

(1997) 04 OHC CK 0014
In the Orissa High Court
Case No : O.J.C. No. 2203 of 1996

Nimain Charan Sahoo

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 22-04-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1997) 1 OLR 530

Hon'ble Judges : S.C. Datta, J; R.K. Patra, J

Bench : Division Bench

Advocate : B. Routry and A.K. Mohanty, for the Appellant; S.P. Mishra, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—The Director, Higher Education Orissa, Bhunbaneswar-opposite party no. 2 in office order No. 27580 Dated 27-5-1995 (Annexure-6)-while approving the appointment of the petitioner against the third post of lecturer in English has declared his eligibility to receive 1/3rd grant with effect from 29-4-1993, 2/3rd grant with effect from 23-4-1995 and full salary cost with effect from 29-4-1837. In this application under Arts. 226 and 227 of the Constitution of India, the petitioner assails correctness of the period from which his eligibility for grant has been declared in the impugned order. He claims that he became eligible to receive 1 /"3rd grant with effect from 9-12-1990, 2/3rd grant with effect from 9-12-1992 and full salary cost with effect from 9-12-1994.

2. The case of the petitioner is that U, N, S. Mahavidyalaya Khairsbad, Mugapal In the- district of Jajpur was established during the year 1975 and it received concurrence from the Stats Government in the academic session 1977-78. After completion of five years from the date of receiving concurrence, the college became eligible to receive "full salary cost under the grant-in-aid principles from the academic session 1982-84, Consequent upon the increase of the roll strength of the college, the Governing Body In us resolution dated 8-5-1983 decided to

create the third post of lecturer in English in the college. One Sahadeb Jena was first appointed against the said post who continued till September 1986. Thereafter, one J. R. Dash was appointed on 18-9-1986 but he resigned. Thereafter, Sashi Bhusan Mohanty was appointed on 19-9-1986 who served up to the end of May, 1986. After he left, one Sudhir Kumar Das was appointed for 89 days. After the termination of his appointment, the petitioner came to be appointed as per the appointment order dated 22-4-1988. Pursuant to the said appointment, he joined the college on 29-4-1988 and since then has been continuing in the said post. Although the 3rd post of lecturer in English became eligible to receive 1/3rd grant in the year 1988, 2/3rd grant in the year 1990, because of inaction on the part of the Governing Body, the petitioner could not receive his legitimate dues. Being aggrieved by such inaction, he filed a writ application bearing O. J. C. No. 8550 of 1992 for appropriate relief. This Court by order dated 14-2-1994 disposed of the said writ application directing the Governing Body to make necessary recommendation to the Director, Higher Education for the approval of his appointment and the Director was called upon to consider the said recommendation and pass appropriate orders. In obedience to the said order, the Governing Body submitted its proposal on 12-3-1994 (vide Annexure-4) seeking approval of the petitioner's appointment. The State Government if the Department of Higher Education in letter No. 19595 conveyed to the Director, Higher Education, Orissa regarding the sanction of the Governor to the payment of grant-in-aid of Rs. 27,361/- in favour of the U. N. S. College, Mugpal towards payment of grant-in-aid under direct payment scheme in favour of the petitioner. On receipt of the proposal from the Governing Body as per Annexure-4, the Director examined the case and accorded approval to the appointment of the petitioner against the third post of lecturer in English as per the impugned order No. 2/580 dated 27-5-1995 at Annexure-6. The Director however, declared the petitioner's eligibility to receive 1/3rd grant with effect from 29-4-1993, 2/3rd grant with effect from 29-4-1995 and full salary cost with effect from 29-4-1997. The petitioner, as already indicated, claims that he is entitled to receive 1/3rd grant with effect from 9-12-1990, 2/3rd grant with effect from 9-12-1992 and full salary cost with effect from 9-12-1994.

On 21-3-1996, notice was issued indicating that the matter was likely to be disposed of finally at the stage of admission itself. On 14-2-1997, the case was listed for final disposal and as the contesting opp. parties did not file counter affidavit, on the request of the State Counsel, it was adjourned to 17-2-1997. . On that day (17-2-1997) the case was admitted and the learned State Counsel undertook to file counter-affidavit by 8-3-1997. Till today, the opposite parties have not filed their counter-affidavit. We have accordingly proceeded to dispose of this matter on the basis of the averments made in the writ application.

3. Shri Routray, learned counsel for the petitioner relying on the judgment dated 7-5-1992 in *Smt. Bilasini Sahoo v. State of Orissa* (OJC No. 2901 of 1990) and judgment dated 24-9-1992 in *Birendra Kumar Mishra v. State of Orissa* (OJC No. 5549 of 1992) contends that the period of five years to receive 1/3rd grant is to

be counted from the date of creation of the post and not from the date of appointment of the petitioner and admittedly, the post having been created by the State Government on 9-12-1986, and as it is a continuing post he is entitled to receive 1/3rd grant with effect from 9-12-1994, 2/3rd grant with effect from 9-12-1992 (on completion of seven years from the date of creation of the post.) and full salary cost with effect from 9-12-1994 (on completion of nine years from the date of creation of post) as per the grant-in-aid principles Shri S. P. Mishra. learned Additional Government Advocate on the other hand. contends that the petitioner having been appointed on 29-4-1988, he is eligible to receive 1 /3rd grant with effect from 9-4-1993, 2/3rd grant with effect from 24-4-1995 and full salary cost with effect from 29-4-1997 and the Director, accordingly, has rightly passed the order.

4. At the out-set, may it be stated that the payment of grant-in-aid to the petitioner is not governed by the Orissa (Non-Government Colleges, Junior Colleges and Higher Secondary Schools) Grant-in-Aid Order, 1994 which has come into force with effect from 6-12-1994. Under the aforesaid 1994 Grant-in-Aid Order, detailed provisions have been made regulating payment of grant-in-aid to private educational Institution or for any post or to any person employed in the institution. The payment of grant-in-aid to the petitioner is governed by the executive instructions issued by the Government from time to time. The Government in the Education and Youth Services Department letter Mo. 19462/EYS, dated 27-5-1978 decided that the teaching and non-teaching staff of aided colleges who have been appointed against the post created as a result of opening of additional sections or subjects which have completed five years from the date of their creation, shall be paid their salary direct by the Government. For the sake of convenience, we may extract the relevant portion of the said letter.

"From : Shri H K. Mishra, O. E. S., Deputy Secretary to Government. To The Director of Public Instruction, Orissa. Sub : Direct payment to the teaching staff of the aided (non-Govt.) Colleges in the State. Ref : Your letter No. 56318 dated 2-11-1977. Sir, I am directed to invite a reference to your letter referred to above and to say that Government after careful consideration have been pleased to decide that the teaching and non-teaching staff of aided colleges who have been appointed against the posts created as a result of opening of additional sections or subjects which have completed 5 years from the date of their creation shall be paid their salary direct by Government like other employees of these institution, subject to the condition that the creation of such posts and the appointment made against them have been duly approved by competent authority.

2. xx xx 3. xx xx Your faithfully,

Sd./ H. K. Mishra, 25-7-1978 Deputy Secy. to Government".

A bare perusal of the aforesaid decision communicated by the State Government would show that the base for determining payment of salary to the teaching and

non-teaching staff of the aided colleges is he "creation" of the post against which such members of the staff were appointed. The stress is on the expression appointment "against the posts created which have completed five years from the date of their creation". Had it been otherwise, the letter would have stated that the teaching and non-teaching staff who have completed five years from the date of their appointment, shall be paid their salary.

The Government in continuation of the aforesaid letter No. 19462/EYS, dated 27-5-1978 again in the Education and Youth Services Department issued letter No. 11131/EYS, dated 17-3-1983 indicating payment of 1/3rd grant, 2/3rd grant and full salary cost. The relevant portion of the said letter is extracted hereunder:

"From : Sri D. D. Jena, O. E. S. (I), Deputy Secretary to Government. To The Director of Public Instruction (H. E.) Orissa, Bhubaneswar. Sub: Direct payment of full salary cost to the state of non- Government Colleges in the State maturing for grant. Sir, In continuation of G. O. No. 194;2-EY3., dated 27-5-1978, I am directed to say that direct payment of full salary cost of the teaching and non-teaching staff of non-Government colleges as admissible according to the prescribed yard-sticks shall be payable to such colleges which have been accorded Govt. concurrence prior to the academic session 19/9-80. The colleges who have received Government concurrence with effect from the academic Session 1979-80 or thereafter until further orders shall be governed by the new grant-in-aid principles as detailed below :

(i) Colleges in advanced areas will receive 1/3rd of the deficit grant-in-aid after 5 years from the date of Government concurrence (recognition), 2/3rd after 7 years and full deficit after 9 years.

(ii) xx xx Yours faithfully. Sd/- D. D. Jena 17-3-1983 Deputy Secretary to Government."

The aforesaid letter issued in the year 1983 is not in supersession of the previous Government letter No. 19462/EYS, dated 27-5-1978 but continuation of the previous Government letter. On perusal of both the aforesaid letters, it would appear that the deciding factor or grant is the date on which the period of five years is completed on the date of creation of the post.

5. Let us now examine what was decided in the case of Smt. Bilasini Sahoo (supra) by this Court, In that case, writ petitioner (aimed that she became eligible to receive 1/3rd grant after five years if justification of the post of second lecturer in Zoology in the college, 2/3rd after seven years and full salary cost after nine years. in the counter-affidavit filed on behalf of the State Government and the director, it was contended that the second post of lecturer in Zoology although was justified from the session 1983-84, it had not been filled up till the date of joining of the writ petitioner on 1-8-1985. and accordingly, the writ petitioner's post became eligible for 1/3rd grant with effect from 1-8-1990 i. e. after completion of five years from the date of joining in the post. The Court accordingly posed the issue for determination as follows:

"So the dispute between the parties is about the date of eligibility to receive the grant-in-aid whether the same is the justification of the post or the joining of the incumbent to the post".

The writ petitioner in that case relying on the office order No. 45787 dated 21-10-1989 of the Director, Higher Education (Annexure-2 in that case) contended that her claim stood, substantiated inasmuch as one Jyotshna Manjari Pradhan who was appointed against the post of second lecturer in Botany on 23-11-1986. In the same college was notified to receive 1/3rd grant-in-aid from 1-8-1988 on the basis of that the post had become justified from the session 1983-84. We have perused the records of that case and after going through the aforesaid Director's office order, we find that as a matter of fact, Jyotshna Manjari Pradhan's eligibility to receive 1/3rd grant was declared on the footing of five years of justification of the post against which she was appointed. In the premises stated above, this Court accepted the contention of the petitioner that five years to receive 1/3rd grant is to be counted from the date the post became justified and not from the date of joining of the concerned incumbent against the post. The ratio of Smt. Bilasini Sahoo (supra) was subsequently followed by another Bench of this Court in Birendra Kumar Mishra (supra). It was observed as follows:

"The question was considered by a Bench of this Court in OJC No. 2901 of 1990 (Smt. Bilasini Sahoo v. State of Orissa and Ors.) disposed of on 7-5-1992 and it was held that the period of five years is to be computed from the date of creation of the post and not from the date of appointment of the petitioner. We are in respectful agreement with the decision in that case. We therefore dispose of the writ application by issuing similar order that the petitioner is entitled to the minimum grant-in-aid to draw 1/3rd of the salary after completion of five years from the date of creation of the post and further periods will be calculated on that basis....."

The same view has been taken subsequently in Uttam Kumar Rout v. State of Orissa : (OJC No. 1160 of 1978 disposed of on 7-12-1992), Jnanendra Biswal v. State of Orissa : (OJC No. 9392 of 1995 disposed of on 21-3-1996), Dr. Uttam Kumar Rout v. State of Orissa (OJC No. 4036 of 1996 . disposed of on 17-1-1997) and Gajendra Kumar Mishra v. State of Orissa : (OJC No. 958 of 1995 disposed of on 11-4-1997).

6. Now coming to the case at hand, there is no dispute that the third post of lecturer in English in U. N. S. Mahavidyalaya, Khairabad, Mugapal was created on 9-12-1985. The said post was held by different incumbents from 9-12-1985 till the petitioner came to be appointed on 22-4-1988 (who joined on 29-4-1988). The said post is a continuing one and as the case of the petitioner is not covered under the Grant-in-Aid Order, 1994, having regard to the consistent opinion of this Court in the matter, we have no hesitation to hold that the petitioner is entitled to receive 1/3rd grant, 2/3rd grant and full salary cost on completion of 5, 7 and 9 years respectively from the date of 9-12-1985 the post was created.

The opp. parties 1 and 2 are accordingly directed to modify the impugned order in terms of the observations made above. They are also directed to sanction arrears . on the differential amount and pay the same to the petitioner within six months of receipt of this judgment.

7. The writ application is allowed. There would be no order as to costs.

S.C.Datta, J.

8. I agree