
(1998) 10 OHC CK 0034
In the Orissa High Court
Case No : O.J.C. No. 3452 of 1995

Nrusingha Khatei

APPELLANT

Vs

Director, Secondary Education and Others

RESPONDENT

Date of Decision : 16-10-1998

Acts Referred:

Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 — Rule 16(2), 19(2)
Orissa Education Act, 1969 — Section 27(4)

Citation : (1998) 10 OHC CK 0034

Hon'ble Judges : Susanta Chatterji, J;C.R. Pal, J

Bench : Division Bench

Advocate : B.N. Rath, B. Senapati, P.K. Panda, S.N. Mohapatra, K.R. Mohapatra, J. Rath, S. Ghosh and B.N. Mishra, for the Appellant; S.P. Mishra, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Susanta Chatterji, J.—In this writ petition the Petitioner has asked for the following reliefs:

..Issue Rule Nisi calling upon the opposite parties to show cause and upon no show cause or shown insufficient cause makes the said Rule absolute;

And further be pleaded to issue a writ in the nature of mandamus directing the opposite parties 1 and 2 to approve the trained graduate scale for the Petitioner w.e.f. 3-11-1995 and all other consequential benefits including the arrears and further be pleased to pass such other order/orders appropriate writ/writs as deemed just and proper....

2. It is stated in details that the Petitioner was appointed by the Managing Committee of G.T. High School, Belaguntha in the district of Ganjam as an Assistant Teacher and he joined against a sanctioned post of the School which is an Aided Educational Institution. The Petitioner was an Intermediate in Arts when

he joined the School in 1966. Subsequently he obtained B. Ed. degree in the year 1968. After B. Ed. result he was allowed to draw untrained graduate scale with effect from 2-7-1968. The Petitioner continues to receive I.A. C.T. scale and he is deprived of getting trained Graduate scale of pay. He relies on Rule 16(2) of 1974 Rules. For better appreciation the said Rule 16(2) is quoted herein below:

Rule 16(2): No teacher who has not undergone the training prescribed for the post shall hold the post substantively; provided that an untrained teacher having not less than ten years of service shall undergo condensed in-service training provided by the Government and after successful completion of such training shall be eligible for confirmation and shall be entitled to draw salary of a trained teacher;

Provided further that a teacher attaining the age of 48 years shall be exempted from undergoing the training and shall be entitled to financial benefits of a trained teacher.

3. The opposite parties have opposed the writ petition. On 21-7-1997 while the matter came up for hearing and this Court has passed the following order:

Heard learned Counsel for the Petitioner and learned Addl. Govt. Advocate Mr. K. Patnaik. There is grievance as to contravention of the second proviso to Rule 16(2) of the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of Staff of Aided Educational Institutions) Rules, 1974. The second proviso to Rule 16(2) as aforesaid indicates, inter alia, that without acquiring the necessary training qualification, a teacher by attaining certain age shall be exempted from undergoing the training and shall be entitled to financial benefits of a trained teacher. It is indicated that this Court will consider as to the vires of this portion of the rule. The matter shall be taken up for final disposal after a fortnight hence. Both sides are to come ready to assist the Court in this regard. The matter remains part-heard,

Time to time the matter appeared and the learned Additional Government Advocate took adjournments to contest the case. Finally we have heard Mr. Ghose for the Petitioner and Mr. Mishra, learned Addl. Government Advocate for the State at length.

4. It is argued on behalf of the Petitioner that he was allowed to draw I.A.C.T. scale as he obtained B. Ed. degree. At the relevant point of time there was no statute governing the field of education to regulate the establishment of educational institutions and their management and functioning. The Educational Institutions were being guided by a set of Executive Instructions, namely, Orissa Education Code which prescribes the qualification and eligibility of teaching and non-teaching staff of Educational Institutions. The said Code assumed effect of a Statute in pursuance of the enactment of Orissa Education Act, 1969 in terms of Section 27(4). As the Recruitment Rules were framed in 1974 till then the Code had statutory force so far as it was applicable to recruitment in Aided institutions.

5. It is contended that in terms of staffing pattern as prescribed under the Code, the Petitioner being eligible to hold the post of I.A.C.T. against Class-VIII was duly selected by the Management.

6. On 19-5-1988 vide E & YS Department Notification No. 22421 (OG Extv No. 784-D/3-6-88) the second proviso to Rule 16(2) of 1974 Rules was substituted as follows:

Provided further that a teacher attaining the age of 48 years be exempted from undergoing the training and shall be entitled to financial benefits of a trained teacher.

In support of his contention reliance has been placed on the decisions reported in The Bengal Immunity Company Limited Vs. The State of Bihar and Others, , 65(1988) C.L.T. 253 Rama Chandra Das and Ors. v. State of Orissa and Ors. and A.I. Rule 1990 SC 933 P.K. Unni v. Nirmal Industries and Ors.).

7. Mr. S.P. Mishra appearing for the State has submitted that looking at the facts of the case and the date of appointment, staffing pattern and scope of Rule 16(2) proviso it will appear that in fact, the Petitioner cannot invoke the benefit under Rule 19(2) second proviso. Factually he is not eligible to ask for the relief as prayed. When 1974 Rules came into existence it was not applicable to the Petitioner's case and the Petitioner cannot ask for any relief on the basis of Rule 16(2) second proviso. Regard being had to his age, qualification and the date when the Rule was introduced the Petitioner ipso facto cannot ask for the relief. If the Petitioner is not entitled to ask for such relief, it will be very academic aspect for the Court to go to the question of vireos so far as Rule 16(2) proviso is concerned.

8. With patience and anxiety, we have considered the submissions made on behalf of the respective parties. The Petitioner's main reliance is on the provisos to Rule 16(2). It is submitted that though admittedly the Petitioner does not have the training qualification, yet he is entitled to train graduate scale automatically. Looking at the second proviso of Rule 16(2) it appears that a teacher attaining the age of 45 years on the date of enforcement of the Rules shall be exempted from undergoing the training and shall be entitled to service benefits of a trained teacher. The Petitioner is aged about 57 years as per his affidavit dated 16-5-1995. The Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 came into force with effect from 1-4-1975. By 1-4-1975 on proper calculation, the Petitioner must have been aged around 37 years. If he was aged 37 years on the date of enforcement of the 1974 Rules, he will not be entitled to benefit of the said second proviso to Rule 16(2).

9. Leaving the question as to vireos or Constitutional validity of the said Rule. If we find that factually the Petitioner is not entitled to any relief, we need not go to decide the said question and leave it for the time being to be adjudicated and decided in an appropriate case and at the proper stage. We are of the view that

the Petitioner without having any B. Ed. qualification cannot ask for release of the Trained Graduate Teachers' Scale in the manner as prayed for.

10. Since we find that the Petitioner cannot ask for the benefit in the manner asked for, we dismiss the writ petition. There would be no order as to costs.

C. R. Pal, J.

I agree.

Writ petition dismissed.