
(2008) 06 OHC CK 0020
In the Orissa High Court

Kanhu Charan Muduli

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 19-06-2008

Acts Referred:

Citation : (2008) 106 CLT 565 : (2008) 2 OLR 705 Supp

Hon'ble Judges : L. Mohapatra, J;Indrajit Mahanty, J

Bench : Division Bench

Judgement

Indrajit Mahanty, J.—The Petitioner Kanhu Charan Muduli was originally appointed as "Sweeper" in the U.N. College, Soro w.e.f. 26.9.1983 on the basis of the resolution passed by the Governing Body of the college. The Petitioner asserts that the post of Laboratory Attendant in the Department of Zoology was created w.e.f. 5.1.1987 and the Petitioner was appointed as such, from the said date.

2. The Petitioner has filed this writ application seeking a direction to the Opposite Parties to approve the services of the Petitioner as Laboratory Attendant in the Department of Zoology against the second post in U.N. College, Soro w.e.f. 5.1.1987 and to pay his arrear salary as well as all service benefits consequent thereto.

3. From the averments made in the writ application, it appears that one Gopabandhu Dash claiming to be the holder of the post of Laboratory Attendant (second post) in the Department of Zoology in the self-same college, had approached this Hon'ble Court in O.J.C. No. 387 of 1996 seeking approval of his services. The said writ application was disposed of directing the authorities to consider his case and in pursuance thereto, the services of said Gopabandhu Dash were duly approved. Thereafter, it appears that the present Writ Petitioner was filed O.J.C. No. 13747 of 1996 before this Court alleging that the said Gopabandhu Dash had obtained the order from this Court in the aforesaid writ application by suppressing the material facts and accordingly, earlier writ application filed by the present Petitioner came to be disposed of by an Order

Dated 29.1.1997 by recalling the earlier order passed in O.J.C. 387 of 1996 and with further directions to the Opposite Party No. 2-Director, Higher Education, Orissa to re-consider the case of both the present Petitioner, namely, Kanhu Charan Muduli as well as Gopabandhu Dash (Petitioner in OJC 387 of 1996).

It is further asserted that after the disposal of the Writ Petition in the year 1997, Opposite Parties came to reject the case of both the present Petitioner as well as Gopabandhu Dash by an Order Dated 18.9.2000. This order rejecting the approval of the Petitioner to the post of Laboratory Attendant is the subject matter of challenge by the present Petitioner, namely, Kanhu Charan Muduli.

4. Mr. Samaniray, Learned Counsel for the Petitioner submits that although the Petitioner had joined the college on 26.9.1983 as a Sweeper and worked as such, but in the year, 1987 after creation of the Second post of Laboratory Attendant in the Department of Zoology, the Petitioner was adjusted against the said post w.e.f. 5.1.1987 and such appointment was regularized by the Governing Body of the college vide resolution No. 16 dated 27.10.1990.

Mr. Samantray submits that the reason ascribed by the Opposite Party No. 2 not to approve the services of the Petitioner, was purportedly on the ground that the Petitioner had only joined the post w.e.f. 27.10.1990 and hence had not completed five years as of 1.6.1994, i.e., the date of the notification issued by the Government. Learned Counsel submits that although the Governing Body regularized the appointment of the Petitioner to the Second Post of Laboratory Attendant in the Department of Zoology by Resolution dated 27.10.1990, yet, the said Resolution regularized the appointment of the Petitioner, retrospectively w.e.f. 5.1.1987 and, therefore, the Petitioner having been appointed on 5.1.1987 had completed more than five years of service as on 1.6.1994 and, therefore, the case of the Petitioner ought not to have been rejected on the said ground.

5. Mr. Pattnaik, Learned Addl. Standing Counsel on behalf of the State while supporting the impugned order under Annexure-1 dated 18.9.2000 stressed on the stand taken by the Opposite Party No. 1 in his counter affidavit and in particular, paragraphs-3 and 4 thereto, is quoted hereinbelow:

3. That the Petitioner Sri Kanhu Charan Muduli has joined as Sweeper in U.N. College, Soro on 26.9.83 as per the appointment order No. 3512 dt. 24.9.83 of the Principal-cum-Secretary of the Governing Body of the College. While the Petitioner was continuing against the post of Sweeper in the College he was adjusted against the 2nd post of Laboratory Attendant in Zoology of the College on 27.10.90. This adjustment has no bearing with in the earlier date of joining in the post of Sweeper as, he joined in the post of Laboratory Attendant in Zoology on 27.10.90.

4. That one Sri Gopdbandhu Dash who was appointed against the Class-IV post was subsequently shown against the Lab. Asst. in Zoology 2nd post on the basis of direction of Hoh"ble High Court in OJC No. 387/96. There after the present Petitioner Sri Muduli filed OJC No. 13747/96 before this Hon"ble High Court

which was disposed of by the Hon'ble High Court on 20.1.97 and the Hon'ble Court re-called their earlier order passed in OJC No. 387/96 and directed the O.P. No. 2 to consider the case of both the Petitioners for giving approval in the post of Laboratory Attendant and it was further observed that the Director shall also consider if both of them can be accommodated in the same college. Pursuant to the aforesaid order the Director Higher Education vide his Officer Order No. 47375 dt.18.9.2000 has rejected the claim of both the Petitioners for approval of their appointment and sanction of grant-in-aid in their favour. It was observed by the Director Higher Education that Sri Gopabandhu Dash has been shown against the 3rd post of Lab. Attendant in Botany in Form "B" submitted by the College and he said post is admissible to the college from the session 1992-93 and as such Sri Dash has not completed the qualifying period of 5 years as on 1.6.94, regarding the claim of Sri K.C. Muduli, it was noticed that Sri Muduli has joined against the 2nd post of Lab. Attendant in Zoology on 27.10.90 and as such he has not completed the qualifying period of service of 5 years as on 1.6.94. The claim of both the Petitioners were rightly denied by the Director Higher Education. The Petitioner is not eligible for grant-in-aid as on 1.6.94.

6. On perusal of the averments made by the Petitioner in the Writ Petition as well as the stand taken by the Opposite Parties in the counter affidavit, it is important to take note of the reason ascribed for rejecting the Petitioners case as contained in the order of rejection under Annexure-1, is quoted hereinbelow:

2. As regards to the Petitioner Sri Kanhu Charan Muduli, although the 2nd post of Lab. Attendant (Zoology) held by the Petitioner is admissible from the session 1986-87, the Petitioner has joined against the post only on 27.10.90 & hence has not completed 5 years as on 1.6.94. So also Govt. have not provided funds beyond 1.6.94.

7. From the above, it would be clear that the State accepts the fact that the Second Post of Laboratory Attendant in Zoology Department held by the Petitioner was admissible from the Session 1986-87 and it is also We admitted case of the State that grant-in-aid is extended to particular posts and not to an individual. Therefore, it is the admitted case of the State that the post of Second Post of laboratory Attendant in Zoology Department was admitted into grant-in-aid from the Session 1986-87. The essence of the objection raised in the counter Affidavit revolves around the date of which the Petitioner joined the said post of Laboratory Attendant. It appears that whereas the Petitioner's claim that although the Governing Body took the resolution regarding his appointment on 27.10.1990, yet, he had been adjusted against the said post w.e.f. 5.1.1987 and, therefore, it should be accepted that 5.1.1987 was the date from which he performed the services as Laboratory Attendant. But for such a plea of retrospectivity to operate, no documentary evidence has been brought on record in the present proceeding and, therefore, we are constrained to observe such claim of the Petitioner that he discharged the responsibility of the Laboratory Attendant w.e.f. 5.1.1987 cannot be accepted. But it is the admitted case

between the parties that the Petitioner has worked as Laboratory Attendant w.e.f. 27.10.90 and the same is not in dispute. It is also further not in dispute that by 1.6.1994, the Petitioner has completed five years of service by 26.10,1995. Therefore, the Petitioner is entitled to the benefits of 1994 grant-in-aid scheme, with effect from the date he completed five years of service.

8. In view of the aforesaid findings, we are of the view that the Petitioner is entitled for approval of his service as Laboratory Attendant in the Department of Zoology against the Second Post in U.N. College, Soro with effect from the date of completion of five years of service which is to be computed from 27.10.1990, i.e., w.e.f. 27.10.1995 and, therefore, we quash the impugned Order Dated 18.9.2000 under Annexure-1 and direct the Opposite Parties to approve the services of the Petitioner for the period as noted hereinabove and to extend the financial benefits to the Petitioner as consequence thereto. Arrear salary may be released in his favour within a period of six months from the date of receipt of certified copy of this order.

With the aforesaid observations and directions, the Writ Petition is disposed of.