(2009) 10 OHC CK 0090

In the Orissa High Court

Case No : Writ Petition (C) No. 10075 of 2006

Philip Kiro and John Kujur — APPELLANT

Vs

State of Orissa and Others — RESPONDENT

Date of Decision : 12-10-2009

Acts Referred:

Constitution of India, 1950 — Article 30
Orissa Aided Educational Institutions Employees Retirement Benefits Rules, 1981 — Rule 3
Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 — Rule 9(1)
Orissa Education Act, 1969 — Section 10(1), 2, 27(1)

Citation : (2009) 10 OHC CK 0090

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Advocate : B.M. Patnaik, R. Sharma, S.R. Singh Samanta, P.R. Patnaik, B.K. Tripathy and P. Behera, for the Appellant; A.G.A., for the Respondent

Final Decision : Allowed

Judgement

M.M. Das, J.—As similar questions arise in the aforesaid two writ petitions, the matters were heard together and are disposed of by this common judgment.

2. In W.P.(C) No. 9523 of 2006, the Petitioner was working as Assistant Teacher in Girl''s Upper Primary School, Gaibira, which is managed by the Catholic Board of Education, Sundergarh and is a minority institution. The said School is a fully aided school. The Petitioner was superannuated on 01.01.1994. Similarly, the Petitioner in W.P.(C) No. 10075 of 2006 was working as Headmaster-in Jhunmur Upper Primary M.E. School, which is also managed by the Catholic Board of Education, Sundergarh, and was superannuated on 31.07.1995. The aforesaid school is also a minority institution. Both the Petitioners in the aforesaid writ petitions have challenged the resolution dated 28.02.2003 issued by the School and Mass Education Department, Government of Orissa.

3. As the pensionary benefits of the Petitioners were refused to be paid, both the Petitioners in W.P.(C) Nos. 4584 of 2003 and 1910 of 2004 and approached this Court. This Court by its order dated 26.03.2004 disposed of the said writ petitions with the following directions:

Without entering into the arena of controversy, I dispose of the writ application directing Opposite Party No. 3 to submit the pension papers of the Petitioner before Opposite Party No. 2 in proper form enclosing all relevant documents along with Xerox Copies of the decisions of the two judgments referred to (supra). On submission of such papers, opposite party No. 2 shall scrutinize the same in consonance with the ratio of the decisions of this Court in the case of Patras and Benedict (supra). On scrutiny, if it is found that the Petitioner is entitled to pension, pass necessary orders for disbursement of the same. The entire exercise shall be completed within a period of six months from the date of communication of this order.

4. It is the case of the Petitioners that after disposal of the aforesaid writ petitions, the Petitioners approached the management of the Schools and submitted all relevant papers along with xerox copies of the judgments of this Court passed in O.J.C. No. 4391 of 1990 Patras Soreng Vs. State of Orissa and Others, and OJC No. 5556 of 1993 (Benedict Xalxo v. State of Orissa and Ors.). The Inspector of Schools, however, observing that the Petitioners are not entitled to get pension since the Controller of Accounts, Orissa, has opined that the Petitioners are not eligible to get pension in view of the Rule 29 (1) of the Government Resolution dated 28.02.2003 issued by the School and Mass Education Department, rejected the claim of the Petitioners. Rule 29(1) of the said Resolution runs as follows:

Rule-29(1) the length of qualifying service of an employees of recognized Aided Non-Government Minority Educational Institution retiring on or after 1st April, 1997 shall be computed by taking into account all his service rendered in a approved Aided post (excepting the period of service prior to attaining the age of 18 years), whether temporary, officiating or permanent, in one or more recognized aided educational institution subject to condition, specified in Sub-Para-(2), (3), (4) & (5) of this order for purpose of retirement benefits under these Orders.

5. The sole question raised before this Court in the present writ petitions is as to whether the Petitioners can be deprived of their pensionary benefits and monthly pension, due to the cut off date imposed in the aforesaid Rule-29(1). It may be mentioned here that the order of this Court passed in the previous writ petitions filed by the Petitioners clearly stated that the authorities are to examine the case of the Petitioners in consonance with the ratio of the decisions of this Court more specifically in the cases of Patras Soreng and Benedict Xalxo (supra). In the case of Patras Soreng (supra), this Court was dealing with a similar question with regard to entitlement of pensionary benefits to a teacher of Christian Minority School. In the said decision, this Court held as follows:

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 "direct payment system". 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 by 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.

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 authorized 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 13.7.1978 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.

6. On the above basis, in the said case, this Court held that the Petitioner is entitled to all the benefits available to the members of the teaching staff under

the Rules, and accordingly directed the opposite parties to take necessary steps to make available the aforesaid benefits to the Petitioner without delay.

7. The Orissa Aided Educational Institutions'' Employees'' Retirement Benefit Rules, 1981 was clarified/modified by the Resolution of the Government of Orissa in its Education and Youth Services Department on 11th July, 1984 to the following effect:

No. 27950-IX E.M.D.-25/84-E.Y.S. GOVERNMENT OF ORISSA EDUCATION & YOUTH SERVICES DEPARTMENT RESOLUTION THE 11TH JULY, 1984. Sub: Extension of retirement benefits to the employees of educational institutions of their choice established and administrated by minorities having the right under Clause(1) of Article 30 of the Constitution which are under the direct payment system of Grant-in-aid.

The Orissa Aided Educational Institutions Employees Retirement Benefit Rules, 1981 were made in exercise of the power conferred by Sub-section (1) of Section 27, read with Sub-section (1) of Section 10 of the Orissa Education Act, 1969 and brought into force with effect from the 1st April, 1982. As provided in Section 2 of the said Act, the said Act does not apply to the educational institutions of their choice established and administrated by minorities under Clause (1) of Article 30 of the Constitution. Therefore, the Orissa Aided Educational Institutions'' Employees'' Retirement Benefit Rules, 1981 are not ipso facto applicable to such institutions.

2. Teachers'' of Educational Institutions established and administrated by the minorities who have retired on or after the 1st April, 1982 on attaining the age of 60 years are not entitled to retirement benefits. This causes hardship to them as their counter parts in other aided educational institutions retiring on or after the 1st April, 1982 are getting the retirement benefits provided in the said Retirement Benefit Rules of 1981.

3. After careful consideration, Government have been pleased to decide that the provision in the above rules and executive instructions issued thereunder regarding, the procedure of payment or retirement benefits under the said rules may be made applicable mutatis mutandis to the educational institutions established and administrated by minorities which are covered by the Scheme of Direct Payment of grants-in-aid with effect from the 1st April, 1982, provided that, the employees are retired on attaining the age of 60 years.

ORDER- Ordered that the Resolution be published in the Orissa Gazette for general information and copies thereof be sent to all concerned.

By order of the Governor S.M. Pattnaik Secretary to Government

8. In view of the above clarification, the Petitioners having retired after 1st April, 1982 are governed under the 1981 Rules and are entitled to receive all retirement/pensionary benefits to which their counterparts in other educational institutions retiring on or after 1st April, 1982 are getting. The Petitioners having

been superannuated when the aforesaid 1981 Rules was in vogue, the question of depriving them from such right which has accrued in their favour pursuant to the aforesaid Rules by applying the impugned Resolution dated 28.02.2003 is not in consonance with law. It is aJso evident that teachers similarly placed who have retired prior to the cut off date now fixed, i.e., 1st April, 1997 as at Rule 29(1) quoted above, have received pensionary benefits and are being paid pension. Thus, depriving the Petitioners from such treatment would be discriminatory. The above conclusion are fortified by the cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation (see Keshavan Madhava Menon Vs. The State of Bombay,). But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing rights, it is deemed to be prospective only ''nova constitutio futuris formam imponere debet non praeteritis''. In the words of LORD BLANESBURG, ''provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment." (See AIR 1927 242 (Privy Council)). "Every statute, it has been said", oberved LOPES, L.J., "which takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes a new duty, or attaches a new disability in respect of transactions already past, must be presumed to be intended not to have a retrospective effect." (See Amireddi Rajagopala Rao and Others Vs. Amireddi Sitharamamma and Others,). As a logical corollary of the general rule, that retrospective operation is not taken to be intended unless that intentionis manifested by express words or necessary implication, there is a subordinate rule to the effect that a statute or a section it is not to be construed so as to have larger retrospective operation than its language renders necessary. (See Reid v. Reid (1886) 31 Ch D 402). In other words close attention must be paid to the language of the statutory provision for determining the scope of the retrospectively intended by Parliament. (See Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc.,). The above position has been highlighted in "Principles of Statutory Interpretation" by Justice G.P. Singh. (Tenth Edition, 2006) at PP. 474 and 475). In the The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, and in Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others, , the Supreme Court held that provision which operates to affect only the future rights without affecting the benefits or rights which have already accrued or enjoyed, till the deletion, is not retrospective in operation. The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others,). The above position was again highlighted by the Supreme Court in S.L. Srinivasa Jute Twine Mills P. Ltd. Vs. Union of India (UOI) and Another, .

9. In view of the above, it is directed that as the Petitioners have already produced all their required documents as has been stated in the writ petitions,

their cases shall be duly recommended by the respective Management of the School to the concerned authorities and their pensionary benefits shall be paid to them without any further delay. The entire exercise shall be completed within a period of two months from the date of communication of this order and upon completion of the same, payment of pensionary benefits as well as the regular arrear pension payable, shall be made to the Petitioners within a fortnight thereafter. It is needless to mention that the Petitioners shall be paid monthly pension regularly.

10. Both the writ petitions are accordingly allowed, but in the circumstances without cost.

