
(1974) 02 OHC CK 0017
In the Orissa High Court
Case No : O.J.C. No. 410 of 1971

N.N. Swamy and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 04-02-1974

Acts Referred:

Constitution of India, 1950 — Article 16, 226, 309

Citation : AIR 1974 Ori 186

Hon'ble Judges : R.N. Misra, J;B.K. Ray, J

Bench : Division Bench

Advocate : Ranjit Mohanty and N.V. Ramdas, for the Appellant; L. Rath and Standing Counsel, for the Respondent

Final Decision : Partly Allowed

Judgement

R. N. Misra, J.—In the town of Berhampur within the district of Ganjam is located an educational institution known by the name of Khallikote College. The said institution was founded in the year 1856 as a High School. In 1878, the Intermediate Classes were opened and the College affiliated "to the Madras University. In 1888, the Management was transferred to a local committee, but owing to financial crisis the institution was threatened with closure. The then Zamindar of Khallikote raised a liberal endowment and in terms of a deed of trust dated 13-7-1896 the institution came to have its name as Khallikote College. The institution became one of the premier colleges of the area and in due course came to be affiliated to the Andhra University at Waltair. Thereafter, in 1943, with the creation of the Utkal University, affiliation to that University was granted, and ultimately with effect from 1967 the said College has now been affiliated to the Berhampur University.

For quite some time negotiation was going on between the State of Orissa and the Management of the College, so that the institution may be taken over by the State Government. On 18-2-70, the Managing Committee (opp. party No. 1) resolved to place the administration of the College in the hands of the State

Government. From July 1970 the State Government appointed one of the senior Professors as the Principal of the College. On 9-3-1971, a formal agreement was executed between the Management and the Governor of the State providing-

" X X X Whereas Government have agreed to take over the Management of the College along with its assets provided they are not saddled with any existing liabilities.

And whereas by its resolution dated 18-2-70 the transferor Managing Committee unanimously resolved to transfer the management of the college with all its assets described in the schedule below and that without any liability.

X X X X X Now the deed witnesses as follows:--

(1) That the transferor hereby transfers to Government the management of the Khallikote College along with its B. Ed. Section to be administered hereafter by the Government as a Government College.

(2) That the assets of the College described in the schedule below which are at present being administered by the transferor are hereby transferred to Government free of any cost to be held by Government absolutely for ever for the benefit of the College.

(3) That the transferor shall be liable for the outstanding liabilities, if any, of the College for which Government shall not be liable.

(4) That the transferor hereby agrees to execute any document or deed that might be required for the purpose of giving effect to this transfer be necessary hereinafter.

(5) That the transferor shall indemnify the Government against any claim that might arise hereinafter in connection with the administration of the college along with its assets described in the scheme appended hereto.

X X X X X "

2. The eight petitioners in this case were working as Readers in different faculties in the said College on the date of the aforesaid transfer in the scale of pay of Rs. 510-860. The petitioner No. 6 was the earliest recruit having joined the College as early as 3-9-57. The last of the petitioners to be recruited to the employment of the College was the petitioner No. 8 and he joined the College on 2-8-62. As shown in Annexure 1 (Nos. 9 and 10 therein are not petitioners) to the writ petition, excepting the petitioners 3, 5 and 8 who have been confirmed as Lecturers the other petitioners have been confirmed as Readers. The petitioners had obtained their promotions as Readers between 1-1-67 and 5-7-70.

3. On 23-3-71, Government provided the conditions governing the taking-over of the services of the teaching staff of the College (Annexure 7). Paragraph 4 of the said letter provided as follows:--

"The State Government shall offer ad hoc appointment to all staff in position on

the date of take-over subject to para 5 and sub-para (d) of this paragraph for a period not exceeding six months in each case treating all such staff as fresh entrants (underlining is ours) to Government service. The final absorption of such staff in Government service shall be subject to the following conditions-

(a) That the services of staff found surplus to the requirements, on the date of take-over, by application of prescribed yardsticks applicable to Government "Colleges, shall be terminated, that of the junior-most according to the date of appointment in the College before the date of take-over being terminated first, and in all such cases of termination one month's notice shall be given to the employee concerned.

(b) That after termination of services of surplus personnel, the cases of staff retained in Class I and Class II shall be referred to the Orissa Public Service Commission for determination of their suitability to hold posts in Class I or II as the case may be. The services of those who are not found suitable by the P.S.C. shall also be terminated by giving one month's notice in each case. Those found suitable by the Commission shall be finally absorbed in respective grade of the O.E.S. for which they are found suitable. It is hereby clarified that at the time of reference to the P.S.C. for determination of suitability for appointment as Readers, cases of lecturers of Government College, eligible for appointment as Readers shall also be simultaneously referred to the P.S.C. for consideration against those posts.

(c) While making "reference to the P.S.C. under sub-para (a) cases of those ad hoc Readers who would have been normally entitled to pay of less than Rs. 600/- per month on 1-3-69 by application of the formula "minimum of the scale of pay of Readers in force in the College on the date of their appointment as such by the Ex-Managing Committee plus one increment in that scale for every completed year of service upto 1-3-69" would be referred for determination of their suitability for absorption as Lecturers only.

x x X"

Paragraph 5 of that letter provides thus-

"Ad hoc appointments shall be issued to all Professors and such of the Readers in position, who on the date of take-over were in receipt of pay of Rs. 600/- per month or more, in the scale of pay Rs 600-1000/- against posts of Readers. Readers who on the date of take-over were in receipt of pay of less than Rs 600/- per month and all lecturers in position of that date shall be given ad hoc appointment against the post of Lecturers in the scale of Rs. 260-780 with effect from the date of take-over."

In paragraph 6 of that communication the manner of fixation of the pay was indicated. On 20-4-71, orders of appointment were issued to the petitioners in the following terms.

"Under the terms and conditions of take-over by Government of Khallikote-

Berhampur College in Government letter No. 7804 E. dated 23-3-71 you are appointed as..... temporarily on ad hoc basis for a period not exceeding six months with effect from the forenoon of the 9th March, 1971 or till appointment is made in consultation with the Orissa Public Service Commission whichever is earlier, subject to verification of character and antecedents and production of medical fitness certificate.

X X X Further, you are requested to give your option within fifteen days from the date of receipt of the appointment order whether you are willing to accept the appointment order under the terms and conditions as laid down by Government in their letter referred to above. The letter conveying your option should be furnished to the Principal on the due date....."

The petitioners allege,

(1) The Management of the College had no authority to transfer the management of the trust to the State by abdicating their functions as trustees;

(2) The transfer was not only of the assets -- movable and immovable -- but also of the management of the College including employees under the institution then in existence and, therefore, they were to be taken over in the position they were under the Management;

(3) Imposition of conditions in derogation of the existing terms of employment is unwarranted;

(4) There was no rational basis for fixing the date "1-3-69" in the Government order while the take-over as a fact was sometime in 1971;

(5) It was not open to Government to make a discrimination between the service under the Management and their own; at any rate, the past service could not be wiped out completely. For the requirement of the requisite experience for being considered for promotion to the post of Reader as also Professor, the service under the institution could not be overlooked or ignored.

4. Government in the counter-affidavit has taken the stand that all that is necessary to be decided is whether Government, after the College becomes theirs, are entitled to regularise the conditions of service of the employees and for that purpose the guideline has been indicated in the Government order dated 23-3-71. The Management of the College accepted the terms and the petitioners had been absorbed on the basis of these principles and option was extended to the members of the teaching staff of the College to come over to Government service on the terms indicated in the aforesaid Government order. It has been further stated that the claim of the petitioners for recognition of the past service is not tenable in law.

5. At the time of hearing the learned counsel for the petitioners confined his contentions to only the following aspects:--

(1) There was no justification for fixing the date as 1-3-69 when the real take-

over was on 9-3-71;

(2) The loss of past service for consideration of eligibility for being appointed as Reader or Professor is unreasonable and arbitrary; and

(3) There is no justification for treating the petitioners to be new entrants in the pay scale admissible to them.

6. Point No. 1-- During hearing of this application the learned Standing Counsel for the opposite parties realised that there was no particular reason to fix 1-3-69 as the basic date. In fact when the hearing was adjourned, we have been supplied with a copy of the latest Government order on the point dated 15-1-74 which is to the following effect-

"I am directed to say that Government had decided to take over the Khallikote College, Berhampur, Bhadrak College, Bhadrak and Panchayat College, Bargarh on terms and conditions as detailed in their order No. 7612-E dated 23-3-71, No. 7606/E, dated 23-3-71 and No. 7609/E, dated 23-3-71. Accordingly, these three colleges mentioned above were taken over on 9-3-71. Consequent upon taking over of the colleges, the teaching staff had represented their various grievances arising out of the terms and conditions decided by Government including protection of pay. This matter was under consideration of Government for some time past. After careful consideration it has been decided to calculate the pay of the individual staff of the aforesaid taken over College on 1-3-69 first in the scale obtaining under the management in accordance with the principles decided by the Government and thereafter to allow one normal increment for every completed year of service in the management scale as existing on 1-3-69, subsequent to 1-3-69 till 9-3-71, date of take-over, and finally fix the pay in appropriate Government scale. While fixing the pay on 9-3-71, the principles of pay fixation decided by Government in their letter under reference will be adopted. It has further been decided to consider the pay component of Rs. 600 or more admissible on 9-3-71 after such fixation under the principles indicated above for the purpose of offering ad hoc appointment to the posts of Readers....." With this Government order in the field, the first objection of the petitioners which was canvassed before us must now be taken as conceded and, therefore, it is not necessary to be agitated. The date of actual take-over has now been made the basis and in our opinion very appropriately.

7. Point No. 2-- As indicated in Annexure 1 each of the petitioners had actually rendered more than 18 years" service as Lecturer by the time of the take-over in 1971. The State Government in their order dated 30-7-70 (Annexure 8) have laid down qualification for appointment of Readers. The material portion thereof is extracted below:--

"I am directed to invite a reference to this Department Letter No. 4296 (2) E, dated the 18th February, 1970 and say that Government, after careful consideration, have decided that it is not necessary to insist in the additional qualifications for the posts of Readers prescribed in their letter under reference.

It is also unnecessary to lay down that the minimum academic qualification shall be a first class or second class master's degree with 48% of marks. There is no direct appointment to the posts of Readers and since all appointments to these posts are made from lecturers and since the aforesaid academic qualification has also been prescribed for the posts of lecturers, it is not necessary to prescribe any academic qualification for the posts of Readers. As regards the additional qualifications these are, according to the letter under reference, two, namely,

(a) research degree, publication in standard research journals and capacity to guide research, and

(b) special proficiency in extra curricular and administrative work.

The posts of Readers are, in reality, promotion posts.....

Keeping in view these difficulties as well as their intention published in the Resolution referred to above. Government have been pleased to order that the following principles shall henceforward be followed in the appointment of Readers, namely.

(a) No officer who has not had at least 8 years of teaching experience as a lecturer would be eligible for consideration; and

(b) The post of Reader shall ordinarily be filled up by promotion subject to the satisfactory performance and conduct of the officer as a lecturer.

X X X X"

Two conditions are thus necessary to be satisfied to entitle a lecturer to be considered suitable for promotion as Reader--(1) 8 years" teaching experience as a Lecturer, and (2) satisfactory performance and conduct of the Lecturer. The present contention of the petitioners is raised on the footing that the past service of theirs under the College before take-over is being obliterated and no credit is being given so far as the first requirement is concerned. It is contended that even if there is a reasonable nexus in the classification of service in a private college and a Government College, and even if it be conceded that the Lecturer in the Government College is superior in regard to merit, past experience as a Lecturer in the private college could not be completely obliterated so far as the first requirement for promotion as Reader is concerned. In fact there could be justification in our view in requiring a longer experience in a private college as Lecturer in order to entitle the Lecturer for consideration as Reader, but there does not seem to be the slightest justification in completely obliterating such experience and requiring these teachers from the taken-over college to gather the requisite years of experience after takeover to become eligible for consideration for promotion as Readers.

8. The learned Standing Counsel put emphasis on the fact that this condition was known to the teachers of the taken-over college and since they have exercised their option knowing the condition offered there is no scope for our interference.

Ordinarily we would have attached great weight to such a contention and would have refused to entertain the argument on behalf of the petitioners. But we cannot lose sight of the fact that when the take-over was decided at the level of the Management on one side and Government on the other, most of the teachers in the College had no other way but to opt to accept service under the new employer. Having served the College for years they had crossed the age bar for recruitment into Government service and by not opting to accept the service under Government by exercising the option as offered they faced the apprehension of loss of service.

There is another angle to look for to the matter. These lecturers who had either been confirmed or were officiating as Readers in the College would now be Government servants following the takeover. Unless they are given a reasonable prospect of service, they would not really be rendering any useful service to Government as members of the teaching staff. As we find that there is no rationale behind the decision of total obliteration of the experience gathered by them as teachers in the College before the takeover we think it just and proper that such a condition should not be imposed.

The justification for the condition lies in the distinction between the service in a private college and the service in a Government College. On behalf of the petitioners dispute is not raised to the requirement of passing through a selection conducted by the Public Service Commission for earning the promotion as Reader. But what is contended is the requirement of acquiring eligibility by rendering 8 years' fresh service after the take-over. As we have just indicated, if on the basis of that reasonable differentia a longer period was required to acquire the eligibility for consideration for promotion to the post of Reader we may not have thought of interfering in the matter. But loss of past service without any rhyme or reason seems to be very unreasonable. If the objection to entertaining the claim for consideration of these Lecturers is that they are not equipped because they were serving under a private college, they would necessarily be weeded out in the process of selection. We see no justification as to why they should not be admitted into consideration, because by admitting them as eligible for consideration no prejudice is caused to the existing Lecturers in Government Colleges at the time of takeover, nor any undue benefit is being conferred on the Lecturers of the taken-over college. The standard of test for promotion which would be similar for both Lecturers in Government colleges and Lecturers of taken-over colleges being the same, there would ultimately be no prejudice either to the employer or to the Lecturers of the Government colleges if on the basis of the past service before take-over the Lecturers of the taken-over college are also held eligible for consideration. We see force in the contention of the petitioners and since the obliteration of past experience is not grounded upon any justification we are prepared to hold that the Lecturers in the taken-over colleges who have also satisfied the requirement of 8 years of teaching experience would be entitled for consideration for promotion as Readers. We make it clear that whether they would be entitled to promotion or not has

nothing to do with our decision and would solely depend upon their performance and the satisfaction of the appropriate authority.

9. Point No. 3-- Now we shall deal with the last contention pressed before us on behalf of the petitioners. As it appears, Government have not yet fixed the pay of the petitioners. In fact while the writ application was pending several interlocutory orders had to be passed to enable the petitioners to draw their salary for current service. In the final order of Government dated 15-1-74 which has been extracted by us above there has been indication that the salary shall be refixed and the Accountant General has been informed to do so. The contention of the petitioners regarding salary and pay fixation cannot be appropriately dealt with by us at this stage. We must, however, point out that a substantial period of time has in the meantime passed and fixation of pay cannot be deferred further. We have been told by the learned Standing Counsel that Government have nothing more to do as they have indicated the principle and clearance has been given for the Accountant General now to determine the pay of each of these petitioners. In that view of the matter we would require the Accountant General to fix up the pay of the petitioners within a period of four months from the date of the receipt of the order. If the petitioners have any grievance in the matter of pay fixed for them, it is open to them to re-agitate the question as we make no final decision on that point.

10. The writ application is accordingly allowed in part. We make no order as to costs.

B.K. Ray, J.

11. I agree.