

(2016) 11 OHC CK 0014
In the Orissa High Court
Case No : W.P.(C) No. 18908 of 2013

Radharani Samal

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 24-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Orissa Education (Recruitment and Condition of Service of Teachers and Members of the staffs of Aided Educational Institution) Rules, 1974 — Rule 16(2)

Citation : (2017) 123 CutLT 218

Hon'ble Judges : Dr. D.P. Choudhury, J.

Bench : Single Bench

Advocate : Mr. Ajit Kumar Mohanty (SC) S and ME Dept, for the Opposite Parties; M/s. Mr. Jyotirmaya Gupta, T.B. Mohapatra and P. Padmavati Rao, Advocates, for the Petitioner

Final Decision : Disposed off

Judgement

Dr. D.P. Choudhury, J. - Heard Mr. Jyotirmay Gupta, learned counsel for the petitioner and Mr. Ajit Kumar Mohanty/learned Standing Counsel for the School and Mass Education Department.

2. Challenge has been made to the inaction of the opposite parties in not disbursing the differential arrear salary as well as current salary to the petitioner in trained graduate scale of pay from the date of attaining the age of 48 years.

3. It is submitted by the learned counsel for the petitioner that by virtue of Annexure-7, the clarification dated 16.4.2010 issued by the Joint Secretary to Government/School and Mass Education Department, the untrained graduate teachers in Government/Non-Government M.E. and High School on attaining the age of 48 years/are eligible to get trained graduate scale of pay. He drew the attention of the Court to Annexure-B. the letter issued by the Deputy Director (NGS)/Orissa/Directorate of Secondary Education/Orissa to all the Inspectors of Schools to submit the proposal on the cases in which the Managing Committee of

Block Grant High Schools have appointed persons against such posts to accord permission by the Government to approve such all such posts. He also further drew the attention of this Court to Annexure-9 where the Head Mistress of Banarnali Brahmachari Girls" High School has recommended the case of the petitioner. to the concerned Inspector of School to allow her to draw salary as trained teacher as the petitioner has attained the age of 48 years having requisites qualification in accordance with the circular as stated above. With reference to the rejoinder affidavit dated 3.9.2014 filed by the petitioner to the counter filed by opposite party no.3, he further submits that similarly situated persons have already been paid the necessary differential salary as well as current salary vide No. 632 dated 6.2.2014 issued by the DEO, Kalahandi and Office Order No.II007 dated 3.9.2013 issued by the D.E.O., Cuttack. So, he submits that there should not be discrimination between the petitioner and her colleagues and accordingly, the petitioner should be paid the differential salary as well as current salary.

4. Learned Standing Counsel for the School and Mass Education Department submits that there was a clarification dated 6.S.2014 issued by the Deputy Director (NGS), Directorate of Secondary Education, Odisha (Annexure-A/3) and the same is reproduced as under :

"Copy of the Letter No.9270/S&ME Dated 6.5.2014 from Government of Odisha, Department of School & Mass Education addressed to the Director Secondary Education, Odisha.

Sub :- Clarification regarding allowing Trained scale of pay to the untrained teachers including Hindi & Sanskrit Teachers continuing in Aided High Schools/ Block Grant High Schools on attaining the age of 48 years.

I am directed to invite a reference to your letter No.4428 dated 29.01.2014 on the above subject and to say that (I) Exemption from undergoing the training course and entitlement to financial benefits of a trained teacher is only applicable to such teachers recruited under O.E. Rules, 1974 & 1993 only.

(ii) Since Block grant Teachers are not recruited under O.E. Rules-1974 & O.F. Rules-1993, the aforesaid provision is not applicable to them.

(iii) Since Hindi & Sanskrit Teachers are not compulsorily deputed to any training programme, the aforesaid provision is not applicable to them.

Sd/-

Under Secretary to Government"

5. He further submits that by virtue of above notification, the petitioner is not entitled for the relief and similarly situated persons have been granted such relief before issuance of such clarification.

6. Considered the submission made by the learned counsel appearing for the respective parties. In view of the Office Order NO.11340 dated 12.11. 2008

(Annexure-3), the petitioner, having B.A., Ratna qualification since 16.7.2008, has been drawing the salary of Hindi teacher in a block grant high school as issued by the Inspector of Schools, Jajpur Circle, Jajpur. In the counter affidavit, at paragraph-7, it is clearly mentioned that vide Government Resolution No.3424/SME dated 18.2.2008, a bachelors degree from recognised university with Hindi in ORC of the elective subject or with Rastrabhasa Ratna from Rastrabhasa Prachar Samiiti, Wardha amongst others have been recognised as requisite qualification for the post of Hindi teacher. In paragraph-8 of the said counter affidavit, it is admitted that the post of such Hindi teacher has been upgraded to the status and scale of pay of Trained Graduate Teachers as per the Government Resolution under Annexure-6 to the writ petition. Clause-13 of the aforesaid Resolution dated 18.2.2008 (Annexure-6) may be reproduced below for better appreciation :

13. The Hindi Teachers possessing the revised common qualification shall be entitled Scale of Pay at par with Trained Graduate Teachers Scale of Pay. The Pay of such Hindi Teachers shall be fixed notionally as per Rule 74(b) of Orissa Service Code.

The Pay of Hindi Teachers, who have availed T.B.A. Scale of pay Rs.5,000-150-1,000 shall be fixed under Rule 74(d) of Orissa Service Code.

The quantum of Block Grant Hindi Teachers continuing with the revised qualifications in Block Grant High Schools shall be determined at par with T.G. Teachers of same Schools G.I.A. Order, 2004, read with Amendment Order, 2007 with effect from the date of issue of this Resolution."

7. In view of the aforesaid Resolution, since the petitioner has possessed the requisite qualification to receive the scale of pay at par with trained graduate teachers, even if she is a block grant high school teachers and rejoinder affidavit dated 3.9.2014 shows that similarly situated employees, in other circles, have received the trained graduate scale of pay after attaining the age of 48 years, the petitioner, having attained the age of 48 years, there is no bar for her to receive the scale of pay of a trained graduate teacher. On the other hand, there could not be discrimination between the petitioner and her colleagues. However, the learned Standing Counsel for the School and Mass Education Department has placed clarification dated 6.5.2014 (Annexure-A/3) which has already been produced in the foregoing paragraphs "and states that the Hindi and Sanskrit teachers who are not compulsorily deputed to any training programme, would not avail the benefit of scale of pay applicable to a trained graduate teacher.

8. Since the present petitioner has made her grievance to get the scale of pay of trained graduate teacher before such notification/clarification is issued, she is entitled to get the same because of the observation made above and there should not be discrimination between her and her other colleagues. Moreover, granting of similar benefits to other colleagues of the petitioner by the opposite parties, as mentioned in the rejoinder affidavit, did go uncontroverted by the

opposite parties.

9. Keeping in view the aforesaid discussions, this Court is of the view that the petitioner is entitled to trained graduate scale of pay and consequences. Accordingly, the opposite parties 2 and 3 are directed to fix up the scale of pay of the petitioner in trained graduate scale of pay notionally when he attains the age of 48 years, i.e, July, 2011, calculate the differential salary and disburse the same as well as current salary within a period of two months from the date of production of a certified copy of this order failing which the petitioner is entitled for the same amount with interest at the rate of 9% per annum from the date of his entitlement till actual payment.

The writ petition is accordingly disposed of.

Issue urgent certified copy on proper application.