

(2001) 12 OHC CK 0018
In the Orissa High Court
Case No : O.J.C. No. 5193 of 1996

Raghunath Prasad Harichandan and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 21-12-2001

Acts Referred:

Citation : (2002) 93 CLT 249

Hon'ble Judges : P. Ray, J; L. Mohapatra, J

Bench : Division Bench

Advocate : M.K. Mohanty, N.R. Rout and B.P. Routray, for the Appellant;
Rangadhar Behera, for the Respondent

Final Decision : Allowed

Judgement

L. Mohapatra, J.—The petitioners who are working as Section Teachers in Basudev High School in the district of Puri have filed this writ application praying for a direction to the opposite parties to sanction posts of Additional Section Teachers in the school and approve their services from the date of joining as well as for quashing the order dated 24.4.1996 refusing to approve services of the petitioners awaiting necessary sanction for creating additional section teachers posts from the State Government.

2. Case of the petitioners is that Basudev High School is an aided educational institution under a Puri Circle. After introduction of new yard stick on 8.7.81 the school had teaching and non-teaching staff in accordance with the said yard stick. Subsequently the students strength increased from year to year and crossed the limits as prescribed under Orissa Education Code. In the year 1988 the student strength in each of the Classes VIII, IX and X became more than 60, as a result of which it was not possible on the part of the school administration to impart teaching to these students in one section. The Managing Committee in its resolution dated 26.7.88 decided to open additional sections in each of those three classes in accordance with Article 285 of the Orissa Education Code. Since a decision was taken to open additional sections in each of the said three classes,

further decision was taken to appoint teachers for the additional sections and applications were invited from intending candidates. The petitioner No. 1 was selected as Section teacher in Class-VIII, was appointed by the Managing Committee on 29.7.88 and he had joined in service on 1.8.1988. Appointment of the petitioner No. 1 was approved by the Managing Committee in its meeting dated 20.1.1989. Similarly, petitioner No. 2 was selected and appointed against additional section teacher post of Class-IX and he joined the post on 1.9.89. His appointment was also approved by the Managing Committee in its resolution dated 12.1.90. Petitioner No. 3 was appointed against post of additional section teacher of Class-X and he joined the service on 1.8.89. The Managing Committee in its resolution dated 12.1.90 approved his appointment. After joining the post, all the three petitioners have been continuing in the school till today.

Further case of the petitioners is that as per the decision of the State Government dated 1.6.1995 the school was taken over with effect from 7.6.1994. Even after taking over of the school by the State Government, additional sections have been continued and petitioners services are being utilised for those additional sections. Unfortunately, the State Government did not approve the appointment of the petitioners on the plea that additional posts are awaiting sanction. By Office order No. 16845 dated April 24,1996 Director of Secondary Education intimated the petitioners that the petitioners prayer for approval would be considered after receipt of sanction order from the State Government. Being aggrieved the petitioners have filed this writ application.

3. Counter affidavit has been filed on behalf of opposite parties 1 to 3. It is stated in the counter that the school was taken over by the State Government with effect from 7.6.1994 and in view of such taking over, teaching and non-teaching staff of the school assumed status of Government servants. It is also stated in the counter affidavit that the Managing Committee of the school appointed the petitioners as section teachers in absence of posts and without obtaining prior permission from the competent authority as per the provision contained in Orissa Education Act, 1969. Appointment being invalid from the beginning and such appointments having been made without any sanction or creation of posts, no relief can be granted to the petitioners.

4. A separate affidavit has been filed by the opposite party No. 4, Inspector of Schools, Puri, wherein it is state that though at the time of entry in service in the year 1988-89, petitioners were not eligible to be appointed as they did not have prescribed qualification but roll strength in the concerned classes justified requirement of additional sections. It is further admitted in the said affidavit that the petitioner are continuing as additional section teachers till date as certified by the Headmaster of the school. It is also stated in the said affidavit that the petitioners 1 and 2 acquired required qualification for appointment in 1991 and 1992 respectively and petitioner No. 3 acquired requisite qualification in the year 1996. The school was taken over by the State Government with effect from 7.6.1994 and on the said date only petitioner No. 3 did not have the requisite

qualification.

5. It is submitted by the learned counsel Sri Routray, that the documents filed on behalf of the State Government clearly indicate that the roll strength of the school justified opening of additional sections in Classes VIII, IX and X. Therefore, the Managing Committee of the school cannot be blamed for opening additional sections in the aforesaid three classes.

Coming to the second question as to whether the petitioners had the requisite qualification at the time of appointment or not, Sri Routray submitted that much prior to taking over of the Managing of the institution by the State Government, the petitioners 1 and 2 had already obtained requisite qualification and only the petitioner No. 3 obtained requisite qualification in the year 1996. Since roll strength justified opening of additional sections and the petitioners services are being utilised even after taking over of the school, the State Government should approve their services and extend the service benefits to them.

On the other hand, learned Standing Counsel (S & ME) submitted that at the time of initial entry into service, the petitioners did not have requisite qualification and, therefore, their appointments were illegal. Learned Standing Counsel has not been able to dispute the contention of the learned counsel for the petitioners that the petitioners are still continuing to serve as additional section teachers even after the State Government took over the institution with effect from 7.6.1994.

Coming to the first question as to whether opening of additional sections by the Managing Committee of the institution was justified or not, it is worth while to refer to Annexure-C/4 attached to the affidavit by the Inspector of Schools, Puri, opposite party No. 4. From the said annexure it is very clear that since 1988-89 till 1999-2000 the students strength in Classes VIII, IX and X were much more than the prescribed numbers for a single section and, therefore, opening of additional sections in the foresaid three clauses was justified.

Coming to the second question as to whether the petitioners' appointment were in accordance with the provisions of-law or not. It is seen that admittedly the petitioners did not have requisite qualification at the time of appointment. But subsequently they acquired qualification in the year 1991, 1992 and 1996 respectively. In this connection, reference may be made to Annexure-B/4 attached to the affidavit filed by the Inspector of Schools, Puri. Said annexure is a circular indicating decision of the State Government for approval of posts of additional section teachers in non-Government aided High Schools of the State. The letter written by the Deputy Secretary indicates that the State Government was pleased to approve post of additional section teachers w.e.f. 7.6.94 in the schools as per the list enclosed provided continuance of such posts are found justified as on 7.6.94 on the basis of yardstick and roll strength of each school. While considering the approval of appointment, such additional section teachers, the following criteria may be observed :

(i) The incumbents must have been eligible on the basis of prescribed qualification to hold the post. (ii) They were appointed following the prescribed procedure.

(iii) The post of Additional Section Teacher was justified on the basis of yardstick and roll strength as on 7.6.94.

It was further provided in the letter that all appointments of additional section teachers shall be with effect from 7.6.94 and retrospective effect shall not be given. Admittedly, in the present case as on 7.6.94 the petitioners 1 and 2 had obtained requisite qualification and were otherwise eligible to hold the post of additional section teachers. Admittedly, from the document Annexure-C/4 it is clear that the school's roll strength justified opening of additional sections in Classes VIM, IX and X and admittedly the petitioners are continuing as additional section teachers till today as is evident from the certificate given by the Headmaster of the school in the year 2000. We fail to understand as to how Government has been accepting service of teachers for last several years without approval of their services and without paying their salary. Such conduct of the State Government in accepting the petitioners' services as additional section teachers in the said school establishes that there is requirement of additional sections as well as additional section teachers in Classes VIII, IX and X in the school. Such conduct of the State Government is not only unfair and unjust but also amounts to exploitation. From the affidavit filed by the Inspector of Schools, it is also found that till today the State Government have approved appointment of 861 additional section teachers in different Schools in the State. We do not find any reason as to why the State Government should refuse to approve services of the petitioners as additional section teachers, if they fulfil the criteria for such appointment and approval. No doubt, the petitioner No. 3 did not have the training qualification on the date of taking over of the school, but in view of the undisputed position that his services have been utilised and in the meantime he has also acquired B.Ed. qualification, we are of the view that his appointment should be approved with effect from the date of acquisition of B.Ed. degree.

6. We, therefore, direct that the opposite parties shall approve the petitioners as additional section teachers in Classes VIII, IX and X in the concerned school namely : Basudev High School of Village Baghamunda Nuagaon and approve appointment of petitioners 1 and 2 with effect from 7.6.94 since by that time both the petitioners 1 and 2 had obtained the requisite qualification for such appointment. So far as petitioner No. 3 is concerned, it is directed that his appointment shall be approved with effect from the date he obtained requisite qualification in the year 1996. Petitioners 1 and 2 shall be paid salary from 7.6.1994 till today in the Trained Graduate Scale of pay if they have not been paid in the meantime and petitioner No. 3 shall be paid salary in the Trained Graduate Scale of pay from the date he acquired requisite qualification in the year 1996 till today.

The writ application is allowed with the aforesaid observations and directions.

There shall be no order as to cost.

P. Ray, J.—I agree.

7. Writ application allowed.