
(1999) 02 OHC CK 0035
In the Orissa High Court
Case No : O.J.C. No. 1043 of 1999

Kamalakanta Kar

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 01-02-1999

Acts Referred:

Citation : (1999) 88 CLT 75

Hon'ble Judges : R.K. Patra, J; R.K. Dash, J

Bench : Division Bench

Advocate : Shri Choudhury, for the Appellant; B.P. Das, Learned A.G.A., for the Respondent

Final Decision : Allowed

Judgement

1. Heard Shri Choudhury, learned Counsel for Petitioner and Shri B.P. Das, learned Addl. Government Advocate, for opp. parties.
2. This is second successive writ application at the instance of the Petitioner. Earlier he had filed writ application bearing O.J. C. No. 4116 of 1996 challenging order of Inspector of Schools refusing to accord approval to his appointment as 4th peon in Patarani High School, Tahalia. The said writ application was disposed of by order dated 15-5-1996 with a clear direction to the Inspector of Schools to pass appropriate order keeping in view the yardstick prescribed in the year 1981.
3. The Petitioner, on being appointed as 4th peon in Patarani High School, Tahalia, joined the post on 15-12-1987. At that time, the yardstick prescribed by the State Government in letter No. 28465/EYS dated 8-7-1981 was in force, which provided, inter alia, that an additional post of peon (4th peon-cum-duftry) was admissible to the school, if its roll strength exceeded one hundred. The roll strength of the school being more than 100, the Managing Committee, accordingly appointed the Petitioner as 4th peon. After the school was notified to receive grant-in-aid with effect from 1-6-1994, the Secretary of the Managing Committee submitted staff position to the Inspector of Schools recommending

approval of the Petitioner against the post of 4th peon. The Inspector of Schools declined to approve the appointment basing on the revised yardstick dated 27-3-1992 which prescribes, inter alia, that the post of 4th peon (duftry) was admissible, if the roll strength of the school exceeded five hundred. At the time of Petitioner's appointment, the earlier yardstick of 1981 being in force., this Court required the Inspector of Schools to revise his order keeping in view the yardstick of the year 1981. The operative part of the order dated 15-5-1996 reads as follows:

xx xx xx On consideration of the averments and the submission of the counsel for parties, we direct the Inspector of Schools, Balasore Circle, Balasore to revise the order of approval of the Petitioner keeping the aforesaid 1981 circular in view. While doing so, he will verify the records of the school to satisfy himself if the roll strength of the school was within the yardstick stipulated in the Government circular of 1981. He is directed to complete the exercise within three months from the date of receipt of this order. Writ application is accordingly disposed of. Requisites will be filed within three days.

The Inspector of Schools, in pursuance of the direction of this Court contained in order dated 15-5-1996, has passed the impugned office order No. 13723 dtd. 30-9-1996 (Annexure-3) refusing to approve the appointment of the Petitioner by observing as follows;

xx xx xx The Daftary post in promotional post Cl. IV employees carrying higher scale of pay Rs. 775-1025/- than that of peon post carrying the scale of pay Rs. 750-940/- "The Inspector of Schools has further noted that the roll strength of the institution does not warrant to fill up a duftry post as per Government Order No. 15500/SME dated 27-3-1992. The impugned order dated 30-9-1996 cannot be sustained in law. This Court in its previous order dated 15-5-1996 clearly held that the yardstick prescribed by the Government in Order No. 15500/SME dated 27-3-1992 is not applicable to the Petitioner, inasmuch as, by the time of his appointment, the previous yardstick of the year 1981 was in force, and the question of approval of his appointment ought to have been decided basing on the yardstick of the year 1981. Besides this the post of duftry was not a promotional post at the relevant time, so far as Non-Government Aided High Schools are concerned. The State Government, for the first time, in letter No. 36118/SME dated 13-11-1996 indicated that the post of duftry in Non Government Aided High schools is to be filled up by way of promotion from amongst the peons. This position has been clarified by this Bench in *Dipak Kumar Sahoo v. State of Orissa* and Ors. O.J. C. No. 13911 of 1996 disposed of on 22-12-1998. As the aforesaid Government circular dated 13-11-1996 is not applicable to the case of the Petitioner, the Inspector of Schools erred in holding that the post of duftry is a promotional post, for which the Petitioner's appointment as 4th peon (duftry) cannot be approved.

4. There is no dispute that at the relevant time the roll strength of the school was more than one hundred, as such, the yardstick prescribed by the

Government in letter No. 2846S/EYS, dated 8-7-1981 would govern his case.

5. For the reasons indicated above, the impugned office order No. 13723 dated 30-9-1996 at Annexure-3 is hereby quashed. The Inspector of Schools, Balasore Circle, Balasore, is directed to accord approval to the Petitioner's appointment as 4th peon in the school in question from the date his case was recommended by the Managing Committee. The Inspector of Schools will pass appropriate order in the light of direction indicated above within two months of receipt of this order.

6. Writ application is allowed. No costs.

Writ application allowed.