

(1999) 04 OHC CK 0014

In the Orissa High Court

Case No : Ori Jurn. Case No. 7133 of 1997

Madarsankar Mahekud and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 23-04-1999

Acts Referred:

Orissa Education Act, 1969 — Section 3, 7

Citation : AIR 1999 Ori 198

Hon'ble Judges : P.K. Mohanty, J;P.C. Naik, J

Bench : Division Bench

Advocate : P.N. Mohanty, P. Choudhury, M.K. Sahoo and S.C. Padhi, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Mohanty, J.—The writ petitioners who are the teaching and non-teaching employees of Puruna Manatri High School, have approached this Court for a direction to the opp. parties to release the grant-in-aid in respect of the salary component with effect from 1-3-1991 instead of 1-6-1994 and for paying their arrear salary within the time stipulated by the Court,

2. The short fact of the petitioners' case is that Puruna Manatri High School at Puruna Manatri in the district of Angul was established in the year 1989 and got recognition by the prescribed authority in the year 1985-86. The School presented its first batch of students in the Annual H.S.C., Examination in the year 1987 and as such the old grant-in-aid principle was applicable to them and the school became eligible to receive the minimum grant-in-aid with effect from 1-3-1991. It is alleged that the staff position was submitted to the Inspector of Schools for approval of their appointment and necessary documents were also submitted for verification. But however, the matter was kept pending for long period and the grant-in-aid could not be released in favour of the members of the staff from the academic session 1991-92 nor the appointments of the petitioners could be approved. It is stated that during pendency of the aforesaid matter, the

Orissa Education Act was amended in July, 1994 and Section 7(c) was incorporated. It is the case of petitioners that because of the incorporation of Section 7(c), a set of new grant-in-aid order was framed in the year 1994. But since the petitioners became eligible to receive the grant-in-aid prior to July, 1994 as per the old grant-in-aid principles, their cases should be governed under the old principles and not under the new grant-in-aid order of 1994. It is stated that the Inspector of Schools vide letter dated 12-6-1993 called upon the Secretary of the Managing Committee to submit records for release of grant-in-aid from 1-6-1994 to 28-2-1995 and approval of appointment of staff made by the Managing Committee, a copy of which is Annexure 2. Accordingly, the particulars were submitted. On verification of necessary records by order No. 9302 dated 20-9-1995 the appointments of the petitioners were approved, but it was indicated that they will receive their full salary with effect from 1-6-1994, a copy of which is Annexure 3. The grievance of the petitioners is that as per the decision of this Court, the grant-in-aid order of 1994 will operate prospectively and since the petitioners became eligible to receive grant-in-aid with effect from 1-3-1991 in terms of Rule 9 of the Orissa Education (Recruitment and Conditions of Service of Staff of Aided Educational Institutions) Rules, 1974 (hereinafter called "the Recruitment Rules").

3. Opp. Parties 1 to 2 have filed a comprehension counter-affidavit, sworn to by Inspector of Schools, Dhenkanal Circle (opp. party No. 3) denying the claim made by the petitioners. It is the case of the opp. parties that the School in which the petitioners are working was eligible to receive grant-in-aid with effect from 1-6-1994 vide Government Order No. 12899-SHK, dated 2-5-1995 and accordingly, the petitioners' appointments were approved in Order No. 9302 dated 20-9-1995 to facilitate payment of grant-in-aid in terms of Rule 9 of the Recruitment Rules. The opp. parties have urged that in order to be an aided educational institution within the meaning of Section 3(c) of the Orissa Education Act, an institution has not only to satisfy the eligibility criteria prescribed in rules and instructions but also the institution must be either receiving aid or the name is included in the list of institutions notified by Government for receiving aid. The Institution cannot be said to be entitled to receive grant-in-aid immediately on satisfying eligibility qualifications prescribed in instructions issued by the Government. The Institution is entitled to aid when Government notifies it as such. The grant-in-aid cannot be claimed as a matter of right.

4. The only question that needs consideration and determination is, as to whether the petitioners are entitled to receive grant-in-aid from the date of eligibility in terms of the earlier grant-in-aid Rules or from the date when the Government passed the order for releasing the grant-in-aid. This controversy has been not at rest by the Full Bench decision of this Court in Laxmidhar Pati and Others Vs. State of Orissa and Others, On consideration of the provision of law and on consideration of the different Division Bench decisions of this Court, the Full Bench held that the entitlement to grant-in-aid from the date of approval and/or from the date of achieving the eligibility criteria does not appear to be

good law. The Full Bench further affirmed the decision of the Division Bench in *Jalada Dalang Uchha Bidyapith Vs. State of Orissa and Others*, . Thus, the settled view of law with regard to grant-in-aid is that an institution cannot be said to be entitled to receive grant-in-aid immediately on satisfying the eligibility qualification prescribed in the instructions issued by the Government. The institution is entitled to aid when the Government notifies it as such. The entitlement to grant-in-aid flows from the order of the Government and the competent authority to take a conscious decision in the matter on consideration of the provisions of Rules and Executive Instructions and other relevant facts and circumstances. The Apex Court in *State of Orissa and Another Vs. Aswini Kumar Dash and Others*, , in the context of grant of U.G.C. scales of pay to the Junior College Teachers has taken the view that no educational institution can claim grant-in-aid as a matter of right. This is a matter of policy which the State Government will decide looking to its financial capacity and other relevant circumstances. Since the entire burden of providing grant-in-aid is on the State, the State regulates, by policy the extent of aid and the Colleges to which it will be given.

5. In view of the aforesaid decision and the facts and circumstances of the case, there cannot be any manner of doubt that no institution is entitled to grant-in-aid as a matter of right from the date it becomes eligible to receive such grant. It is only entitled to receive grant from the date when the Government notifies to allow such grant-in-aid. The petitioners have not alleged mala fide nor discrimination, but the sole ground on which they claim the grant-in-aid from an anterior date is their eligibility in terms of the grant-in-aid scheme framed earlier to 1994. In that view of the matter, we do not find any merit in the writ application and as such, the same is dismissed. But, however, in the facts and circumstances of the case, there shall be no order as to cost.

P.C. Naik, J.

6. I agree.