

(1983) 03 OHC CK 0007
In the Orissa High Court
Case No : O.J.C. No. 2283 of 1982

Ramakrishna Kar

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 04-03-1983

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 — Rule 4, 4(1), 4(3), 4(4), 4A

Orissa Education Act, 1969 — Section 10(2)

Citation : (1983) 55 CLT 333

Hon'ble Judges : R.N. Misra, C.J.; R.C. Patnaik, J

Bench : Division Bench

Advocate : G.A.R. Dora, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, C.J.—Challenge in this application under Article 226 of the Constitution is to the order dated 26th June, 1982 (Annexure-3) by which the Petitioner has been made to retire from Government service on superannuation with effect from 30th June, 1982.

2. The Petitioner belongs to the Orissa Education Services, Class-I (Selection Grade). He was appointed as Vice-President of the Board of Secondary Education, Orissa, and on 30th July, 1981 under a Notification in Annexure 1, on reversion from that post he was appointed as Member, Selection Board, with headquarters at Bhubaneswar. The Selection Board is constituted u/s 10(2) of the Orissa Education Act of 1969 read with Rule 4 of the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1973 (hereinafter referred to as "the Rules"). Rule 4 as originally framed in 1974 provided:

4. Selection Board: (1) The Selection Board shall comprise not less than three

and not more than five members.

(2) At least two of the members shall be persons of eminence in the field of education, administration, public life, art, culture or science and technology.

(3) Government shall appoint the members thereof including the President and the Secretary and may also appoint a Vice-President who shall perform all the functions and exercise all the powers of the President in his absence.

(4) The term of office of the members including the President. Vice-President and Secretary shall be three years from the date of their appointment and any member shall be eligible for reappointment.

xxx xxx xxx

While the Petitioner was appointed, in 1981 under Annexure-1 the rule was as quoted above. With effect from 10-12-1981 Sub-rules (1), (3) and (4) of Rule 4 were amended. As amended they run thus:

(I) The Selection Board shall comprise of not less than three and not more than five members which includes its President, Vice-President and the Secretary.

Explanation: "Member" in this rule as well as in Rule 4-A includes President, Vice-President and Secretary of the Selection Board.

(3) The Member shall be appointed by Government.

(4) The term of office of the Members shall be three years from the date of their appointment or till the date of attaining the age of 61 years whichever is earlier:

Provided that Government may, for good and sufficient reasons to be recorded in writing, extend the term of office of any member for such period as they think fit or remove any, member at any time:

Provided further that a Government servant appointed as a Member may be transferred to any post under the Govt. at any time whereupon or on the superannuation of such Government servant, he shall cease to be a member of the Board.

The terms of Annexure-3 run thus:

Sri Ramakrishna Kar, Inspector of Schools, Selection Grade in Class I of O.E.S. (Field Wing), at present Member, Selection Board, as allowed to retire from Government service on superannuation with effect from 30-6-1982. (A.N.).

3. The Petitioner contends that the amendment operates prospectively and he having already been appointed under the old rule was entitled to be in office for a term of 3 years and Annexure 3 under which he has been directed to superannuate from 30th June, 1982, is not valid. It is further contended that the Proviso to the amended Sub-rule (4) also would not justify the Petitioner's superannuation in as much as the Petitioner was never transferred back to

Government service. It has been further contended that there have been instances where appointments have been made of persons as members of the Selection Board even after superannuation from Govt. service. It has also been pleaded in paragraph 17 of the writ application that one Mr. Mohapatra, Reader in English, was appointed as a Member in January, 1982, about five months before superannuation and he has been continuing as a Member. It has, therefore, been contended that the Petitioner has been discriminated against.

4. A return has been made by the Deputy Secretary in the Department of Education & Youth Services justifying the action. It has been contended that the post of Member, Selection Board, is not a "term post" in respect of Govt. servants. The second proviso of the amended Sub-rule (4) envisaged that a Govt. servant appointed as a Member could be transferred to any post under Govt. at any time and on superannuation from Govt. service he would cease to be a member of the Board. In paragraph 4 of the counter affidavit it has been further pleaded that under the unamended rule as well as under the amended rule the Petitioner has no right to continue as Member, Selection Board, beyond the age of superannuation. The further averment in the counter affidavit is that the amended rule operated on a person who was already appointed before the amendment yet it must be taken to be operating only in future. In paragraph 8 of the counter affidavit, with reference to the two instances relied upon by the Petitioner it has been pleaded:

...Sri P.K. Das and Sri B.J.B. Mohapatra were appointed as President and Member of the Board respectively in accordance with law. The Petitioner cannot claim reappointment or continuance as Member of the Selection Board as a matter of right.

5. 3 questions arise for consideration, namely:

(1) Whether the appointment of the Petitioner was for a term of 3 years when under Annexure-1 he was given the appointment under the unamended rules.

(2) When under the amended rules, which are conceded to be prospective, the Petitioner is being asked to superannuate, whether the existing right is being taken away: and

(3) Whether the Petitioner had been discriminated against.

6. Rule 4(4) of the parent rules made no distinction between a Govt. servant and an outsider in the matter of appointment as President. Vice-President, Member and Secretary. For everyone, the term of office was a 3-year period subject to eligibility for reappointment. There is, therefore, no force in the stand taken in the counter affidavit that the term of 3 years in the sub-rule did not refer to Govt. servants. If a Government servant was appointed as Member, on completion of a term of 3 years unless he was reappointed, he was to revert to his parent service. The Petitioner had, therefore, when appointed under Annexure-1 in 1981, been appointed for a term of 3 years. Though there is no

mention of it in the order of appointment (Annexure-1) in view of Sub-rule (4) of Rule 4 of the unamended rule, it must follow that it was intended to be for a term of 3 years.

7. In the counter affidavit it has been conceded that the amendment is intended to operate prospectively. In view of the conceded stand, it is unnecessary to go into the legal proposition as to whether the rule could be retrospective. Once we hold, and we have already taken the view that the Petitioner's initial appointment was for a term of 3 years, the amended Sub-rule (4) could not affect him when the amendment is prospective. To ask the Petitioner to go out of the post before the term of 3 years is over would make the rule retrospective in its operation and affect vested rights. That not being the intention of the rule maker as stated to us in course of hearing, based upon the stand taken in the counter affidavit, the Petitioner's superannuation before the 3 year term was over is uncalled for.

8. The Petitioner has specifically pleaded in paragraph 17:

...Sri B.J.B. Mohapatra Reader in English, was appointed as a Member in January, 1982, about 5 months before completion of 58 years and was allowed to continue even after completion of 58 years. But the Petitioner has been made to retire on completion of 58 years and before the expiry of 3 years" fixed term....

We have already extracted the stand taken in paragraph 8 of the counter affidavit. There is no denial that Sri Mohapatra was appointed five months before he became 58 and even when he became 58 and ordinarily should have superannuated, he had been allowed to continue. The Petitioner and Sri Mohapatra, therefore, stood at par. It is not the case of the opp. party that the Petitioner's retirement under the impugned Annexure-3 had been grounded upon any other consideration except his reaching the age of 58, which is the age of superannuation. Since the Petitioner and Sri Mohapatra are similarly placed, Sri Mohapatra could not be retained as a Member while the Petitioner would be required to superannuate. This certainly does amount to discrimination within the meaning of Article 14 of the Constitution. If the rule as amended required that every Govt. employee appointed as a Member of the Selection Board was to superannuate when he reached the age of 58, Sri Mohapatra should have also retired.

9. Taking any view of the matter, we are inclined to agree with Mr. Dora for the Petitioner that the direction under Annexure-3 that the Petitioner should superannuate from 30th June, 1982 when he reached the age of 58 is illegal and that the Petitioner is entitled to continue for a term of 3 years with effect from his appointment as a Member of the Selection Board on 30th July, 1981.

10. We, therefore, quash Annexure-3 and direct that the Petitioner shall be deemed to be continuing as a Member, of the Selection Board for a term of 3 years from 30th July, 1981. He shall be entitled to all the advantages following such a declaration.

11. The Petitioner is entitled to his costs of this proceeding. Hearing fee is assessed at Rs. 200/-.

R.C. Patnaik, J.

12. I agree.