

(2010) 09 OHC CK 0009
In the Orissa High Court
Case No : O.J.C. No. 10096 of 2001

Prabira Kumar Biswal and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 16-09-2010

Acts Referred:

Orissa Education Act, 1969 — Section 7(C), 7(C)(4)

Citation : (2011) 111 CLT 677 : (2011) 1 OLR 239

Hon'ble Judges : S. Panda, J;B.P. Das, J

Bench : Division Bench

Judgement

B.P. Das, J.—The Petitioners, who are the teaching staff of the School for the Deaf located at Sunabeda in the district of Koraput, have filed this writ application challenging the order dated 25.7.2001 passed by the District Social Welfare Officer, Koraput, O.P.4, in Annexure-10 intimating them that in response to the order dated 19.9.2000 passed by this Court in O.J.C. No. 7823/2000 and in view of the reduction of budgetary provision, the Government in Women and Child Development Department has been pleased to decide not to allow the benefits of the O.R.S.P. Rules, 1996 (Orissa Revised Scales of Pay Rules, 1996) in favour of teaching staff of special schools.

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2. The brief facts leading to this writ application tend to reveal that the school in which the Petitioners were appointed was established in the year 1986 by the Red Cross Rotary Society, Koraput, which is a voluntary Organization and established the school for imparting education to the handicapped children. The State Government in Community Development & Rural Reconstruction Department after careful consideration of the financial assistance provided to the voluntary organizations for maintaining the special schools imparting education to blind, deaf and dumb and mentally handicapped children in the State, framed a set of rules called "Rules Governing Grant-in-Aid to Institutions Imparting to Handicapped Children"s" (herein after called, "the GIA Rules") and notified the

same by the resolution dated 31.12.1985, vide Annexure-1. Rule-5 of the said GIA Rules dealing with the scale of GIA provides as follows:

5. Scale of Grant-in-aid-(I) Unless revised by Government, the grant-in-aid payable to an institution shall be calculated at the following rates per month per student:

189 Residential Institutions High School Elementary/Middle School	Rs. Rs. Food
90 90 Bedding, Clothes, Soap, Oil, etc.	15 15 Educational Expenses (both general education & vocational education, and including teachers' salaries)
30 15	

Total 175 160

Non-Residential Institutions Educational Expenses	15 Conveyance Expenses (of students only)	20 Contingencies	40
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Total 75

INDIAN LAW REPORTS, CUTTACK SERIES [2010] NOTES-

(i) The scale of expenditure indicated above be varied for any item by the Management, but any increase on any item shall not entitle it to an additional grant from the Government. The provision on food, however, shall not be reduced under any circumstance.

(ii) If any other contribution is received, its receipt and utilization shall be fully accounted for.

(2) Residential institutions receiving grant-in-aid for the first time will also receive a grant calculated at the rate of Rs. 300 (Rupees three hundred) only per student towards the cost of furniture to be used by students. This grant will be given once for all and is not renewable from year to year except for new students who may have been admitted since the last grant was given.

(3) The grant-in-aid admissible according to the above scale may be reduced on account of shortage of budget provision or existence of any other ground justifying reduction.

(4) Notwithstanding anything in the foregoing sub-rules and subject to availability of funds, Government shall be competent to sanction a 190 special grant to any institution to meet an expenditure of emergent or non-recurring nature.

(5) In the event of receipt of any assistance from the Government of India, the assistance shall be utilized strictly for the purpose for which it is provided and in the manner indicated by the Government of India and the State Government.

As there was no provision in the GIA Rules in regard to the recruitment of teachers and their scales of pay, etc., the State Government by resolution dated 28.12.1987 (Anneure-2) made certain amendments. By the said amendment, a new Rule 5-A was inserted. Sub-rule (1) of Rule-5-A provides that the teachers

of the institutions shall be paid salary at rates applicable to teachers of comparable rank and qualification in Government schools subject to their possessing the qualifications prescribed for the posts.

Thereafter, the management of the Petitioners' institution submitted necessary proposal to the State Government for approval of their appointment and release of salary. The Deputy Director-cum-Deputy Secretary to Government in Panchayat Raj Department by letter dated 26.2.1991 (Annexure-7) conveyed approval of the Director, Social Welfare, to the appointment of the Petitioners against the posts noted therein for payment of salary at Government scales of pay with the stipulation that the P. KU. BISWAL v. STATE OF ORISSA [B. P. DAS, J.] approved staff would receive Government scales of pay subject to the conditions, if any, as noted against each from the date of their joining as entitled under the rules. The names of the Petitioners find place in Annexure-7 as well as in the order of approval dated 16.7.1992 communicated to Petitioners' institution in Annexure-8. With the passage of time, the State Government also extended the benefit of revised scales of pay from time to time as per the Orissa Revised Scales of Pay Rules meant for the Government employees, which means the State Government decided to allow the Revised Scales of Pay to the staff of the Petitioners' institution and similar institutions run by the voluntary organizations in the State, as reflected in the resolution dated 18th December, 1992 passed by the Government of Orissa in Panchayat Raj Department, vide Annexure-9. Despite repeated representations, when the Petitioners did not get the benefit of ORSP Rules, 1996 in terms of Rule-5-A(I) of the G.I.A. Rules, finding no other alternative they filed a writ application being O.J.C. 7823/2003 before this Court, which was disposed of by order dated 19.9.2000 directing the State Government to consider the claim of the Petitioners for payment of salary in the revised scale of pay as per the 191 Orissa Revised Scales of Pay Rules, 1996 and in the event it is found that the Petitioners are entitled to the revision of scales of pay, the differential amount would be paid within six months from the date of communication of that order. When the aforesaid order dated 19.9.2000 was not complied with, the Petitioners filed a contempt petition bearing Crl. Misc. Case No. 269/2001 and this Court passed the following orders, relevant portion of which is reproduced herein below:

It is most unfortunate that the order dated 19.9.2000 passed by this Court in O.J.C. No. 7823/2000 has not been complied with by the opp. Parties for long time. However, as a last chance we grant eight weeks' time to the opp. parties to comply with aforesaid order of this Court, if not already complied with, failing which it will be seriously viewed.

Thereafter, the District Social Welfare Officer, Koraput, by letter dated 25.7.2001 (Annexure-10) intimated the Petitioners the decision of the State Government in Women & Child Development Department not to allow the benefits of the O.R.S.P. Rules, 1996 to the teaching staff of the Special Schools, vide Annexure-10. The said order, as stated above, challenged in this writ petition is

extracted hereunder:

I am to say that in response to the Order No. 2 dt.19.9.2000 of High Court in the O.J.C. No. 7823/2000 and in view of the reduction of Budgetary Provision Government in Woman and Child Development Department has been pleased to decide not to allow INDIAN LAW REPORTS, CUTTACK SERIES [2010] the O.R.S.P. Rules, 1996 in favour of teaching staff of special schools.

According to Mr. B. Routray, learned Counsel for the Petitioners, the impugned order dated 25.7.2001 in Annexure-10 has been passed not only to deprive the Petitioners from getting the benefit, which has been extended by the Government, but also to nullify the order dated 19.9.2000 passed by this Court in O.J.C. No. 7823/2000. That apart, no reason has been assigned as to why they will be deprived of such benefit when at various stages, the Government found that the Petitioners were entitled to get such benefits in terms of Rule 5-A of the Rules and the case of the Petitioners was also considered and they were found eligible to get such benefits.

A counter affidavit has been filed on behalf of O.P.1-Secretary to Government, Women and Child Development Department, basing upon which learned Counsel for the State submits that as the Petitioners are neither Government servants nor are they serving in an aided education institutions or are entitled to get the benefit of the Orissa Revised Scales of Pay Rules, 1996, the writ petition is devoid of any merit. Apart from that, the 192 order dated 25.7.2001 under Annexure-10 refusing to grant the benefit of Revised Scales of Pay to the Petitioners was due to reduction of budgetary provision and therefore, it is not at all possible on the part of O.P.1 to pay the Revised Scales of Pay to the teachers of the Special Schools managed by the Non-Governmental Organisations and therefore, there is no illegality or irregularity in the impugned order in Annexure-10. In this regard, our attention is drawn to paragraph-8 of the counter affidavit wherein in reply to the averments made in paragraphs-6, 7 & 8 of the writ petition, it is stated that the Government has nothing to comment.

Paragraphs-6, 7 & 8 of the writ petition deal with the amendment of the Rules and insertion of Rule 5-A. Apart from the aforesaid limited objection, as projected in the counter affidavit, learned Counsel for the State further submits that the school, in which the Petitioners are working, is run by the Red Cross Society, which is a voluntary organization, and once the revised scale of pay is released, the same will go to the coffers of the said voluntary organisation, which is also getting aid from the Central and State Governments and other source will only enrich it.

As regards the above objection raised by the learned Counsel for the State, we may say that the apprehension of the learned Counsel for the State is borne out from the record and cannot be accepted as the State Government took a conscious decision to extend the benefit of revised scales of pay to the Petitioners like that of the teaching and non-teaching staff working in

Government Schools, the intention of the State is only clear, i.e., to give the benefit to the teachers of comparable rank in these types of institutions. The State Government has also created a mechanism, which P. KU. BISWAL v. STATE OF ORISSA [B. P. DAS, J.] works to check the misutilisation of financial aid given by the State Government to the institutions in question. Sub-Rule 3(i) & (v) of Rule 5-A of the G.I.A. Rules, which was introduced by the amendment made by the Resolution under Annexure-2, which provides as follows:

3. The Management shall be eligible to receive grant-in-aid from Government to meet the expenses on account of salaries of teachers subject to the following conditions:

(i) That the list of teachers and the scales of pay in respect of seach has been approved by the Government.

(v) That the assistance may be reduced or revised, if the voluntary organization receives any assistance for the same purpose from the Government of India or any other source.

Hence, the apprehension of the learned Counsel for the State that the aid from the State Government would enrich the N.G. Os., is unfounded.

This being the position, let us now see, what is the effect of Annexure-5, i.e., the communication dated 28.6.1991 issued by the Deputy Director-cum-Deputy Secretary to Government, Panchayati Raj Department. It cannot be strictly construed to be a denial of giving the Revised Scales of Pay to the Petitioners. It is only a postponement of the same because of reduction in budgetary provision, as it prevailed during the year 2001. The scenario of the State Government has been changed now in 2010. It is further submitted by Mr. Routray that in the meantime, the Petitioners have also got the benefit of 5 & 6 revised scale of pay on the latter date. This shows that the postponement is a temporary one and due to the circumstances that prevailed when the impugned order dated 25.7.2001 under Annexure-10 was passed. Our attention is drawn to a decision of this Court rendered in Prafulla Kumar Sahoo Vs. State of Orissa and Another, wherein interpreting Section 7C of the Orissa Education Act, this Court passed the following orders:

The aforesaid circular of the Finance Department is the basis of the decision in the impugned order dated 9.8.2000 of the Government of Orissa, Department of Higher Education rejecting the case of the Petitioner for approval and grant-in-aid was would be clear from the very language of the impugned order dated 9.8.2000 quoted above. As the Finance Department, Government of Orissa, had no jurisdiction to impose restrictions by an executive order on the claim of any educational institution or any member of its teaching or non-teaching staff to grant-in-aid, the impugned order dated 9.8.2000 of the Government of Orissa, Higher Education Department which is based on such executive order of the Finance Department, INDIAN LAW REPORTS, CUTTACK SERIES [2010] Government of Orissa is ultra vires Sub-section (4) of Section 7C of the Orissa

Education Act and the Grant-in-Aid Order, 1994 and is also without jurisdiction and is liable to be quashed.

Considering all these aspects and the provisions made in Rule 5-A which was brought under the amendment made in the resolution dated 31st December, 1985 Governing Grant-in-aid to Institutions Imparting Education to Handicapped Children, we do not get any substance in the allegation of the Petitioners that the State Government is intentionally going to deprive the Petitioners from getting the revised scales of pay, 1996. However, considering all those aspects and taking into consideration the objection raised, we find that there is a provision in the G.I.A. Rules to take care of such eventuality. Accordingly, we allow this writ petition and set aside the order dated 25.7.2001 passed by the District Social Welfare Officer, Koraput, O.P.4 and direct the State Government to extend the benefit of revised scale of pay, 1996, as applicable to the teachers of comparable rank 194 in Government Schools with effect from the date the O.R.S.P. Rules came into force within a period of six months from the date of communication of this judgment. There will be no order as to cost.