
(1993) 06 OHC CK 0004
In the Orissa High Court
Case No : O.J.C. No. 4391 of 1990

Patras Soreng

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 18-06-1993

Acts Referred:

Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) (Amendment) Rules, 1976 — Rule 3

Citation : (1994) 1 LLJ 768 : (1993) 2 OLR 272

Hon'ble Judges : B.L. Hansaria, C.J;R.K. Patra, J

Bench : Division Bench

Advocate : B.M. Patnaik and R.N. Mishra, for the Appellant; Govt. Advocate, B.K. Beura and A.C. Badu, for the Respondent

Final Decision : Allowed

Judgement

B.L. Hansaria, C.J.—The petitioner had joined Hamirpur High School as a Physical Education Teacher in 1955 by force of the letter of appointment dated June 22, 1955 as at Annexure 1. After joining the school, he went for training and on completion of the same he was accepted as a trained Physical Education Teacher with effect from July 1, 1953 to be confirmed in that post with effect from Septembers, 1964. He served the school till the age of superannuation, which was 60 years, which date fell on October 19, 1990, and so, came to retire with effect from October 31, 1990. He prayed for grant of retirement benefits like pension and gratuity but the same not having been paid, the present application has been filed.

2. Before we proceed to examine the merit of the case of the petitioner relating to his entitlement to the aforesaid retirement benefits, it may be stated that Hamirpur High School is a minority institution having been established by Christian Minority, Githolic Diocese of Sambalpur/ Bcndargarh. Even so, it is an Aided Institution and fully aided at that, as staled in paragraph 2 of the petition, which averment has been replied in the counter affidavit filed by the Stale and

the Inspector of Schools (opp. parties 1 and 2) by slating in paragraph 3 that the school is an aided school but not one coming under "direct pay-mentsystem". As to what is the relevance of this, we shall advert later.

3. Employees of Aided Educational Institutions are entitled to retirement benefits as provided in the Orissa Aided Educational Institutions"Employees" Retirement Benefit Rules, 1981 (hereinafter "the Rules"). Rule 3 of the Rules, however, states that the same shall apply, inter alia, to the teaching staff, as was the petitioner, of such schools which come under the "directpaymentsystem". The proviso to that rule permits the Government to apply the Rules to any other educational institution or category of institutions as may be specified by general or special order. It is the requirement of the school to be under the "direct payment system" which has stood in the way of the petitioner in getting the benefit under the Rules inasmuch as the case of opp. parties 1 and 2, as already noted, is that the school in question does not come under the direct payment system. It is because of this that the vires of Rule 3 have been assailed in this petition, inter alia, on the ground that it is discriminatory. As, however, we are satisfied that despite what has been stated in rule the petitioner is entitled to the benefits under the Rules, we are not addressing ourselves on the question of validity of Rule 3 on the ground that it is discriminatory.

4. We have taken the aforesaid view because the school in question is admittedly fully aided and Rule 9(1) of the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 has stated, after its amendment in 1976, that every employee of an Aided Educational Institution shall ordinarily be paid in the month following the month to which the claim relates "directly by the Government or by any Officer or by any Agency authorised by Government". The position, therefore, is that after the aforesaid 1974 Rules were amended in 1976, a member of the staff of an Aided Educational Institution receives his salary directly from the Government, and, as such, such a school has to be regarded as under "the direct payment system* of which Rule 3 of the Rules speaks of. It may be that before the aforesaid 1974 Rules were amended in 1976, there used to be a distinction between schools receiving aid under the direct payment system and otherwise, which would appear to be so, inter alia, from what has been stated in Government Resolution No. 250011/EYS dated July 13, 1978 which has said something about the direct payment system being not applicable to educational institutions run by the Christian Minority Community. The 1976 amendment, to which we have referred earlier, however, leaves no manner of doubt in our mind that a school which is fully aided, as is the one at hand, has to be regarded as one under the "direct payment system" of which mention has been made in Rule 3 of the Rules. As to the aforesaid Government Resolution, we would say that though this seeks to make a distinction between minority institutions and non-minority institutions as regards the direct payment system, the same cannot override the statutory rules of 1974 as amendment in 1976, because of which that resolution and for that matter such other resolutions could not and did not

hold the field.

5. This being the position, the petitioner is entitled to all the benefits available to a member of the teaching staff under the Rules, and we direct the opposite parties to take necessary steps to make available the aforesaid benefits to the petitioner without delay, Let the petitioner file necessary papers before the managing committee of the school as early as possible. On receipt of the same, the managing committee shall duly forward the same within a period of one month to the concerned authority, who is said to be the Inspector of Schools, Sundargarh. The Inspector of Schools in his turn shall finalise the matter within a period of three months.

6. The petition is allowed accordingly.

R.K. Patra, J.

7. I agree.