
(2014) 05 OHC CK 0014
In the Orissa High Court
Case No : W.P.(C) No. 7764 of 2014

Kabita Dhal

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 02-05-2014

Acts Referred:

Orissa Education Act, 1969 — Section 3(b)

Citation : (2014) 118 CLT 652 : (2014) 1 ILR 1168 : (2014) 2 OLR 290

Hon'ble Judges : B.R. Sarangi, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

Dr. B.R. Sarangi, J.—The petitioner has filed this petition challenging the inaction of the opposite parties in not considering her case for approval of appointment as Lecturer in English of Rani Sukadei Mahila Degree Mahavidyalaya, Banki in the district of Cuttack and seeking for a direction to round off the percentage of her marks 54.6% (in Master's Degree Examination) to 55% in consonance with the circular issued by the Government of Orissa in Education and Youth Services Department vide letter No. 32578(2)-III E/A-55/89-EYS dated 25.7.1989 under Annexurer-5. Rani Sukadei Mahila Degree Mahavidyalaya was established at Banki in the district of Cuttack having Arts faculty only in +2 or +3 courses. Initially the college was established having +2 wing in the year 1993-94 with Arts stream and the said Junior College received temporary recognition from the Directorate of Higher Education and thereafter +3 Degree Arts stream was opened in the year 1998-99 and the degree courses received affiliation from the Utkal University. Both the Junior College and Degree College was a Women's College and the degree courses received its recognition and affiliation on or before 1st June, 2000. Therefore, the institution in question is eligible to receive block grant in terms of Rule 4 of the Orissa (Nongovernment Colleges, Junior Colleges & Higher Secondary Schools) Grant-in-aid Order, 2008, hereinafter to be referred to as "Grant-in-aid Order, 2008". As such, the college in question is an

aided educational institution within the meaning of Section 3(b) of the Orissa Education Act, 1969 and the teaching and non-teaching staff of the Institution are regulated by the provisions contained in Orissa Education Act and the Rules framed thereunder. In order to fill up the post of Lecturers in various disciplines including English in +3 Degree courses, applications were invited by publishing a notice widely. Pursuant to such advertisement/notice, the petitioner, who has acquired the Post Graduation qualification in English securing 54.6% of marks submitted her application for consideration for appointment as Lecturer in English. By following due procedure of selection, she was selected to be appointed as Lecturer in English and accordingly, order of appointment was issued in her favour vide letter dated 16.6.1998, pursuant to which, she joined on 23.6.1998 and discharging her duties as Lecturer in English in the college since then.

2. Mr. H.M. Dhal, learned counsel for the petitioner states that the petitioner has acquired Master's Degree in English from Ravenshaw (Autonomous) College being placed in 2nd Division securing 437 marks out of 800 marks in the subject English, which comes to 54.6%. While the petitioner was continuing as Lecturer in English, as per the Grant-in-aid Order, 2008, which came into force with effect from 7.1.2009, proposal in prescribed Form-A was submitted to the opposite party No. 2 for approval of the post of teaching and non-teaching staff of the college and to release grant-in-aid, which was received by the Directorate on 17.4.2009. All the documents for the purpose of verification has been submitted and such documents have been duly verified by the authorities and accordingly, notification was issued in the website of the Department indicating the teaching and non-teaching staff, which are approved. As it appears, the petitioner's name did not find place in the said notification in the order of approval of the post. So the petitioner analyzed about the matter and came to know that the post in which the petitioner was working was not approved because the petitioner has not secured 55% of marks in M.A. examination. It is stated that such action of the authorities is contrary to the Government circular dated 25.7.1989 issued under Annexure-5 under which the Government in Education & Youth Services Department has taken a decision that candidates, who have secured 54.6% of marks or more, but below 55% at the Master's Degree Examination that should be rounded up to 55%. Undisputedly the petitioner has secured 54.6% marks in M.A. Examination and the said marks ought to have been rounded off to 55% in view of Annexure-5. But without doing so, approval of the post held by the petitioner has not been done by the authorities. It has also been brought to the notice of the Court by learned counsel appearing for the petitioner that similar question came up for consideration before this Court in W.P.(C) No. 8653 of 2010 (Krupsindhu Mishra v. State of Orissa and others) disposed of on 03.08.2010 and W.P.(C) No. 17095 of 2010 (Manoranjan Nayak v. State of Orissa and others) disposed of on 30.11.2010 wherein this Court directed the authorities to take a decision on the approval of the appointment of the incumbents and sanction of grant-in-aid treating his/her percentage of marks as 55% and therefore, applying

the ratio of the said orders, the marks secured by the petitioner i.e. 54.6% should be rounded off to 55% taking into account the circular in Annexure-5 and extend the benefit of approved her post as Lecturer in English by granting block grant in accordance with law.

3. When the matter was taken up on 16.04.2014, Mr.S.Das, learned Addl. Standing Counsel for the State, stated that the orders relied upon by the learned counsel for the petitioner mentioned supra are not applicable to the present context and as such, rounding off of marks is not permissible and he sought time to produce the judgments of the apex Court in support of his contention. Accordingly, the matter was adjourned to 24.04.2014 giving opportunity to the learned Addl. Standing Counsel to produce the judgment of the apex Court on which date, learned Addl. Standing Counsel produced the judgments in State of Orissa and Another Vs. Mamata Mohanty, , The Registrar, Rajiv Gandhi University of Health Sciences, Bangalore Vs. G. Hemlatha and Others, and Orissa Public Service Commission and Another Vs. Rupashree Chowdhary and Another, and stated that rounding off of marks is not permissible and sought for dismissal of the writ petition.

4. Mr. H.M. Dhal, learned counsel for the petitioner sought time to verify the applicability of the said judgments cited by the learned Addl. Standing Counsel and wanted to address the Court. On his request, the matter was adjourned to 2.5.2015.

5. In compliance to the order dated 24.4.2014, Mr. Dhal referring to Mamata Mohanty (supra) states that the said case is not applicable to the present context inasmuch as, that is a case where the apex Court has considered grant of UGC scale of pay admissible to the lecturers continuing in service, but not a case of rounding off marks and he has referred to paragraph 69 of the judgment wherein the apex Court has observed that a teacher, who had been appointed without possessing the requisite qualification at the initial stage cannot get the benefit of grant-in-aid scheme unless he acquires the additional qualification and therefore, question of grant of UGC pay scale would not arise in any circumstances unless such teacher acquires the additional qualification making him eligible for the benefit of grant-in-aid scheme. The cumulative effect therefore comes to that such teacher will not be entitled to claim the UGC pay scale unless he acquires the higher qualification, i.e. MPhil/PhD.

6. Mr. Dhal stated that has Rupashree Chowdhary (supra) Rule 24 of the Orissa Superior Judicial Service and Orissa Judicial Service Rules, 2007 which provided that the Commission shall call the candidates for interview who have secured not less than forty-five per centum of marks in aggregate and a minimum of thirty-three per centum of marks in aggregate in each paper in the main written examination. Considering the said provision, the apex Court held that rounding off the aggregate marks of 44.93% to 45% so as to make a candidate eligible for appearing at the interview dehors the rule as directed by the High Court was not permissible. In that context the apex Court held that the Rules are statutory in

nature and there is no power provided in the rules permitting any such rounding off or giving grace marks so as to bring up a candidate to the minimum requirement. Therefore, the apex Court held that no such rounding off or relaxation was permissible.

7. Mr. Dhal also stated that Registrar, Rajiv Gandhi University of Health Sciences (supra), the apex Court relying upon the ratio decided in Rupashree Chowdhary (supra) has stated that question of rounding off marks is not permissible in absence of any provision in the Statute empowering the authority to make such rounding off. He specifically referred to paragraph 12 wherein the apex Court observed that there is no provision of any statute or any rules framed thereunder, which permit rounding off of eligibility criteria prescribed for the qualifying examination for admission to the PG course. Apex Court further held that when the eligibility criteria is prescribed in a qualifying examination, it must be strictly adhered to.

8. Mr. Dhal states that the facts of the case at hand is different from the facts of the case cited by learned Addl. Standing Counsel for the State mentioned supra. In the present case, relaxation has been given by the State vide Annexure-5, the notification under which the Government has decided that the candidates who have secured 54.5% marks or more but below 55% at the Master's Degree examination that may be rounded off to 55%. Since relaxation power has been given by the State to make rounding of marks from 54.5% or more to 55%, the ratio decided by the apex Court in the aforesaid judgements is not applicable. Mr. Dhal has relied upon the decision of the apex Court in State of Orissa and another Vs. Damodar Nayak and another, more particularly para 3, which reads as follows:

The question limited to the notice is whether the respondent would be entitled to payment of salary under the Grants-in-aid Scheme from the date of initial appointment till he improved his qualification or from the date of his acquiring the qualification? The admitted position is that Respondent No. 1 came to be appointed as a lecturer in 1978. The Government issued clarification on 5.1.1987 that unqualified lecturers having minimum second class, i.e., 48% or above and below 54% of marks in P.G. examination and appointed on or after 1.8.1977 in recognized non-government colleges would be eligible to receive grant-in-aid for payment of salary to the first respondent from the date of his acquiring qualification or from the date of initial appointment? Admittedly, since the first respondent on the date of his appointment was not possessing the requisite qualification and acquired the same only on 21.3.1989, he will be eligible to the benefit of the grants-in-aid w.e.f. 1.4.1989 and onwards.

In the aforesaid case since the respondent No. 1 has secured 53.9% marks, which is almost equivalent to 54% marks on 21.3.1989, question arose whether the second respondent is entitled to receive grants-in-aid for payment of salary to the first respondent from the date of his acquiring qualification or from the date of initial appointment. Admittedly, since the first respondent on the date of

his appointment was not possessing the requisite qualification and acquired the same only on 21.3.1989, he will be eligible to the benefit of the grants-in-aid w.e.f. 1.4.1989 and onwards. In that view of the matter, therefore the apex court has permitted to rounding off from 53.9% to 54%. In the present case the rounding off of marks pursuant to the notification of the State Government under Annexure-5 can also be permitted. Similar question also arose before this Court in W.P.(C) No. 8653 of 2010 disposed of on 3.8.2010 and W.P.(C) No. 17095 of 2010 disposed of on 30.11.2010, wherein this Court considering the relaxation power of the State Government for rounding off of marks, directed the State authorities to round off the percentage of marks of the petitioner in that case to 55%.

9. In view of the foregoing discussions, this Court is of the view that since the petitioner has secured 54.6% at her Master's degree examination as per the Government decision vide Annexure-5 the same be round off to 55% and the petitioner would be entitled to get the benefits of approval of her appointment and sanction of grant-in-aid, if she is otherwise eligible, treating her percentage of marks as 55% and this Court directs accordingly. With the aforesaid observation and direction, the writ petition is disposed of.