
(2007) 12 OHC CK 0010
In the Orissa High Court
Case No : O.J.C. No. 9830 of 1996

Puspalata Behera

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 07-12-2007

Acts Referred:

Orissa Education Act, 1969 — Section 3(b)

Citation : (2008) 1 OLR 370 Supp

Hon'ble Judges : R.N. Biswal, J;P.K. Tripathy, J

Bench : Division Bench

Advocate : S. K. Mund, D.K. Mohapatra, D.P. Das and S.K. Panda, for the Appellant; A.G.A. for O.Ps. 1 to 3, K.K. Swain, P.N. Mohanty and S.C. Padhi for O.Ps. 4 and 5, Basudev Mishra and B. Tripathy for O.P. No. 6, for the Respondent

Judgement

1. As per the case of Petitioner, though Indravati Mahavidyalaya, Jaipatna has not received any grant-in-aid from Government, it is being financed by Upper Indravati Hydro Electric Project under the approval of the Government in Energy Department and as such it is an aided Educational Institution within the meaning of Section 3(b) of Orissa Education Act, 1969 (hereinafter referred to as "the Act").

2. The Governing Body of the College published an advertisement in daily "Sambad" dated 9.6.1993, under Annexure-1 inviting applications from women candidates for a post of Lecturer in Geography in the scale of pay of Rs. 2000-3500/-. There was no indication in the advertisement that the post was temporary one nor that the appointment was to be made for 89 days, on ad hoc basis. The Petitioner along with some others applied for the said post and faced interview before the Selection Committee constituted by the Governing Body of the College and she came out successful. The Principal of the College informed the Petitioner that she was selected for the post and further instructed her to join in the College. Accordingly, she joined in the College on 18.9.1993, but however she was allowed to sign the Attendance Register from 22.9.1993 only. While she

was continuing as Lecturer in Geography in the said College, she was shocked to receive her appointment order dated 2.9.1993, wherein it was indicated that she had been appointed on ad hoc basis with a consolidated pay of Rs. 15007- only per month, till the post received approval of the competent authority of Upper Indravati Project. When protested, the Principal assured her that once the post was approved, her scale of pay would be Rs. 2000-3500/- per month with retrospective effect from 18.9.1993. Relying on the said assurance, the Petitioner continued to discharge her duties regularly. In the meantime, Government of Orissa in Energy Department vide letter No. 2738 dated 8.2.1993 sanctioned the Petitioner's post and approved her appointment and subsequently confirmed the same vide letter dated 28.7.1994. To her dismay, on 21.12.1993 she received Anr. appointment order dated 21.12.1993 wherein she was asked to join within 15 days as a Lecturer in Geography with a consolidated pay of Rs. 1500/- per month, on 89 days basis. The post of the Petitioner was sanctioned from time to time for different spells and ultimately it was sanctioned for the period from 1.3.1995 to 28.2.1996. On 5.8.1998, vide office order No. 95/3166, the Petitioner was asked to sign in a proforma letter if at all she wanted to continue in the college. However, instead of signing on the said letter, on 10.5.1995, she submitted a letter written in her own language to the Principal, expressing her willingness to continue in the College. Since the Principal refused to receive the said letter, she sent it by Registered Post on 10.5.1995, which he again refused to accept. Being vindictive, the Principal stopped payment of the arrear dues of the Petitioner, though the said amount had already been drawn. He wrote a letter to the Executive Engineer with a copy to the Secretary of the Governing Body of the College by Memo No. 171 (II) dated 25.7.1995 (Annexure-10) stating therein that the statement submitted by his office dated 30.3.1995 claiming a sum of Rs. 42000/- towards arrear dues of the Petitioner for the period 1.3.1993 to 31.3.1994 was a clerical error and as such, the said amount was required to be refunded. This shows the real picture of the vindictive attitude of the Principal and the Governing Body of the College towards the Petitioner. To add to her misery, the Petitioner was not allowed to sign in the Staff Attendance Register since 3.7.1995 and ultimately, on 5.8.1995 she was restrained from entering into the College by the Principal, on the ground that Anr. Lecturer in Geography (opp. party No. 6) had already been appointed in her place since 31.7.1995. The claim of the Petitioner for her salary went unheeded. Finding no other alternative, she filed an Appeal before the Director, Higher Education, Orissa, Bhubaneswar (opp. party No. 3) challenging the order of termination and- non-payment of her salary which was dismissed on 8.8.1996 under Annexure-11, on the ground that she was appointed for a particular period and that she did not apply in proforma letter for further extension of the period of her service. No specific order was passed on the claim of salary. So the Petitioner filed the present writ petition to quash the appointment order of opp. party No. 6 and the appellate order, Annexure-11 and to direct the opp. parties 1 to 5 to pay her salary from 18.9.1993 and to allow her to discharge her duties as Lecturer in Geography in Indravati Mahavidyalaya, Jaipatna.

3. Opp. party No. 1 in the counter affidavit stated that Indravati Mahavidyalaya, Jaipatna is a private recognized institution and not an aided private educational institution within the meaning of Section 3(b) of the Act. The staff of the College, including the Petitioner are under control of the Governing Body and their appointment, promotion, service conditions etc. are regulated as per the decision of the Governing Body of the College. There is no employee and employer relationship between the staff of Indravati Mahavidyalaya, Jaipatna and Upper Indravati H.E. Project. This Project is only extending financial assistance for payment of salary of the staff and for meeting the maintenance cost of the College pursuant to Department of Energy, Orissa letter Nos. 2738/EG dated 8.2.1993 and 17752/EIL dated 28.7.1994. There is no indication about the post of the Petitioner being sanctioned for continuance vide Energy Department letter No. 2738 dated 8.2.1993.

4. In their counter affidavit, opp. party Nos. 4 and 5 stated that the Governing Body of the College in question invited applications from suitable candidates to fill up various posts including the post of Lecturer in Geography which was reserved for women candidates publishing it in the Orissa daily the "Sambad", on 9.6.1993 under Annexure-C/4. A corrigendum was issued on 9.7.1993 lifting the restriction for other candidates in the post of Lecturer in Geography and in the said notice it was indicated that the aforesaid post would be filled up on ad hoc basis for a period of 89 days carrying a consolidated pay of Rs. 1500/- for first two years, under Annexure-D/4. Petitioner faced the interview and was selected for the post of Lecturer in Geography. The Governing Body of the College passed a resolution empowering the Secretary to issue appointment order in favour of the Petitioner on ad hoc basis for a period of 89 days, on a consolidated pay of Rs. 1500/- per month. Pursuant to the said decision, the Secretary vide office order dated 2.9.1993, issued the order of appointment in favour of the Petitioner including the terms and conditions of her service under Annexure-E/4. Accordingly, Petitioner joined the post on 22.9.1993 and continued in service on 89 days basis with some break on the cessation of each spell till 3.10.1994, when her service was terminated under Annexure-L/4. However, the Petitioner was again given appointment on ad hoc basis for the period from 27.10.1994 to 15.5.1995 vide order dated 27.10.1994 of the Secretary of the Governing Body under Annexure-M/4. Then the Secretary asked the Petitioner to make a fresh application in a proforma for her further continuance in service vide letter dated 5.4.1995. But she did not make any fresh application in such proforma as indicated in the letter dated 8.5.1995, as a result of which, her case could not be considered. So, in order to fill up the post of Lecturer in Geography, the Governing Body formed a subcommittee on 18.7.1995 to conduct the interview. Accordingly, the sub-committee conducted the interview, wherein opp. party No. 6 was selected for the post of Lecturer in Geography and was given appointment on ad hoc basis. On 22.7.1995, he joined in the College and continued till 24.7.1995 on 89 days basis. It is the specific plea of opp. party Nos. 4 and 5 that the Petitioner received her salary as per the terms and conditions given in her

appointment letter till 30.4.1995, but she did not accept her salary from 1.5.1995 to 15.5.1995.

It is the further case of opp. party Nos. 4 and 5 that the Governing Body of the College took a decision on 4.10.1996 to fill up the aforesaid post on regular basis, but because of the interim order passed by this Court, it is in a fix. These opp. parties refuted the allegation that the Principal of the College assured the Petitioner that once her post was approved, she would be paid her salary with retrospective effect from 18.9.1993 in the scale of pay of Rs. 2000 to 2500/-. They also denied the averments that Government in Energy Department sanctioned Petitioner's post and approved her appointment and confirmed the same vide letter No. 17752 dated 28.7.1994.

As per their case because of clerical mistake, it was communicated to the Executive Engineer Power House Division, Mukhiguda that a sum of Rs. 42,000/- was due towards payment of arrear salary of the Petitioner. Subsequently when the mistake was detected, it was communicated to the Executive Engineer to return that amount to the Department. The Petitioner resorted to falsehood by stating that she was discharging her duties regularly in the College, but the Staff attendance Register was withheld from her since 3.7.1995 and that the Principal restrained her from entering into the College. Hence, opp. party Nos. 4 and 5 prayed to dismiss the writ petition.

Opp. party No. 3 supported the stand taken by opp. parties 4 and 5.

Learned Counsel for the Petitioner submitted that since Indravati Mahavidyalaya, Jaipatna receives assistance from the Government in Energy Department, it is an aided educational institution and as such, it would be governed by the Orissa Education (Recruitment and Conditions of Service of Teachers and Members and the Staff of Aided Educational Institutions) Rules, 1974. Section 3(b) of the Act defines Aided Educational Institution, which reads as follows:

Aided Educational Institution means private educational institution which is eligible to, and is receiving grant-in-aid from the State Government, and includes an educational institution which has been notified by the State Government to receive grant-in-aid;

So, a private educational institution, which is eligible to receive grant-in-aid and in fact receiving it or has been notified by the State Government to receive grant-in-aid can only be an Aided Educational Institution. In the present case, there is nothing in the writ petition to show that the college in question is eligible to receive grant-in-aid or it has been notified by the Government to receive grant-in-aid. Even if a private educational institution receives any grant from the Government, unless it is eligible to receive or has been notified by the Government to receive grant-in-aid, it can not be said as an Aided Educational Institution. Moreover, in the instant case as found from Annexure-A/4 the Executive Engineer, Power House Division, Mokhiguda stated that the assistance given to the College in question shall not be treated as grant-in-aid. So the

institution cannot be treated as an aided College.

5. Learned Counsel for the Petitioner next submitted that there was no stipulation in the advertisement dated 9.6.1993 inviting applications for the post of Lecturer in Geography that the appointment would be on ad hoc basis for a period of 89 days. On the other hand it stipulated that the appointment would be on regular basis in the pay scale of Rs. 2000-3500/- per month. Furthermore, the post of Lecturer in Geography was reserved for women only. So the appointing authority was estopped from changing the conditions as stipulated in the advertisement. On the other hand learned Counsel for the opp. parties submitted that the earlier advertisement under Annexure-A/1 was modified vide corrigendum under Annexure-D/4 on 9.7.1993 dereserving the post of lecturer in geography and specifically stipulating that the post would carry a consolidated pay of Rs. 1500/- per month and that the appointment would be for 89 days on ad hoc basis. In our view there is no bar for modifying the earlier notification by way of corrigendum. Furthermore, Petitioner accepted the post and joined in the College knowing the contents of the appointment order. Now she cannot fall back from it.

6. Learned Counsel for the Petitioner further submitted that Petitioner was supplied with a proforma letter on 8.5.1995 and was asked to sign it, if at all she was desirous of continuing in the post. Since the Petitioner suspected some foul play, she wrote a letter, Annexure-8 in her own language to the Principal on 10.5.1995, expressing her willingness to continue in service. Only because she did not sign in the proforma letter, she was debarred from continuing in service and Opp. party No. 6 was appointed in her place on ad hoc basis which was per se illegal. When the Petitioner was continuing as a Lecturer on ad hoc basis from 22.9.1993 to 15.5.1995 with some artificial break only, the authority ought to have renewed her service, particularly when she wrote to the Principal, albeit in her own language, stating that she was desirous of continuing in the post, instead of appointing Opp. party No. 6 that too on ad hoc basis.

7. As regards the claim of salary from 18.9.1993 it is contended on behalf of the opp. parties that the Petitioner received her salary as per the terms and conditions given in her appointment letter till 30.4.1995 and she refused to receive the salary from 1.5.1995 to 15.5.1995. On perusal of Annexure-T/4, the Acquittance Register of Indravati Mohavidyalaya, Jayapatna, it is found that in fact the Petitioner had received her salary at the rate of Rs. 1500/- per month for the period 22.9.1993 to 30.4.1995 as contended by opp. party Nos. 4 and 5. She has to get her salary for the period 1.5.1995 to 15.5.1995 at the rate of Rs. 1,500/- only.

8. Under such circumstances, the writ petition is allowed in part and the Petitioner shall continue in her post afresh and shall be paid salary as per the appointment order and opp. parties 4 and 5 shall pay her remuneration for the period 1.5.1995 to 15.5.1995 within a period of two months of receipt of this order. In the event of regularization of the post, her case be considered in

accordance with law.

9. As found from Misc. Case No. 10798 of 1996 the selection list has already been prepared for appointment for the post of Lecturer in Geography, but due to the stay order passed by this Court on 12.11.1996 they have not declared the result. In view of the judgment, the result of the interview for the post of Lecturer in Geography shall not be declared.