
(1999) 03 OHC CK 0001
In the Orissa High Court
Case No : O.J.C. No. 4621 of 1996

Kanhu Charan Pradhan

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 30-03-1999

Acts Referred:

Citation : (1999) 87 CLT 762

Hon'ble Judges : Susanta Chatterji, Acting C.J.; D.M. Patnaik, J

Bench : Division Bench

Advocate : S.K. Nayak-3, for the Appellant;

Judgement

D.M. Patnaik, J.—The prayer of the Petitioner is to quash letter No. 3434 dated 19-2-1996 of the Inspector, Of Schools, Khurda, Annexure-4 refusing to approve the appointment of the Petitioner as Additional Section Teacher of Sapneswar Deb High School. Rakwa in the district of Khurda.

2. The Petitioner is an untrained teacher, but holding the post of a trained graduate teacher against the Additional Section Teacher post for Glass- VIII-B. His date of appointment is 25-1-1986. Alleging inaction of the State Authorities for not approving, the post Petitioner filed O.J. C. No. 4871/93. While disposing of this writ petition by order dated 2-8-1993 this Court directed the State Government to create a post of Additional Section Teacher for that Class with effect from the date when the roll strength of that Section according to the staffing pattern exceeded 55, Pursuant to this direction, the Inspector of Schools under Annexure-3 sought for relevant information from the school which was supplied But instead of giving approval the Inspector of Schools, opposite party No. 3, under Annexure-4. Intimated non-approval of the Petitioner's, appointment on the ground that he was an untrained hand.

3. The Inspector of Schools, opposite party. No. 3, in the counter has taken two grounds in defense. Firstly, that the Petitioner is not an "approved employee" of the school, perhaps meaning that the post so held by the Petitioner has not been

approved and secondly, he is an untrained hand, appointed against the trained graduate post.

4. We have heard Mr. S.K. Nayak-3, learned Counsel for the Petitioner and Mr. Sangram Das, learned Additional Standing Counsel for the State. We have perused the contents of the writ petition, counter-affidavit of the Inspector of Schools and various annexures filed by the respective parties.

So far as the "non-approval of the post held by the Petitioner" is concerned while disposing of the earlier writ petition a specific direction was given to the State to create a post of Additional Section Teacher in respect of Class-VIII, if the roll strength at the relevant time exceeded 55. The Inspector of Schools has not come forward with any explanation as to why such approval has not been given till now though years have passed in the meantime after disposal of the earlier writ petition. This shows utter inaction on the part of the authorities. Be that as it may. in the absence of any explanation for non-approval/sanction of the post of Additional Section Teacher, we have no alternative than to direct the State Government to create a trained graduate post if not already so done, and this will be effective from the date when the roll strength of the school became more than 55. This shall be in strict compliance of the order of this Court in O.J. C. No. 4891193.

5. So far as the second point touching the Petitioner's ineligibility is concerned, reliance is placed on the decision of this Court in the case of Bibekananda Das v. State of Orissa 1997 (II) O.L. Rule 122. It is contended, that this Court in the said decision held that if the appointment of a untrained hand is prior to the coming into force of the Orissa Subordinate Education (Method of Recruitment and Conditions of Services) Rules. 1993, he will be entitled to get the salary of an untrained- teacher though holding the post of a trained graduate teacher until he acquires B. Ed. qualification.

We have no quarrel over the proposition of law. But the fact remains till now in spite of directions of this Court in D.\}. C. No. 4891/93. the State Government have not created a post of Additional Section Teacher for Class- v. III-B nor any such post has been approved till now. In this, reliance is placed on the decision of this Court reported in Vpl. 85 (1998) C.L. T. 87 (Sukanta Kumar Nanda v. State of Orissa and Ors. The ratio of the case applies to the present case. Unless the post is created/sanctioned/approved by the State, question of getting grant-in-aid in respect of an Untrained Teacher against the Trained Post would not arise. Therefore, non-approval of the post by the Inspector of Schools cannot be faulted with.

6. However, we dispose of the writ petition with a direction to the Government that the Government shall create/ approve the post strictly compliance with the orders of this Court in O.J. C, No. 4891/93 and this should be done within a period of three months from the date of communication of the order. After such a post is created/approved, as the case may be, the Petitioner shall make a

representation for receiving grant-in-aid from the Government, which shall be considered in tube light of the judgment of this Court in the case of Bibekananda Das (supra) within a period of three months after such approval of the Government. So long the Management is taking advantage of the services of the Petitioner, it would be appropriate that the Petitioner, this such action by the Government, shall be paid salary from the management fund.

7. With such observation and direction, the writ petition is disposed to No costs.

Susanta Chatterji, A.C.J.

8. I agree.

9. Writ petition disposed of.