
(1994) 09 OHC CK 0019

In the Orissa High Court

Case No : Original Jurisdiction Case No. 6003 of 1991

Kshitish Chandra Pati and Another

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 02-09-1994

Acts Referred:

Orissa Education Act, 1969 — Section 3

Citation : (1994) 78 CLT 967 : (1994) 2 OLR 534

Hon'ble Judges : R.K. Patra, J;G.B. Pattnaik, J

Bench : Division Bench

Advocate : K.K. Swain, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

G.B. Pattnaik, J.—The order of the Inspector of Schools approving the services of the petitioners from the date the institution became eligible to receive grant-in-aid and not from the data of their actual appointment as teachers is being challenged in this writ application.

2. It is alleged in the writ application that Kalinga Nagar High School under Keonjhar Education Circle was established in the year 1975 and the State Government granted recognition in 1973. The School became eligible to receive minimum grant-in-aid with effect from 1-3-1983 and it came to the fold of Direct-Payment-System with effect from 1-3-1986. With effect from 1-3-1986 the teaching and non-teaching members of the staff have been receiving their monthly salaries directly from the Inspector in accordance with Rule 9 of the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided educational Institutions) Rules, 1974 (hereinafter referred to as the "Recruitment Rules") and the School had thus become an aided educational institution within the meaning of Section 3(b) of the Orissa Education Act. Much prior to the aforesaid date, the petitioners have been appointed by the Managing Committee of the School on different dates-petitioner

No. 1 with effect from 16-8-1976 and petitioner No. 2 with effect from 16-1-1978. But even though they ate continuously serving the institution with effect from 1976 and 1978, as stated above, the Inspector having approved their services only with effect from 1986 and the past period having been wiped off, the petitioners have approached this Court contending that their services are to be approved with effect from their respective dates of appointment and not with effect from the date the School became an aided educational institution and the employees came under the Direct- Payment-System,

3. A counter affidavit has been filed being sworn to by the Assistant Inspector of Schools, Keonjhar Circle. It has been stated therein that in accordance with the grant-in-aid principle, a recognised High School becomes eligible to receive minimum grant-in-aid after four years from the year of presentation of candidates in the final High School Certificate Examination subject to two further conditions as mentioned in the Circular of Grant-in-aid (Annexure-2) and then it will be considered for the privilege of direct payment of salaries three years after receipt of the minimum grant, provided the roll-strength does not fall below the roll strength prescribed for the receipt of the minimum grant and the result of the school for the preceding two years is on par with the State average or above, in the Annual High School Certificate Examination and satisfies other conditions for direct payment laid down by the State Government from time to time. In this view of the matter, the educational authorities are required to accord approval of the teaching and non-teaching staff with effect from the date the institution becomes eligible to receive grant-in-aid and not with effect from the date of their initial appointment.

4. In the premises, as aforesaid, the question that arises for consideration is whether so far as the approval is concerned, is the Inspector bound to accord approval of the services of a teacher with effect from the date the teacher is appointed by the Managing Committee, or with effect from the date the Inspector is able to pay the salary of the teacher in accordance with the grant-in-aid principle ? Approval of a teacher becomes necessary for the purpose of making payment of the salary under the direct payment scheme and it has got no connection with the appointment of a teacher given by the Managing Committee, The purpose for which an order of approval is necessary being this, it is difficult for us to accept the contention of the learned counsel for the petitioners that the approval must be made with effect from the date a teacher is factually appointed. On the other hand, only when an institution becomes entitled to receive grant-in-aid and the State takes up the obligation of paying salary of a teacher, an order of approval has to be made. Consequently, we see no infirmity with the order of approval accorded by the Inspector taking into account the date on which the institution became eligible to receive grant-in-aid. But so far as the past services of the petitioners are concerned, the same have to be taken into account for the purpose of determining the pension and other retirement benefits of the employees, inasmuch as the said services cannot be ignored altogether. While, therefore, we see no infirmity with the order of

approval made by the Inspector which is essentially meant for the purpose of payment of salary of the petitioners, we would observe that the past services of the petitioners rendered under the Management of the private institution cannot be ignored altogether but have to be taken into account for the purpose of determining the pension and other retirement benefits of the employees at the time of his superannuation.

Subject to the aforesaid observation, the writ application is dismissed. There will be no order as to costs.

R.K. Patra, J.

5. I agree.