners have not been scrutinized in terms of the aforesaid decision. The relevance of Section 7-C of the Orissa Education Act, 1969 was also taken into consideration by the Division

Bench of this Court in the case of Pradip Kumar Patra v. State of Orissa & others (supra) and this Court also directed for payment of arrear salary. The other decisions cited by the learned counsel for the petitioners related to non-payment of salary on the ground of paucity of funds where the Court has held that the same would not be a ground to withhold payment of salary. I have not referred to those decisions as the learned counsel appearing on behalf of the State authorities did not argue on the said question and only confined his argument to the observations of the Apex Court with regard to the application of Section 7-C of the Orissa Education Act, 1969. As discussed earlier, all the petitioners have already been paid their salary from grant-in aid for certain period and therefore the presumption is that their records were scrutinized and they were found eligible for validation under the Validation Act, 1988 and were also found eligible for payment of salary as per the Grant-in-Aid Order, 1994. In view of the above, there is hardly any scope for this Court to permit the State authorities to again scrutinize (he records to find out as to whether the petitioners are entitled to get their salary as per Validation Act, 1998 and the Grant-in-Aid Order. 1994.

6. In view of the discussions above, I allow the writ applications and direct that the cases of all the petitioners be examined to find out as to whether they worked for the period for which arrear salary is being claimed and accordingly payment of arrear salary be made within a reasonable time.

There shall, however, be no order as to costs.