
(1992) 08 OHC CK 0004

In the Orissa High Court

Case No : Original Jurisdiction Case No. 584 of 1992

Rajkishore Swain

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 26-08-1992

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 : (1992) 2 OLR 373

Hon'ble Judges : P.C. Misra, J;A.K. Padhi, J

Bench : Division Bench

Advocate : U.C. Panda, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

P.C. Misra, J.—The petitioner claiming to be a Green Card holder has prayed for two advance increments with effect from the date he is entitled to such benefit.

2. It has been alleged in the writ petition that the petitioner is a teacher of Goutami High School, an aided educational institution within the definition of Orissa Education (Recruitment and Conditions of Teachers and Members of Staff of Aided Educational Institutions) "Rules, 1974. It is however, alleged that on 17-10-1986 the wife of the petitioner adopted the terminal method of contraception (Tubectomy) by which time the petitioner had two sons only to avoid further conception. She was granted a Green-Card for the adoption. A copy of the Green Card has been annexed to the writ application as Annexure 1. By virtue of a resolution of the Government dated 12-10-1983, copy of which was forwarded to all Departments on 19-10-1983, the Government of Orissa assured certain advantages and incentives to the Green Card holders. In the said Resolution it was stated that one would be given a Green Card if either of the parents in the age group of 1.5-48 years having two children or less would go for terminal methods i. e. tubectomy/ vasectomy, Since the petitioner's wife has

adopted terminal method of contraception (Tubectomy), the petitioner claims to be entitled to the benefits assured . to the Green Card holders thereunder. Out of the facilities assured to a Green Card holder, the petitioner in this case claims two advance increments on the basis that he is a teacher in the aided school and he is entitled to the same benefits to which his counter part in Government service is entitled to. Opp. party No. 3 i.e. The Inspector of Schools has alone filed a counter affidavit wherein it has been contended that the Government Resolution giving benefits to a Green Card holder to Government Servants cannot be extended to the teachers of the aided educational institution in the absence of any specific Government order in this regard.

3. That the petitioner's wife is a Green Card holder has not been disputed. On the other hand, the xerox copy of the Green Card issued to the petitioner's wife which has been appended to the writ petition as Annexure-1 clearly shows that Sudhansabala Swain, w/o Rajkishore Swain (petitioner) has, after two sons accepted terminal method of contraception (Tubectomy) on 17-10-1986 and in consequence thereof is entitled to the benefits enumerated in Health and Family Welfare Department Resolution No. 34707 dated 19-10-1983. At the hearing two questions were raised by the Slots counsel appearing for the opposite parties against the prayer of the petitioner claiming to be entitled to the benefits assured in the aforesaid Government resolution, namely , (i) There is no specific Government order extending the facilities available to a Government servant being a Green Card holder to school teachers of the aided educational institution, it is contended that the petitioner not being a Government servant, he is not entitled to the same, (ii) Even if such benefit is extended to the teachers of an aided educational institution, the petitioner himself not being a Green Card holder (though his wife is) he would not be entitled to the benefits given thereunder.

4. So far as the first point is concerned, it has been urged on "behalf of the petitioner that Rule 9 of the 1974 Rules provides 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 counterpart in the Government educational institutions under the relevant rules applicable to him. The word "pay" is generally understood as "money given for the service rendered" which is synonymous to the word "salary" and/or "wages". In other words, it would mean "the return a person receives for services rendered by him." Identical questions came up for consideration in O. J. C. No 2848 of 1990 in which a Bench of this Court observed that the word "pay" in Rule 9 of the 1974 Rules, should not be given a restricted meaning and that it should be understood in a broader sense. Rule 9 in clear language has conferred on the teachers serving in aided educational institutions the benefit to receive the same pay as a teacher serving in Government educational institution. In the aforesaid case it was held that the same principle should apply to a teacher in an aided institution, as a consequence of which he would be entitled to the same benefit which his counter-part in Government service would get. In this connection it

was further observed that increment is a constituent of pay as it merges in the pay after it becomes due. It was further held by their Lordships that the principle of equality being the purpose of Rule 9 of the 1974 Rules, there is no justification as to why a teacher serving in an aided educational institution possessing a Green Card should receive less pay than his counter-part holding a Green Card and serving under the Government. Absence of specific Government order in this behalf was held to be unnecessary in view of the provisions contained in Rule 9 of the 1974 Rules. The same rule was followed by another Bench decision of this Court in O. J. C. No. 3752 of 1991 decided on 22-8-1991. In both the aforesaid cases, the petitioners were conferred the benefit of two advance increments from the due date.

5. The next point urged by the Government counsel is that petitioner's wife having gone through the Tubectomy was given a Green Card by virtue of which she may be entitled to-, if any, the benefits provided, if she has been holding a Government service. It was contended that by virtue of the Green Card issued to his wife, the petitioner would not be entitled to the benefits of the Green Card as the husband is not a Green Card holder. This argument though attractive on the face of it, is devoid of merit on a closer examination. The Scheme for granting benefits to the people is for the purpose of arresting population growth and to secure a small planned family. The Scheme provides some incentives as motivational measure to achieve the said objective. The Scheme itself mentions that a national consensus has developed that mere monetary incentive especially of a marginal nature, will not be adequate and that some long term tangible benefits should also be coupled with it. It has also been stated in the Resolution that considering the aforesaid aspects, the State Government have decided that either of the parents in the age group of 15-43 years having two children or less who would go for terminal method, i.e. tubectomy vasectomy would be given a Green Card. It has been further mentioned that as a group the Green Card holder will be entitled to the benefits enumerated therein. (The words "either of the parents" and "as a group" have been underlined by us to supply emphasis). The scheme therefore, in clear terms provides that either of the parents having two children or less who would undergo terminal method would be given a Green Card and in this context the mention of words "as a group" is significant, Reading paragraph 4 as a whole it means that the said benefits of a Green Card are given to parents as a group. In other words, if either of the spouses go in for terminal method, they as a group would be entitled to the incentives and benefits assured thereunder. This interpretation finds support from what has been printed in the Green Card itself. The Green Card contains a gist of the benefits, which the Green Card holder is entitled to. In item No. 5 it has been stated as follows ;

"In case the card holder or spouse happens to be a State Government servant, he or she will get an incentive allowance equivalent to twice the amount of increment."

We, therefore, conclude that even if the wife of the petitioner adopted the terminal method, the petitioner would be entitled to the benefits of a Green Card holder.

6. In the result, we would allow this writ application and direct payment of the benefit of two advance increments to the petitioner if he satisfies the requirements prescribed in the Government resolution mentioned above from the due date.

A.K. Padhi, J.

7. I agree.