

(2003) 10 OHC CK 0016
In the Orissa High Court
Case No : Civil Review No. 143 of 2000

Lalit Mohan Pradhan

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 29-10-2003

Acts Referred:

Gratuit-in-aid Order, 1994 — Rule 9(4)(ii)

Citation : (2004) 97 CLT 107 : (2003) OLR 815 Supp

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : B. Routray and S.N. Biswal, for the Appellant; A.K. Mishra, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

L. Mohapatra, J.—This review application has been filed against the order dated 17.8.2000 passed in O.J.C. No. 4366 of 1996 dismissing the case of the petitioner.

2. As it appears the writ application had been filed challenging the conditions imposed for release of U.G.C. scale of pay. The petitioner is working as Lecturer in Physics in Rairangpur College which was established in the year 1962-63. The College got affiliation from Utkat University on 23.5.1964 as well as concurrence in the same year. The college received Government concurrence for opening of additional, classes during the year 1975-76 and the University also granted permission to increase seats from 16 to 32 in Zoology and other subjects on 25.8.1976. The State Government at a subsequent stage granted concurrence for opening of 16 Honours seats in Physics. The petitioner was initially appointed against a leave vacancy as a lecturer in Physics on 29.8.1983 and thereafter he was allowed to continue on 89 days basis. Subsequently, on 29.1.1990 his appointment was validated under the Orissa Aided Educational Institutions (Appointment of Teachers Validation) Act, 1989. The Principal of the College in his letter dated 28.1.1989 addressed to the Deputy Director (NGC-II) sent a

budget indicating that the 4th post of Lecturer in Physics had been created on 2.11.1983 and the petitioner was holding the said post. It was also intimated that the said post comes under 1/3rd grant-in-aid principles of 1988. The claim of the petitioner in the writ application was that though he was entitled to receive 1/3rd grant-in-aid with effect from 2.11.1986, 2/3rd from 2.11.1988 and full salary cost from 2.11.1990, he had been sanctioned 1/3rd grant-in-aid with effect from 1.6.89, 2/3rd from 1.6.1991 and full salary cost from 1.6.1993. It was contended in the counter affidavit filed by the State that the 4th post of Lecturer in Physics held by the petitioner was created by Government order dated 2.11.1983 during the financial year 1983-84. The post having been created with effect from 2.11.1983 it was also contended that the grant-in-aid sanctioned in favour of the petitioner as mentioned above was correct.

3. The learned counsel appearing for the petitioner relying on a decision of this Court in the case of *Nimain Charan Sahoo Vs. State of Orissa and Others*, submitted that the petitioner is entitled to 1/3rd grant-in-aid on completion of five years from the date of creation of the post. The Court while deciding the matter held that the post having been created with effect from 2.11.1983 as per Rule 9(4)(ii) of the Grant-in-aid Order, 1994 the date of eligibility of the post for which grant-in-aid has not been sanctioned is the 1st day of academic year following the date on which an approved post completes the qualifying period as applicable to the post and consequently held that the 1st day of academic year after the creation of the post would be 1.6.1984 and, therefore, grant-in-aid had been rightly allowed to the petitioner by the State Government.

4. In this review application the only question raised before this Court by the learned counsel for the petitioner is that the Government order No. 50263 dated 2.11.83 creating the 4th post of lecturer in Physics having been done in the financial year 1983-84, it will be deemed that the post had been created with effect from 1st April, 1983 and not from 1.6.1984 as held in the judgment. The Government Order dated 2.11.83 issued by the Department of Education and Youth Services indicates that the 4th post of Lecturer in Physics in Rairangpur College was approved during the financial year 1983-84 and the approval of the said post as is evident from the said Government order was passed on 2.11.1983. Though the Government Order does not indicate the date from which the said order will take effect it is contended by the learned counsel for the petitioner that it should be given effect to from 1st April, 1983 as the post had been approved during the financial year 1983-84. The learned Additional Government Advocate, on the other hand, submitted that creation of the post cannot have any retrospective effect merely because it was approved in the financial year 1983-84 and, moreover, in a review petition, the scope for reopening the matter is not available and accordingly, the review should be dismissed.

5. There is no dispute that the 4th post of Lecturer in Physics in Rairangpur College was created in the financial year 1983-84 vide Government order dated

2.11.1983. The question that arises for consideration is whether such creation of the post by order dated 2.11.83 will date back to 1.4.83 merely because the same was created in the financial year 1983-84, In the case of Nimain Charan Sahoo v. State of Orissa and Ors. reported in 1991 (I) OLR 530 this Court held that the incumbent holding the post shall be entitled to 1/3rd grant-in-aid on completion of five years from the date of creation of the post. Since the post was created on 2.11.1983 it was held in the writ application that as per Rule 9(4) (ii) of the Grant-in-aid Order, 1994 the date of eligibility of the post shall be the 1st day of academic year following the date on which the approved post completes the qualifying period as applicable to the post. Though the term financial year 1983-84 has been mentioned in the order dated 2.11.83, granting approval of creation of the 4th post of Lecturer in Physics, in my view, the approval cannot relate to 1.4.83. The creation of a post and approval thereof, in my view, cannot have retrospective effect even though the term financial year has been used in the order dated 2.11.83. Accordingly, I do not think that there is any merit in the contention of the learned counsel for the petitioner. Moreover, in a review application the scope of review of the judgment is very limited and the petitioner has not brought out a case which can be considered within the scope of review. As a matter of fact, the petitioner in this review application seeks for review of the judgment on merits which is not permissible under law.

I, therefore, do not find any merit in the review petition and the same stands dismissed.