

(1995) 12 OHC CK 0006

In the Orissa High Court

Case No : O.J.C. No's. 9655 of 1992, 9869 of 1993 and 5672, 6063, 6256, 6257, 7107, 7160, 7477, 8031 and 9520 of 1994

Priti Ranjan Pradhan and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 22-12-1995

Acts Referred:

Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 — Rule 8(3)

Citation : (1996) 81 CLT 505 : (1996) 1 OLR 145

Hon'ble Judges : D.P. Mohapatra, Acting C.J.; S. Chatterji, J; R.K. Patra, J

Bench : Full Bench

Advocate : S.K. Purohit, in OJC 9655/92, S.B. Mohanta, in OJC 9869/93, R.K. Mohapatra, in OJC 5672/94, M.R. Nayak, in OJCS 6063/94 and 7477/94, S.K. Nayak, in OJCS 6256/94 and 6257/94, K.K. Swain, in OJCS 6520/94 and 8031/94, B. Misra, in OJC 7167/94 and M.R. Panda, in OJC 7160/94, for the Appellant; Government Advocate, for the Respondent

Judgement

D.P. Mohapatra, A.C.J.

1. In these cases the question that arises for our consideration is whether the Full Bench decision in the case of Golakh Ch. Mohanty and Others Vs. State of Orissa and Others, , requires reconsideration by a larger Bench. The relevant portion of the reference order passed by the Division Bench reads:

"Prima facie the contention raised on behalf of the State Government is fully supported by the decision of the aforesaid Full Bench case. But to us it appears that it would create great harassment to all those teachers who were appointed as Headmasters of the different unaided schools when there was no embargo for their appointment."

2. The facts of the case relevant for determination of the aforementioned question may be shortly stated thus :

The petitioners were appointed as Headmasters of recognised, unaided High Schools. At the time of appointment, they did not possess the requisite eligibility qualification for holding the post of Headmaster of High School, i. e., seven years" teaching experience as trained graduate teacher. Therefore, when the schools became aided educational institutions, the petitioners were approved as in-charge Headmasters. They were not paid salary in the sanctioned scale of pay meant for the post of Headmaster of High School. In course of time, they got themselves trained and also acquired the requisite teaching experience as trained graduate teachers. Thereafter they claimed salary according to the Headmaster"s scale of pay. The said benefit having been not extended to them, they filed the writ applications seeking writ of mandamus for the purpose.

3. The stand taken by the opposite parties in essence was that the principles laid down in Golakh Chandra Mohanty"s case (supra) could not be extended to the case of the petitioners and, therefore, the Headmaster"s scale of pay could not be granted to them. To put it differently, the opposite parties contended that by 3-6-1988 (i. e. the cut off date as held by this Court in the aforementioned decision) the teachers who had not acquired the requisite experience (seven years" teaching experience as trained graduate teacher) could not be granted the Headmaster"s scale of pay.

4. The Full Bench in Golakh Chandra Mohanty"s case considered the question, "whether seven years" teaching experience as trained graduate is necessary to make an assistant teacher eligible for promotion/appointment to the post of Headmaster of a High School ?". After considering the question from different angles the Full Bench summed up its conclusion in paragraph 26 of the judgment in the following words:

"1 Seven years" teaching experience as trained graduate teacher was necessary for an assistant teacher to be promoted to the post of Headmaster with the aid of Rule 8 (2) (b) of the 1974 Rules in those cases where the appointments had been made on or after 29-4-1977, when the amended regulation 17 (2) (i) of the Board"s Regulations had come into force. This applies both to aided and unaided schools.

(2) The promotions of incumbents made even after 29-4-1977 despite their not having had the requisite qualification (i.e., seven years" teaching experience as trained graduate teachers) would not be re-opened if the appointments had already been approved.

(3) Those cases of promotion relating to which approval orders have not been passed by today shall be decided keeping in view what we have stated above, namely, that if the incumbents had acquired the requisite qualification before 3-6-1988, the promotions/appointments shall be approved.

(4) Those cases in which the requisite qualification had not been obtained before 3-6-1988 shall not be approved and the posts shall be treated as vacant on and from 3-6-1988 and shall be filled up by complying with the requirements of Rule

8 (3) of the 1974 Rules.

(5) Rule 8 (3) of the 1974 Rules applies to all aided schools irrespective of whether the school has started receiving full salary-cost or not."

Discussing the relevance of the cut-off date 3-6-1988, it was observed in paragraph 25 of the judgment that in so far as those cases in which appointments of Headmaster have not been approved by the date of the judgment on the ground that the incumbents did not have seven years' teaching experience as trained graduate teacher by the time they were promoted to the post of Headmaster, approval shall be accorded in those cases where the incumbents had acquired seven years' teaching experience before 3-6-1988, on which date Rule 8 (3) of the 1974 Rules became operative; in those cases where this length of experience has not been acquired before 3-6-1977, the posts of Headmaster shall be treated as vacant, which would bring into operation Rule 8 (3) of the 1974 Rules, and the posts shall be filled up in accordance with the provisions contained in Rule 8 (3).

5. At the commencement of the hearing, we asked the learned counsel appearing for the petitioners in all the cases whether any of them was questioning the correctness of the decision in Golakh Chandra Mohanty's case (*supra*). None except Shri S. B. Mohanta, learned counsel appearing in OJC No. 9869/93, wanted to question the correctness of the said decision. Indeed, they submitted that they want implementation of that decision. The learned Advocate-General appearing for the State of Orissa in the Department of School and Mass Education, the Director, Secondary Education, and the Inspectors of Schools concerned also supported the decision. We, therefore, heard Shri S. B. Mohanta at length. His attack was mainly against conclusions 3 and 4 of the Full Bench decision quoted above. The thrust of his argument was that there is no justification for fixing 3-6-1988 as the cut-off date for the purpose of extending the benefit of Headmaster's scale of pay to persons appointed in the post without possessing the prescribed qualification when the school was unaided. According to him, as a result of fixation of the cut-off date, a section of the teachers have been denied the benefit of Headmaster's scale of pay though they have been discharging the duties of the post since long.

6. Therefore, the question for consideration is whether the Full Bench decision in the case of Golakh Chandra Mohanty v. State of Orissa (*supra*) needs re-consideration. If the question is answered in the affirmative, the cases have to be placed before a larger Bench to consider the correctness or otherwise of the decision. As noted earlier Shri Mohanta's challenge is directed against conclusions 3 and 4 recorded in paragraph 26 of the judgment. In essence, his objection is against fixing 3-6-1988 as the cut-off date for approval of appointments of unqualified and ineligible persons as Headmasters. It has already been noticed that 3-6-1988 is the date on which Sub-rule (3) of Rule 8 of the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 (for short,

"the 1974 Rules") was brought into force by an amendment. For convenience, the said provision is quoted hereunder:

"Vacancies in the posts of Headmasters of aided Boys' High Schools and Headmistresses of Girls' High Schools and Reader including Principals of aided Colleges under the fold of the "system of direct-payment-of-full-salary-cost" shall be filled up by the eligible trained graduate teachers of respective categories of High Schools and Headmistresses of respective categories of Middle English Schools and by the lecturers belonging to the common cadre of the Aided Colleges, as the case may be, from the select list prepared by the Selection Board in the manner prescribed in the Regulation framed by the Selection Board for the purpose, on the basis of the recommendation of a Committee to be constituted by the Government which shall be headed by the Director. The selection shall be made on the basis of seniority in the common feeding cadre and performance. The zone of consideration shall be thrice the number of vacancies :

Provided that ad hoc promotions to the posts of Readers which includes Principals of aided Colleges, Headmasters of aided Boys' High Schools and Headmistresses of aided Girls' High Schools under the fold of the "system of direct payment-of-full-salary-cost" may however, be made from the concerned common feeding cadre for a period of one year or till the date of receipt of select list from the Selection Board, whichever is earlier, with the prior approval of Government:

Provided further that in the absence of common feeding cadres, appointment to the posts of Headmasters of aided Boys' High Schools and Headmistresses of aided Girls' High Schools of the State under the fold of the system of direct - payment-of-full-salary cost can be made by the authority from amongst the eligible trained graduate teachers of the respective categories of aided High Schools and Headmasters and Headmistresses of respective categories of aided Middle English Schools, as the case may be on the recommendation of the Selection Board through an open advertisement. The selection shall be on the basis of the length of service and performance as trained graduate teachers in aided High Schools or Headmasters and Headmistresses in aided Middle English Schools."

7. The aforesaid rule lays down the procedure for promotion to the post of Headmaster of aided High Schools under the fold of "the system of direct payment of full salary-cost". The promotion has to be made from the select list prepared by the Selection Board on the basis of seniority in the common feeding cadre and performance. Even ad hoc promotions to the post are to be made by the authority from the common feeding cadre or, in the absence of common feeding cadre, from amongst the eligible trained graduate teachers of the respective categories of aided High schools. From the date of enforcement of the above rule, there is no scope for appointment/ promotion to the post of Headmaster of a particular school from the trained graduate teachers of the said school either by the Managing Committee or by any other authority. It follows

that if by 3-6-1988 a person has acquired the eligibility qualification for holding the post of Headmaster of an aided High School (seven years' teaching experience as trained graduate teacher), then his case could be considered only in the manner and according to the procedure laid down in Sub-rule (3) of Rule 8 of the 1974 Rules. It is relevant to note here that it has been held in Golakh Chandra Mohanty's case (supra), and the position is not disputed before us that seven years' teaching experience as trained graduate teacher was the eligibility qualification for appointment/promotion as Headmaster of a recognised High School under the Regulations framed by the Board of Secondary Education, Orissa. This position has been discussed in paragraph 10 of the judgment in Golakh Chandra Mohanty's case. Therein, reference has been made to the Division Bench of this Court in the case of Kailash Chandra Champati v. State of Orissa and Ors. : 1990 (II) OLR 533 in which it was held, inter alia, that while Rule 8 (2) (b) concerns itself with the case of promotion of teachers in the school, yet implicitly it does not have any application to the case of promotion to the post of Headmaster, which has been dealt with by a specific Rule, i.e. Rule 8 (3) and Rule 8 (2) would, therefore, apply to all other cases of promotion. In view of the clear provision in the rule, it is not permissible to issue a direction for according approval to a person who has not been selected in the manner prescribed in the rule as Headmaster of an aided High School. Therefore, this Court fixed 3-6-1988 as the cut-off date for approval of persons who had acquired the requisite eligibility qualification for holding the post of Headmaster and directed that the posts held by ineligible persons should be taken as vacant on and from that date and be filled up in the manner prescribed under the rule. In the context, it cannot be said that fixation of 3-6-1988 as the cut off date is arbitrary. Though as a consequence of the same, some persons functioning as in-charge Headmasters of High Schools will not be able to continue in the post and will have to wait till their turn for promotion comes in the common feeding cadre of trained graduate teachers, we are not persuaded to think that this causes harassment to them. It has to be borne in mind that these persons were appointed/promoted as Headmasters when they did not possess the requisite eligibility qualification of training and seven years' teaching experience after training and their appointment to the post had not been and could not have been approved by 3-6-1988 since they had not got acquired the requisite experience. The date 3-6-1988 has rational nexus with the object sought to be achieved by the provision which requires that seven years' teaching experience as trained graduate teacher is eligibility qualification for appointment/ promotion as Headmaster of a recognised High School. The cut-off date cannot be dubbed as arbitrary. As observed by Sabyasachi Mukharji, J. (as he then was) in paragraph 38 of Dr (Mrs) Sushma Sharma and Others Vs. State of Rajasthan and Others, , "what is best is not always discernible", and the fixation of cut-off date may have "some odour to some people".

8. On giving our anxious consideration to the matter, it is our considered view that the decision of the Full Bench of this Court in the case of Golakh Ch.

Mohanty and Others Vs. State of Orissa and Others, does not need reconsideration. The reference is answered accordingly. The cases will now be listed before the appropriate Bench for disposal on merit.

S. Chatterji, J.

9. I agree.

R.K. Patra, J.

10. I agree.