
(2015) 12 OHC CK 0011
In the Orissa High Court
Case No : W.P.(C). No. 11164 of 2007

Keshab Panda

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 10-12-2015

Acts Referred:

Orissa Education Act, 1969 — Section 3(b), 7-C

Citation : (2015) 12 OHC CK 0011

Hon'ble Judges : S.N. Prasad, J.

Bench : Single Bench

Final Decision : Disposed Off

Judgement

S.N. Prasad, J.—Heard learned counsel for the petitioner and Mr. Buddhiman Rout, learned counsel for the School and Mass Education Department.

2. The petitioner has approached this Court challenging letter dated 25.08.2007 by which one percent of the grant sanctioned has been directed to be held back to meet the cost of audit.

3. According to the petitioner he has been engaged as Headmaster of Mohan Chandra Khandia U.P.(M.E.) School in the district of Jajpur, said school has been notified as an aided educational institution within the meaning of Section 3(b) of the Orissa Education Act by the State Government w.e.f. 31.3.1992. It is the case of the petitioner that the moment the school in question has been brought within the purview of Section 3(b) of the Orissa Education Act, the provision of the Orissa Education (Recruitment and Condition of Service of teachers and Members of Staff of Aided Educational Institution) Rules, 1974 (hereinafter referred to as "Rules 1974") will be applicable wherein as per the provision as contained in Rule 9 the Legislature has provided to treat the petitioner at par with the regular employees of Govt. institution but the authorities while granting sanction order dated 25.8.2007 has directed to held back 1% of total grant to meet out cost of audit.

4. According to the petitioner, petitioner in view of the provision as contained in Rule 9(1) of the Rules, 1974 is entitled to be treated at par with the regular teachers of the government schools and in view thereof he is entitled to get 100% salary but by holding back 1% of the salary to meet out audit cost the petitioner has been discriminated with the teachers working under the government school which is contrary to the Rule 9(1) of the Rules, 1974.

5. He further submits that the issue has already been decided in the case of Dipti Roy and others v. State of Orissa and others in W.P.(C) No. 5345 of 2004 wherein in similar circumstances decision of the authority dated 15.10.1999 was challenged which also contains similar clause and the same was quashed and in view of the direction passed by this Court authorities have been directed to release the entire salary but the government has again issued one letter dated 30.3.2005 holding back 1% of salary for the purpose of audit cost, same has been challenged in several writ petitions being W.P.(C) Nos. 1956, 1957, 1958, 1959 & 9269 of 2007 and this Court vide order dated 2.12.2015 has quashed that part of the order contained in the communication dated 30.3.2005. According to the petitioner same clause is in the impugned order dated 25.8.2007, hence the same is not sustainable.

6. This Court vide order dated 13.9.2007 has issued notice to the opposite parties and directed the learned counsel for the School and Mass Education Department but no counter affidavit has been filed.

7. Learned counsel for the School and Mass Education Department has submitted that in spite of repeated communication no para-wise comments has yet been received however he has submitted that in some cases para-wise comments has been received but in spite of the same opposite parties have not turned up to swear the affidavit as such prayer has been made for further time for filing counter affidavit but the same has been objected by the learned counsel for the petitioner on the ground that they are not getting full grant-in-aid as per the direction of the State Government by which it has been directed for full payment in the revised scale under ORSP rules, 1998 and thereby the statutory provision as contained in Rule-9(1) of the Rules, 1974 is being violated.

8. In view of the fact, that the matter is of the year 2007 and the authority has not chosen to file counter affidavit hence the matters are being disposed on the basis of material available on record.

9. Learned counsel for the School and Mass Education Department has argued the case on the basis of material available on record and has submitted that there is no infirmity in the decision taken by the Assistant Finance Advisor-sum-Under Secretary to Government dated 25.8.2007 by which it has been directed to held back one percent of the grant sanctioned to meet the cost of audit because of the reason that the same has got concurrence of the Finance Department and also due to the reason that if excess amount would be paid to one or the other teaching and non-teaching staff an audit is to be conducted and

for that decision has been taken to held back one percent of the grant sanctioned in order not to put any pressure upon the State exchequer.

10. Heard learned counsel for the parties and perused the documents on record.

11. In order to assess the issue involved in this case it is relevant to examine the provision as contained in Section 3(b) of the Orissa Education Act, 1969 which is being reproduced below:

"3(b) Aided Educational Institution means private educational institution which is eligible to, and is receiving grant-in-aid from the State Government, and includes an educational institution which has been notified by the State Government to receive grant-in-aid."

12. According to the petitioner the question in question has brought under the purview of Section 3(b) of the Orissa Education Act, 1969 and as such service conditions laid down in the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 will be applicable wherein there is provision contained in Rule 9(1) provides that every employee of an Aided Educational Institution shall draw same pay and other benefits. For ready reference the relevant provision is being reproduced below.

"Rule.9(1) Every employee of an Aided Educational Institution shall draw the same pay, dearness allowances and subsistence allowance in case of suspension as is admissible to counterpart in the Government Educational Institutions under the relevant rules applicable to him and shall ordinarily be paid in the month following the month to which the claim relates directly by Government or by any Officer or by any Agency authorized by Government."

13. Thus the statutory provision is clear that an employee working in the aided educational institution shall be treated at par with the employee of the government educational institution and the employees working in an aided educational shall draw same emolument and pay scale etc. as that of the employees of the government educational institution.

14. From the argument advanced on behalf of the petitioner that the issue regarding extending the benefit of grant-in-aid held for consideration before this Court in the case of Smt. Dipti Roy etc. Vs. State of Orissa, and this Court has been pleased to held at paragraph-19 which is being quoted below:

"19. In consonance with Section 7-C of the Education Act, 1969, the State Government is duty bound, of course within the limits of its economic capacity, to set apart a sum of money annually for giving "grant-in-aid" to Private Educational Institutions in the State. For complying with the said mandatory requirement and in order to streamline the modalities for extending the benefits of "grant-in-aid", Orissa Educational (Payment of Grant-in-Aid to the High Schools and Upper Primary Schools) Order, 1994 was framed. In consonance with the provisions of the aforesaid 1994 Order the Government after taking into

consideration all the pros and cons agreed to provide grant-in-aid to several Private Educational Institutions existing within the State. Such decision was taken consciously and keeping in mind the mandates of Section 7-C of the Education Act read with Grant-in-Aid Order, 1994 and the economic capacity of the State. After deciding to provide "grant-in-aid" covering the salary cost of teaching and non-teaching staff of different Private Aided Educational Institutions it is no more open to the Government to back out at this stage in absence of legislation. As has been stated earlier the salary cost of teaching and non-teaching staff of private educational Institutions has to be same as that of their counterpart working in the Government Educational Institutions. Legislature in its wisdom having stipulated such a condition in Rule 9 of the 1974 Rules, the State Government cannot act contrary to the same. After agreeing to pay the salary components in consonance with Rule 9 of the 1974 Rules vis-à-vis the Grant-in-Aid Order, the State Government is legally liable to make provisions for payment of salary to the employees working in Private Aided Educational Institutions at par with their counterpart in Government Educational Institutions."

15. In view of the order passed in the case of Dipti Roy and others v. State of Orissa and others(supra) Government has come out with a letter dated 30.3.2005 by which authorities have decided to pay grant-in-aid to its employees w.e.f. 1.1.1996 notionally in accordance with the provisions as contained in School and Mass Education Department Resolution dated 30.3.2005.

16. It further transpires from the said order passed by this Court in the case of Dipti Roy and others v. State of Orissa and others(supra) one specific condition has been inserted at Clause 9 to held back 1% of salary to meet out audit expenses.

17. It has further been argued by learned counsel for the petitioner that the order dated 30.3.2005 has been assailed by the employees of the aided educational institution in series of writ petitions and this Court vide order dated 2.12.2015 in W.P.(C) Nos. 1956, 1957, 1958, 1959 & 9269 of 2007 long with analogous cases have been pleased to quash the clause 9 of the letter dated 30.3.2005. This aspect of the matter has not been disputed by learned counsel for the opposite parties-School and Mass Education Department.

18. It has further been by learned counsel for the petitioner that here in this case same condition has been inserted holding back 1% of the salary to meet out audit expenses. Hence according to the petitioner since the dispute has already been decided, as such this condition is fit to be quashed.

19. In order to examine the fact this Court has gone into the order passed in W.P.(C) Nos. 1956, 1957, 1958, 1959 & 9269 of 2007 dated 2.12.2015 wherein this Court has quashed Clause No. 9 of the letter dated 30.3.2005 on the ground that when government has sanctioned full grant-in-aid for disbursement in favour of employees of aided educational institutions which suggests that the government has given concurrence in implementing statutory provision of Rule 9(1) of the

Rules 1974 which provides the condition that the employees working in aided educational institutions will be treated at par so far as salary and pay scale, etc. is concern along with employees of the government educational institution but the Assistant Finance Advisor-cum-Under Secretary to Government while implementing the decision of the government in pursuance to the order passed by this Court in W.P.(C) No. 5345 of 2004 in the case of Dipti Roy and others v. State of Orissa and others(supra) has inserted a condition in Clause-9 holding back 1% salary of the teaching and non-teaching employees of aided educational institution to meet out audit expenses.

20. This Court after considering the fact that the Assistant Finance Advisor-cum-Under Secretary to Government has got no jurisdiction to insert any other condition which will be said to be contrary to the decision taken by the Government who has taken decision to sanction full grant-in-aid for its disbursement to the employees of aided educational institutions and if 1% of the salary will be held back by the government for audit cost, then employees working in aided educational institutions will be discriminated by releasing less pay scale in comparison to that of the employees of government educational institutions and also keeping the fact into consideration that if the authorities want to conduct audit it cannot be on the cost of the employees and thereafter that decision containing in Clause-9 of the letter dated 30.3.2005 has been quashed.

21. Here in this case also Director, Elementary Education has come out with letter for implementation of the order passed by the government in pursuance to the order passed in the case of Dipti Roy and others v. State of Orissa and others(supra) and released grant-in-aid to 609 Non-Government aided UP Schools for making payment on the basis of revised scale of pay as per the statement enclosed for the month of June to August, 2007 during the financial year, 2007-08, but however with a condition to held back 1% to meet cost of audit which shall be deposited in the treasury.

22. Applying the ratio of this Court taken in the W.P.(C) No. along with analogous cases and also applying the principle laid down in the case of Dipti Roy and others v. State of Orissa and others(supra) which has also been affirmed by the Hon"ble Apex Court in Civil Appeal No. 2685 of 2007, that part of the decision as contained in letter dated 25.8.2007 by which it has been ordered to held back 1% of total grant to meet out audit coast, is held to be illegal and as such the same is quashed.

23. In consequence, petitioner is entitled to get entire arrears which was to be paid by the authorities, after deducting the amount already paid, within period of six weeks from the date of receipt of copy of this order.

24. The writ petition is accordingly disposed of.