
(1984) 03 OHC CK 0003
In the Orissa High Court
Case No : O.J.C. No. 584 of 1979

Narottam Mishra

APPELLANT

Vs

The State of Orissa and Others

RESPONDENT

Date of Decision : 22-03-1984

Acts Referred:

Citation : (1984) 58 CLT 151

Hon'ble Judges : P.K. Mohanti, J;P.C. Misra, J

Bench : Division Bench

Advocate : P.K. Mohanty and P.K. Ray, for the Appellant; Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

P.K. Mohanti, J.—The Petitioner, after passing. Class VIII examination, was appointed as a primary school teacher on 14-7-1942. The Orissa Pay Committee in its report of 1960-61 recommended certain scale of pay for the primary school teachers and on the recommendation of the said Committee, the State Government published a Resolution to the following effect:

A teacher who has put in 10 years of service and has qualification less than M.E. may be treated as M.E. passed and if less than the 9th Standard and above Middle English then as 9th Standard passed and if less than metric but above 9th Standard, then as Matric passed....

(Vide Annexure-I).

Since the Petitioner had passed Middle English and was less than 9th Standard, he was treated as 9th Standard teacher and his scale of pay was fixed at Rs. 70-85/- which was the scale of pay prescribed for 9th Standard untrained teachers and trained M.E. teachers. The Director of Public Instruction (Schools) in his letter dated 13-4-1970 (vide Annexure-2) issued a direction not to depute for training the untrained primary school teachers who were enjoying the scale of pay prescribed for trained teachers by virtue of their 10 years of continuous

service by 1-4-1961 and to exempt them from undergoing training. In accordance with the report of the Fourth Pay Committee of 1974, the scale of pay of the Petitioner was revised and fixed by the District Inspector of Schools (O.P. No. 3) at Rs. 255-340/- which is the scale of pay prescribed for matric/non-matric trained teachers. He was allowed to enjoy that scale of pay from 1-1-1974 to 1-8-1976. In August 1976, his scale of pay was reduced to Rs. 215-265/- which is the scale of pay prescribed for non-matric (untrained) teachers. On the Petitioner's representation, the Director of Public Instruction (Schools) by his letter dated 25-8-1978 intimated as follows:

The scale of pay of untrained M.E. passed teachers and untrained IX class passed teachers is the same i.e. Rs. 215-265/-. Since you are an untrained non-matriculate teacher you are not eligible for higher scale of pay.

(Vide Annexure-5).

2. The Petitioner's contention is that by virtue of the orders contained in Annexures-2 and 5 he was considered equivalent to a non-matric trained teacher and his pay was fixed in the scale of pay of Rs. 255-340/- and that reduction of his scale of pay was arbitrary and illegal. Accordingly, he prays for issue of a writ of mandamus quashing the impugned order contained in Annexure-5 and directing the opposite parties to allow the benefits as available to him under the law.

3. The stand taken by the opposite parties 1 to 4 is that the Petitioner is untrained M.E. passed teacher and by virtue of his completing 10 years of continuous service by 1-4-1961 he was eligible to get his pay in the scale of pay prescribed for the 9th Standard passed teachers and that he was never treated as trained M.E. passed teacher. It is contended that exemption from undergoing training does not mean that the Petitioner is a trained teacher. It is further contended that the Petitioner's pay having been wrongly fixed in the scale of Rs. 255-340/- by the then District Inspector of Schools, he was getting the pay in that scale, but as per the Fourth Pay Committee Report of 1974 read with Government Resolution No. 34791-VIE/Cp-13175-EYS-dated 28-10-1979, the M.E. passed teachers with 10 years of service by 1-4-1961 who were drawing their salary in the scale of pay of Rs. 70-85/- are to get their pay in the revised scale of Rs. 215-265/- and as such reduction of his scale of pay cannot be said to be illegal or arbitrary.

4. It appears from the report of the Fourth Pay Committee, that before 1974 different scales of pay were prescribed for teachers of primary school according to their education. The Fourth Pay Committee observed that nature and job content being similar, variation in the scales of pay was unnecessary. It recommended the scale of pay of Rs. 255-340/- for the non-matric trained teachers and the scale of pay of Rs. 215-265/- for the untrained non-matric teachers. It is not disputed by the opposite parties that the Petitioner was allowed to enjoy the pay scale of Rs. 255-340/- from 1-1-1974 to 31-7-1976 But

their contention is that the Petitioner's pay was wrongly fixed by the then District Inspector of Schools. In the impugned order (Annexure-5) it is stated that the Petitioner being an untrained non-matric teacher, he was not eligible for higher scale of pay. In the counter-affidavit filed by the opposite parties, it is contended that the Petitioner was not treated as a trained teacher. This contention is not acceptable in view of the clarification issued by the Joint Director of Public Instruction (Schools), Orissa in his letter No. 31050 dated 19-7-1976 addressed to the Inspector of Schools, Cuttack I Circle. The relevant portion of the letter reads as follows:

Sub: Extension of service benefits of a trained teacher to untrained one.

Ref: Your letter No. 6790 dt. 22-5-1976.

Clarifications sought for in your letter under reference are given below:

1. An untrained teacher who is 45 years of age on 1-4-1975 is eligible to get all facilities as has been prescribed for a trained teacher and he/she may be treated as trained one.

xx xx xxx

(Vide Annexure-6).

Validity of the order in Annexure-6 has not been disputed by the opposite parties. The date of birth of the Petitioner as entered in his Service Book being 25th September, 1922, he was more than 45 years of age on 1-4-1975. He was, therefore, eligible to get the facility of higher scale of pay prescribed for a trained non-matric teacher.

5. In the result, we quash the order contained in Annexure-5 and allow the writ application with costs. Hearing fee is assessed at Rs. 200/- (two hundred).

P.C. Misra, J.

6. I agree.