
(2008) 10 OHC CK 0037
In the Orissa High Court

Nikunja Bihari Mohapatra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 21-10-2008

Acts Referred:

Orissa Education Act, 1969 — Section 10(2)(3)

Citation : (2008) 2 OLR 998

Hon'ble Judges : R.N. Biswal, J;B.P. Das, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The petitioner in this writ petition challenges the order dated 7.5.2002 passed by the Deputy Secretary to the Government in the Department of Higher Education vide Annexure-5A rejecting his claim for validation of his services. He seeks a direction to opp. party Nos. 1, 2, and 4 to validate his services as per the Orissa Aided Educational Institution (Appointment of Lecturers Validation) Act, 1998 in short the "1998 Validation Act" and for release of his salary component.

2. The brief facts leading to filing of the writ application are as follows.

3. The petitioner was appointed by the Principal-cum-Secretary, Sadhu Goureswar College in the District of Jajpur (opp. party No. 3) vide Annexure-4 dated 28.8.1989 as a Lecturer in English (4th post), which was lying vacant under the Management payment. It is worthwhile to mention here that the post was admissible and the petitioner had the requisite qualification for being appointed. While the petitioner was working as such, the Deputy Director (NGC-I) of the office of opp. party No. 2 requested the Principal, S.G. College on 13.5.1996 to submit all the records for verification and necessary approval. But, instead of taking action in pursuance of letter dated 13.5.1996, opp. party No. 2 issued Annexure-6 sponsoring the name of opp. party No. 5 for appointment against the 4th post of English. It may be mentioned here that during pendency of the writ application opp. party No. 5 was responsored vide Annexure-7 for

appointment in Shree Ram College, Rampur, Dist-Sonepur. After issuance of Annexure-6, the petitioner approached this Court by filing this writ application and this Court by its order dated 19.8.1997 directed that there shall be no termination for a period of three weeks, which is still continuing. But, in fact that stay order has already become infructuous in view of re-sponsoring of opp. party No. 5 after issuance of Annexure-7 during the pendency of the writ application. The Orissa Aided Educational Institutions (Appointment of Lecturers Validation) Act, 1998 was enacted to validate the services of those who were appointed against approved/admissible post between 1.1.1985 and 31.12.1992 and are continuing as such. Admittedly, the petitioner satisfies all the requirements as he is holding the 4th post of Lecturer in English till date. Therefore, his prayer is to regularize his service as per the 1998 Validation Act and to give consequential financial benefit.

4. According to the learned Counsel for the petitioner, in the meantime the person namely Sarat Das who was working as lecturer in English in 5th post has already been validated by virtue of 1998 Validation Act and he has been allowed regular payment of salary by opp. party No. 1 w.e.f. 17.10.1998 as mentioned in para 14(A) of the consolidated writ petition but the petitioner has been left out and the aforesaid benefit has not yet been made available to him. Our attention is drawn to the impugned order in Annexure-5A. The reason for not giving validation as indicated therein is that the person who has been selected through State Selection Board for recruitment against notified vacancies will be in a disadvantageous position it is not disputed that since 1.1.1985 till date no candidate has been sponsored against the 4th post. That apart, the 5th post of lecturer in other college has already been validated.

5. The counter affidavit filed by opp. party No. 3 clearly supports the case of the petitioner. In the counter affidavit filed by opp. party Nos. 1 and 2 through one Sudhir Kumar Joshi, Deputy Director, Non-Government College-1, a stand has been taken that u/s 10(2)(3) of the Orissa Education Act, 1969, opp. party No. 3 had no authority to appoint any lecturer on regular basis. As per the provision under Rule 5(3) of the Orissa Education (Recruitment and Condition of Services of Teachers and Members of the Staff of Educational Institution) Rules, 1974, the post held by the petitioner was required to be filled up by a candidates selected and sponsored by State Selection Board. According to the learned Counsel for the State, the Governing Body is only authorized to appoint a candidate selected by the State Selection Board and, as such, appointment of the petitioner has been made in contravention of the said Rules.

6. There is no dispute that the petitioner having been selected by the Governing Body of the College was appointed against the 4th post of English and there is also no dispute that the petitioner had the requisite qualification for being appointed as such. The only dispute is with regard to appointment of the petitioner against the post, which otherwise should have been filled up by a candidate sponsored and selected by the State Selection Board. As has been

indicated in the foregoing paragraph, service of the persons holding the 5th post of Lecturer in English in other college, as mentioned above, has already been validated under 1998 Validation Act. Therefore, there is no reason as to why the petitioner who is holding the 4th post of Lecturer in English shall be discriminated.

7. Since, the petitioner, has got the requisite qualification and was found suitable for the post and there was no Selection Board candidate sponsored till date to be appointed in the aforesaid college, we must not allow the technicalities to stand on the way of validating the service of the petitioner. We therefore, allow the writ application by quashing Annexure-5A and direct opp. party Nos. 1, 2 and 4 to validate the appointment of the petitioner under the Validation Act, 1998 and grant him financial benefits in terms of the said Validation Act, within a period of four months from the date of communication of this order.

Urgent Certified copy be granted.