
(1996) 02 OHC CK 0023

In the Orissa High Court

Case No : Original Jurisdiction Case No. 5791 of 1994

Purna Chandra Mohanta

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 06-02-1996

Acts Referred:

Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 — Rule 9

Citation : (1996) 1 OLR 309

Hon'ble Judges : D.P. Mohapatra, Acting C.J.; S. Chatterji, J; A. Pasayat, J

Bench : Full Bench

Advocate : G.S. Namtoar, A.K. Patnaik and S.P. Pattnayak, for the Appellant; Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A. Pasayat, J.—Doubting correctness of view expressed by several Division Benches of this Court that by operation of Rule 9 of the Orissa education (Recruitment and Conditions of Service of Teachers and Members of Staff of Aided Educational Institutions) Rules, 1974 (in short, "the Rules") teachers serving in aided educational institutions, who held Green Cards, were entitled to benefit of two increments as is available to their counterparts serving in Government schools, this reference has been made to a larger Bench.

2. A brief reference to the factual position would suffice. With a view to check high growth of population, several family welfare programmes have been introduced by the Central and various State Governments. State of Orissa being of the view that a rapid reduction of such growth is the single most critical factor determining success of developmental effort directed to securing economic progress decided that where either of the parents in the age group of 15 to 48 years having two children or less would go for terminal method, i. e., tubectomy/vesectomy would be given a Green Card. As a distinctive group, the Green Card holders would be entitled to certain benefits under various schemes of the State

Government.

3. Rule 9 of the Rules mandates that every employee of an Aided Educational Institution shall draw the same pay, dearness allowance and subsistence allowance in case of suspension, as is admissible to his counterparts in the Government educational institutions under the relevant rules applicable to him. In *Suresh Chandra Pati v. State of Orissa and Ors.*: (OJC No. 2848 of 1990 decided on 20-12-1990), it was observed that in order to bring a parity and keeping in view the intent and purpose behind the decision of the Government contained in Government Order No. 34707/H. dated 19-10-1983, the word "pay" as appearing in Rule 9 would include benefit of two increments as is extended to Government servants holding Green Cards. It was observed that the word "pay" should not have been given a constricted meaning and having regard to the purpose behind Rule 9, a broad interpretation is warranted. In *Arun Kumar Parhi v. State of Orissa and Ors.* : (OJC No. 3752 of 1991 decided on 22-8-1991) it was observed that the word "pay" is generally understood as money given for the service rendered which is synonymous to the word "salary" and/or "wages"; and would mean "the return a person receives for service rendered by him", and included the two increments given. Similar view was expressed in *Rajkishore Swain Vs. State of Orissa and Others*, . In the case at hand, the benefit was not extended to the petitioner, even if while working as Headmaster of Dhabaleswar High School, he got a Green Card on account of tubectomy operation undertaken by his wife Smt. Kanaka Manjari Mohanta.

4. During the course of hearing of the application the State Government took a stand that the effect of Office Memorandum dated 4-6-1985 issued by the State Government was not noticed by the Benches bearing the earlier cases. A bare reading thereof, according to the State counsel, indicated that the two increments allowed were in the nature of incentive allowance and did not form part of pay of the concerned employee. It was further submitted that the said memorandum restricted the benefit of Clause 4 (a) only to Government employees, and the same cannot be extended to teachers serving in Aided Educational Institutions. The Bench hearing the application was of the prima facie view that by operation of Rule 9 of the Rules a Green Card holding teacher of an Aided Educational Institution did not automatically become entitled to the benefit of two increments allowed to the Government servants as incentive under the Scheme framed by Government Order dated 19-10-1983.

5. Several learned counsel appearing for petitioners involving similar dispute at their request were heard. According to them, the view taken earlier in *Suresh Chandra Pati's* case (supra), in *Arun Kumar Parhi's* case (supra) and in *Rajkishore Swain's* case (supra) is correct and in line with the object, purpose and intent of the Scheme framed by the State Government by Government Order dated 19-10-1983 annexed as Annexure-A to the counter-affidavit and no departure should be taken from that view. It is further stated that increment is always a part of a pay and is in nature of a personal pay. With reference to

Annexure-A it is submitted that the Central Government treated the incentive as a part of personal pay and keeping the same in view the Resolution dated 19-10-1983 (Annexure-A) was issued, and therefore, the increment has to be treated as part of personal pay.

Learned counsel for State on the other hand submitted that the Office Memorandum dated 4-6-1985 (Annexure-C to the counter-affidavit) is holding the field since 1985, which was not challenged at any point of time and is also not under challenge in the present writ application. According to him, a combined reading of Annexures-A and C leaves no manner of doubt that the benefit is not to be extended to the teachers of aided educational schools.

6. It is to be noted that the word "pay" has not been defined either in the Orissa Education Act, 1969 (in short, "the Act") or in the Orissa Education Rules, 1969 (in short, "the Orissa Rules"). Definition of the word "pay" appears in the Orissa Service Code (in short, "the Code") in Rule 33 thereof. Rule 37 thereof defines "personal pay", and Rule 40 defines "special pay". Undisputedly the increment as given has not been claimed to be a part of special pay, and in our opinion rightly.

7. Stand of the learned counsel appearing for the petitioners is that it can be covered by Clause (a) (ii) of Rule 37. We do not find any substance in this plea because it is payable only where some special service is rendered. Stand of the teachers appeared at first flush to be on terra firma because the increments are to be given as per Annexure-A and the same generally forms a part of pay. But on a closer scrutiny, we find that the stand is untenable. Clause 2 of the Government Order dated 19-10-1983 refers to incentives allowed for a Green-Card holder. The Office Memorandum dated 4-6-1985, which is holding the field for a decade when read with the aforesaid Government Order leaves no manner of doubt that the increments were given as incentives and are in the nature of incentive allowance. All types of benefits and allowances do not form part of the pay as referred to in Rule 9. In fact in Suresh Chandra Pati's case (*supra*), it was observed that the word "pay" does not comprehend other benefits like LTC, medical facilities, house rent allowance etc. Increments are undoubtedly a part and parcel of pay receivable by a teacher. But when it is in the nature of a measure of incentive, it cannot be taken to be a part of the pay. Increments were given as incentives, and it is clear from the Office Memorandum dated 4-6-1985. The relevant clauses thereof, i. e.. Sub-clauses (a) and (b) of Clause 3 read as follows :

"(a) The incentive allowance would be Equal two twice the mount of increment admissible to the Government servant on the date he is declared eligible for this allowance and in case the Government servant is on foreign service on the eligible date the aforesaid increment admissible in his parent scale will be taken into account.

(b) The benefit of incentive allowance "would be allowed even if an employee is

held up at the efficiency bar stage of his time-scale."

8. At this juncture it is necessary to refer to the Office Memorandum dated 16-3-1992 issued by the Government of Orissa in the Finance Department. It has been clearly stated therein that the grant of financial incentive to State Government servants in possession of Green-Cards is regulated as per Finance Department Office Memorandum dated 4-6-1985. It has been stipulated that the Government servants who are in possession of Green-Cards with two children will be entitled to incentive allowance equal to the amount of one increment, while those with one child will be entitled to incentive allowance equal to twice the amount of increment. Class IV Government servants who are in possession of Green-Cards with one or two children will be entitled to one incentive allowance equal to twice the amount of increment. Finance Department Office Memorandum dated 4-6-1985 was modified to the aforesaid extent.

9. "Pay" essentially is the amount drawn monthly by a Government servant which has been sanctioned for a post held by him substantively or in an officiating capacity or to which he is entitled to reason of his position in a cadre. On a combined reading of the Government Order dated 19-10-1983, the Office Memorandum dated 4-6-1985 and the subsequent Office Memorandum dated 16-3-1992, conclusion is inevitable that as an incentive allowance the amount equal to twice the amount of increment was being paid to Government servants holding Green-Cards. The amount paid was not a part of the pay. The fixation of quantum at twice the increment is relatable to the measure of incentive. In that view of the matter, the teachers of Aided Educational Schools are not entitled to the benefit of two increments, even if they are Green-Card holders, by operation of Rule 9. The reference is accordingly answered.

10. Learned counsel appearing for several petitioners in several cases, submitted that by taking shelter under our present judgment, direction for recovery of the amount already paid may be made. We made it clear that the amount already paid till the date of judgment, i.e., today shall not be recovered and our judgment shall operate prospectively. We are passing this order keeping in view the fact that payments were made pursuant to the decisions of this Court, and it would be inequitable to make recovery of the amount already paid.

The writ application is dismissed with aforesaid observations directions. No cost.

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

I agree.

S. Chatterji, J.

I agree.