

(2003) 06 OHC CK 0015

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1196 of 1994

Niranjan Nayak

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 20-06-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 — Rule 7, 9, 9(1)

Orissa Education Act, 1969 — Section 27(1)

Citation : (2003) 2 OLR 321

Hon'ble Judges : R.K. Patra, J;Ch. P.K. Misra, J

Bench : Division Bench

Advocate : B. Routray, M.K. Mohanty, N.R. Rout., B.P. Routray., P.K. Mohanty., N. Patra, D.K. Tripathy and S. Patra, for the Appellant; A. Routray, Addl. Government, for O.P. No. 1 and D.P. Sarangi, Senior Standing Counsel for O.Ps. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—This writ petition was allowed by order dated 19.4.1995 passed by a Division Bench of this Court declaring that the petitioner is entitled to draw I.A. (Intermediate in Arts) C.P. Ed. scale of pay with effect from 2.9.1986, the date of acquisition of training qualification, i.e. C.P. Ed. The State Government being aggrieved by the said order as well as similar orders passed in other connected cases, preferred Special Leave Petitions in the Supreme Court which set aside this Court's orders and remitted the matters for fresh disposal by order dated 21.4.1997. This is how this matter and other connected matters have come up for hearing before us.

2. We have heard counsel for parties. Since points involved in this matter and other connected matters are one and the same, they were heard together and are governed by this judgment.

3. Briefly stated, the case of the petitioner is that he is a Physical Education Teacher in Dadhibamanjew Bidyapitha which was an aided educational institution (now taken over by the State Government). On being appointed as a Physical Education Teacher (hereinafter referred to as "P.E.T.") in the said High School, he joined the post on 9.4.1975. At that time, he was an Intermediate in Arts (I.A.). On 2.9.1986 he passed C.P. Ed. i.e. the Certificate from the College of Physical Education (hereinafter referred to as "C.P. Ed.") which is the qualification required for a P.E.T. On acquiring the aforesaid training qualification, he laid claim before the Inspector of Schools for grant of I.A. C.P. Ed. scale. The claim was rejected by the Inspector of Schools in his office letter No. 4222 dated 25.4.1988 (Annexure-G/3) on the ground that he had not acquired the C.P. Ed. qualification prior to the cut off date (1.4.1981). We may extract the order hereunder :

"Since the validation date for allowing I.A.C.P. Ed. scale is 1.4.1981, Sri N. Nayak, P.E.T. of your school has qualified I.A.C.P. Ed. after the validate period. The question of allowing higher scale (I.A.C.P. Ed.) does not arise."

The correctness of the said order is the subject matter of challenge in this writ petition.

4. Before examining the contentions raised, we may profitably extract hereunder the order of the Supreme Court dated 21.4. 1997 remanding the matter to this Court for fresh disposal :

"Leave granted.

We have heard learned counsel on both sides.

These appeals by special leave arise from the judgment of the Orissa High Court, made on April 19, 1995 in O.J.C. No. 1 196 of 1994 and batch. The Government has prescribed April 1. 1981 as the cut off date for acquisition of the qualification and those who have acquired the qualifications prior to that date are entitled to the additional amounts as prescribed under the Rules. The High Court has allowed the writ petitions without reference to the relevant Rules. It is settled law that the cut off date has to be valid and bears reasonable relationship to the object sought to be achieved.

It is stated that the teachers are relying upon Rule 9 of the 1974 Rules. We are informed that several writ petitions are pending in the High Court on the basis of Rule 9. In that view of this matter, it may be desirable that all these matters be decided by the High Court.

Taking an over all view of all the facts, the appeals are allowed. The judgment of the High Court stands set aside. The High Court is at liberty to consider the matter afresh. Learned counsel for the respondents states that orders were implemented subject to the result of the appeals. Implementation of the order does not stand on the way of the High Court to have the matters examined. No costs."

5. Counsel for parties urged the following points :

(i) After Regulations were made by the Board of Secondary Education u/s 21(ii) of the Orissa Secondary Education Act, 1953, the qualification for P.E.T. in the non-Government Secondary School was matric with C.P. E.d. (vide Clause 20- A of Chapter-IX of the Regulations). Thus, there is no rhyme or reason to fix the cut off date 1.4.1981 which has no reasonable nexus with the object sought to be achieved. The stand of the State Government that 1.4.1981 has been taken as the cut off date because of the amendment to Clause-20 of Chapter- IX of the Board's Regulations is no correct, inasmuch as, the relevant clauses of Chapter-IX of the Board's Regulations were amended on 19.4.1981 and not on 1.4.1981.

(ii) The Board's Regulations apply to both the Government High Schools as well as the aided High Schools and since the State Government allowed I.A.C.P. E.d. scale of pay in respect of P.E.Ts. working in the Government Schools who acquired higher qualification subsequent to 1.4.1981, there is no reason as to why P.E.Ts. working in the aided High Schools who secured the training qualification after 1.4.1981 should be deprived of I.A.C.P. E.d. scale, in view of the Rule-9 of the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules. 1974 which lays down that every employee of an aided educational institution shall draw the same pay and dearness allowance as is admissible to his counterpart in the Government educational institutions under the relevant rules applicable to him. The fixation of cut off date 1.4.1981 by an executive instruction cannot supersede Rule-9 of the aforesaid 1974 Rules and the provisions of Orissa Revised Scales of Pay Rules. 1985, 1989 and 1999.

6. Before examining the issues involved, it would be relevant to trace the history of appointment and qualification of P.E).Ts. We need not however refer any of the provisions of the erstwhile Orissa Education Code because all the writ petitioners have come to be appointed after the enforcement of the Orissa Secondary Education Act, 1953. As provided u/s 3 of the said Act, the State Government constituted Orissa Board of Secondary Education to regulate, control and develop Secondary Education in the State. u/s 21, the Board has made a set of Regulations. Chapter-IX of the Regulations deals with recognition of educational institutions by the Board of Secondary Education. Regulation 18(2)(ii) of the said Chapter-IX provides that there should be one P.E.T. (Matric C.P. Ed.) for the school which seeks permission to open Class-X for the purpose of securing recognition or presenting candidates at the High School Certificate Examination of the Board. Regulation 20-A of the said Chapter-IX lays down that for the Schools with classes from VI to X having no additional Sections, there should be one P.E.T. Section 27(1) of the Orissa Education Act, 1969 empowers the State Government to make rules for carrying out all the purposes of the said Act. In exercise of the power the State Government have made the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 which have come into force with

effect from 1.4.1975. Rule-7(C) of the 1974 Rules provides that the age and qualification for appointment as teacher and for other posts for an aided educational institution would be the same as of similar or corresponding post in educational institutions established and maintained by the Government. Rule-9(1) states that every employee of an aided educational institution shall draw the same pay and dearness allowance as is admissible to his counterpart in the Government educational institutions under the relevant rules applicable to him.

7. As already stated, petitioner's claim for C.P. Ed. scale of pay is resisted on the plea that he acquired the said qualification after 1.4.1981. Law is now well settled that the cut off date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice of the said date unless it is shown to be capricious or whimsical in the circumstances, while fixing a line, a point is necessary and there is no mathematical or logical way of fixing it. The cut off date must be accepted unless it is very wide off the reasonable mark (See Union of India and Others Vs. M.V. Valliappan and Others, .

"1.4.1981" which has been fixed as the cut off date must therefore be supported on the touch stone of Article 14 of the Constitution. If the choice of the date results in classification, it has to be shown that the classification is based on an intelligible differential and on rational consideration which bears a nexus to the purpose and object thereof. The differential treatment accorded to those who obtained C.P. E.d. qualification prior to the specified date and those who acquired subsequent thereto must be justified on the touch stone of Article 14, otherwise it would be hit by the equality clause enshrined in the Constitution.

Counsel for the petitioner contended that the cut off date is wholly arbitrary, capricious and has no nexus with the object sought to be achieved. His further case is that P.E.Ts. working in Government High Schools are getting I.A.C.P. Ed. scale of pay although they had secured the requisite qualification after the cut off date and there is no reason as to why their counterparts in the aided High Schools should be deprived of the said benefit. In this connection, Rule 9 of the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of Staff of Aided Educational Institutions) Rules, 1974 is relied upon.

We do not find any reasonable classification for drawal of I.A.C.P. E.d. scale of pay basing on the cut off date 1.4. 1981. If a P.E.T. would be entitled to I.A.C.P. E.d. scale of pay if he had acquired requisite qualification prior to 1.4.1981 there is no reason as to why such scale of pay shall not be made available to P.E.T. who had secured the said qualification after the cut off date.

It would not be out of place to note here that in the Orissa Revised Scales of Pay Rules made under Proviso to Article 309 of the Constitution of India from time to time, the post of P.E.T. has been carrying separate scales of pay.

(1) Orissa Revised Scales of Pay Rules. 1974 : In the First Schedule (Education and Youth Services Department) it has been prescribed as follows :

SI. No. Name_of Post Existing scales Revised of pay scales of pay 62. Physical Education Teacher (Intermediate) 115-180 320-500 69. Physical Education Teacher 110-155 300-410

(2) Orissa Revised Scales of Pay Rules. 1981 : In the First Schedule (Education and Youth Services Department) .it has been prescribed as follows :

SI. Name of Post Existing scales Revised No. of pay scales scales of pay 167. Physical Education 255-390 Teacher (For untrained PET). 255-360 168. P.E.T. (Matriculate with C.P. Ed. 169. P.E.T. (Matriculate) 300-470 (In High Schools/ Training Schools) (For trained . PET). 170. Untrained P.E.T. 255-360 255-390

(3) Orissa Revised Scales of Pay Rules, 1981 : In the First Schedule (Education and Youth Services Department) it has been prescribed as follows :

SI Name of Post Existing scales Revised No of pay scales of pay 174. Physical Education Teacher (Intermediate) 370-630 935-1530 222. Physical Education 300-470 840-1240 Teacher. (For trained) (For trained) 223. Matriculate Physical 255-390 780-1160 Education Teacher. (For untrained) (For untrained) 224. Physical Education 300-470 840-1240 Teacher. (Trained) (For trained) (For trained) 225. Physical Education Teacher (Matriculate) 255-390 780-1160 (C.P. Ed.) (For untrained) (For untrained)

(4) Orissa Revised Scales of Pay Rules. 1989 :

SI. No. 6 : Posts with existing scale of pay of 840- 1240 was revised to 975-1660.

(5) Orissa Revised Scales of Pay Rules. 1998 : SI. No. 6 : Posts with existing scale of pay of 975-1660 was revised to 3200-4900.

8. The aforesaid indicate that there are posts of P.E.T. like trained, untrained, matriculate and Intermediate under the Education Department for which different scales of pay have been prescribed. There is no reference to any cut off date in any of the posts because a particular scale of pay is attached to a post with specific qualification.

9. There is also much force in the other contention raised on behalf of the petitioners which is based on Rule 9 of the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974. It lays down that every employee of an Aided Educational Institution shall draw the same pay and dearness allowance as is admissible to his counterpart in the Government educational institution under the relevant rules applicable to him. The said provision thus makes no distinction between an employee of an aided educational institution and his counterpart in the Government educational institution so far as entitlement of pay and dearness allowance is concerned. In view of the admitted fact that P.E.Ts. with I.A.C.P. Ed. scale of pay have been drawing the appropriate scale attached to the said posts in the Government institutions irrespective of date of acquisition of such

qualification, denial of such benefit to their counterparts in the aided educational institutions is clearly violative of Article 14 of the Constitution as envisaged in the aforesaid Rule 9.

For the reasons aforesaid, the petitioner, therefore, cannot be deprived of the said benefit even though he had acquired the C.P. E.d. qualification after 1.4.1981. The cut off date (1.4.1981) is capricious and whimsical and has no nexus with the object sought to be achieved and, therefore, the same is hereby struck down.

10. In the result, the writ petition is allowed. The petitioner would be entitled to I.A.C.P. Ed. scale of pay with effect from the date of acquisition of the requisite training qualification (2.9.1986). The opposite parties are directed to work out the differential salary payable to him and pay the same within four months of receipt of this order.

P.K. Misra, J.

11. I agree