
(2022) 04 OHC CK 0092

In the Orissa High Court

Case No : Writ Petition (C) No. 26692 Of 2011

Samarendra Nayak And Others

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 18-04-2022

Acts Referred:

Orissa Higher Secondary Education Act, 1982 — Section 30(3)

Citation : (2022) 04 OHC CK 0092

Hon'ble Judges : Dr. S. Muralidhar, CJ; R.K. Pattanaik, J

Bench : Division Bench

Advocate : Pami Rath, P. K. Muduli

Final Decision : Allowed

Judgement

Dr. S. Muralidhar, CJ.

1. Eleven persons working as Demonstrators in the disciplines of Chemistry, Physics and Zoology in various colleges in Orissa have come together seeking directions to the Director, Higher Education, Orissa to provide the Petitioners with the scale of pay as is admissible under the University Grants Commission (UGC) guidelines from their respective dates of entitlement.

2. Each of the Colleges, in which the Petitioners were working, is a fully Aided Non-Government College. It is stated that the post of Demonstrators was included in the Colleges in the year 1949 in the Junior Branch of Class-II of the Orissa Education Service (OES). It is stated that in the Education Department, the Lecturers and Demonstrators have been categorised as Class-II in one group for the purposes of pay revision.

3. In due course of time, the Government of Orissa introduced the post of Laboratory Assistant instead of Demonstrator in the Education Department. They were further classified as Junior Laboratory Assistant and Senior Laboratory Assistant in different scales of pay. While as per the UGC norms, a scale of pay for Demonstrators was Rs.500/- to Rs.900/- in the year 1974 in all States of

India, even after redesignating the post of Laboratory Assistant as Demonstrator, the State of Orissa was an exception. The cadre of teachers to which the Petitioners belong remained in the scale of Rs.400/- to Rs.620/-.

4. The Laboratory Assistants possessing B. Sc. qualification were designated as Demonstrators (Non-Teaching) in the scale of pay of Rs.1090- 1950/- only from 1st January, 1985 by a letter dated 24th September, 1986 of the Director of Higher Education-Opposite Party No.4. The said letter reads as under:

"After careful consideration, Governor has been pleased to decide that Laboratory Assistants in Science subjects in non-Govt. Aided Colleges possessing B.Sc. qualification shall be designated as Demonstrator (Non-Teaching) and placed in the scale of Rs.1090-1950/- with effect from the date this decision has been made applicable to Laboratory Assistants in Government Colleges."

5. By a letter dated 17th June 1987, the Department of Education, Ministry of Human Resource Development, Government of India, informed the UGC on the issue of "revision of pay scales of Teachers in Universities and Colleges and other measures for maintenance of standards in Higher Education." In this letter, it was stated that effective from 1st January, 1986 it was decided to revise the salary scales of teachers as per the scheme enclosed with the said letter. The scheme must be implemented in the Central Universities and other Institutions fully financed by the Central Government. It was stated that Government of India had also decided to assist the State Governments, who wished to adopt and implement the scheme subject to the condition that Central Government would provide assistance to the State Governments to the extent of 80% of the additional expenditure involved in giving effect to the revision of scales of pay. The Central assistance was to be made available for the period 1st January, 1986 to 31st March, 1990. The State Governments would meet the remaining 20% of the expenditure from their own resources and would not pass on the liability to the Universities or the Managements of the private colleges. The State Governments would take over the entire responsibility for maintaining the revised scales of pay with effect from 1st April, 1990. The Central assistance was restricted to the revision of pay scales of the posts, which were in existence as on 1st January, 1986. The appendix to the scheme stated that "The revised scale of pay of Tutors and Demonstrators is for the existing incumbents of these positions in the Universities and Colleges. There shall be no fresh recruitment to this category." In other words, since the cadre of Demonstrators was a dying cadre, this was to be a one-time implementation. Annexure-1 to the Appendix indicated that where Tutors/Demonstrators were in the existing scale of pay Rs.500 - 900/-, they would get a revised pay of Rs.1740-3000/-.

6. Meanwhile, acting on the representation of the Orissa Government and Non-Government College Demonstrators (NT) Association, the Government of Orissa deleted the word 'NT' from the designation 'Demonstrator (NT)' in the existing scale of pay Rs.1090-1950/- by a letter dated 10th April, 1989. However, it was subject to the following conditions:

"(i) That they will not claim for parity with the existing Demonstrators placed in the scale of pay 1120-2245/-.

(ii) that they cannot claim for higher post on the ground that they are doing teaching job.

(iii) that the U.G.C. scale of pay will not be given to them at any point of time.

(iv) that they will abide by the rules framed in respect of their recruitment and duty chart."

7. In other words, despite recognizing that the Demonstrators were also performing a teaching job and were entitled to the same salary as teaching staff, the above conditions prevented the Petitioners from gaining UGC scale of pay.

8. The Department of Education issued another circular on 22nd July, 1988 on the same topic of revision of pay scales of teachers in Universities and Colleges. In terms of this scheme also it was stated that the revised scale of pay for Tutors and Demonstrators would be in the scale of Rs.1740-3000/- with the stipulation that "there shall be no fresh recruitment in this category."

9. On 17th April 1989, the Orissa Higher Secondary Education Regulations, 1982 were amended in terms of Section 30(3) of the Orissa Higher Secondary Education Act, 1982 (Act). By introducing a proviso to Regulation 149, it was provided "examiners for conduct of the practical examinations may be appointed from among the Demonstrators with Post-Graduate qualification or those having fifteen years of experiences as such without Post-Graduate qualification."

10. By a judgment dated 30th April, 1993 in OJC No.8516 of 1992 (Smt. Gitanjali Mishra v. State of Orissa), this Court held that the post of Demonstrators was a teaching post for which the minimum qualification was B. Sc. Having discussed the above circulars and schemes, it was held that the Petitioner in that case was entitled to be considered for the M. Phil course in the quota of 'teacher' of a college. At the relevant time, the Petitioner was a Laboratory Assistant in the Radhanath Training College of Cuttack.

11. Again in a decision in Bijay Kumar Swain v. State of Orissa 2005 (II) OLR 752, another Division Bench of this Court held that Demonstrators were teachers. This Court upheld the Petitioner's challenge to the rejection of his claim for approval and consequent release of Grant-in-aid against the post of Demonstrator in Chemistry of the Rajsunakhala College in Nayagarh District. By an order dated 9th March, 2011 in Civil Appeal No.5426 of 2006, the appeal was dismissed by the Supreme Court of India.

12. Despite all of the above measures, the Petitioners were denied the benefit of the revision of pay scale by the Government of Orissa, whereas in many other States they were granted that benefit. Meanwhile, promotional avenues were given to the Demonstrators of Non-Government Colleges to the post of Lecturers by the Government of Orissa following a letter dated 8th October, 1992 of the

UGC. By a letter dated 3rd March 1994, the Government of Orissa wrote to the UGC for matching share to implement the UGC scale of pay to the Demonstrators in the State of Orissa. The UGC replied stating that the Central Government would provide assistance subject to the terms and conditions laid down in the Department of Education's letter dated 11th October, 1994.

13. Pursuant to a decision dated 2nd May, 1995 of this Court in OJC No.6930 of 1994 and 954 of 1995 and Batch, the Utkal University allowed the UGC scale of pay to Demonstrators by a letter dated 31st May, 1997. On 18th November 1994, the Government of Orissa through the Directorate of Higher Education directed the respective Principals to indicate the financial liability that would accrue if the revised scale of pay of Rs.1740-3000/- would be extended to Demonstrators. By a subsequent letter dated 18th September 1995, the Department of Higher Education decided to discontinue the post of Demonstrators in various Government and Non-Government Aided Colleges.

14. On 14th August 1996, the Government of Orissa wrote to the Ministry of HRD, Department of Education, Government of India asking it giving its approval for extension of the UGC scale of pay to Demonstrators and agreeing to provide central assistance to the extent of 80% of the additional cost for a period of five years and to implement the scheme with effect from 1st January, 1996. The Department of Education by its letter dated 24th December, 1996 stated that the Central Government would provide financial assistance for the period of 1st January, 1986 to 31st March, 1990 and only for posts, which were in possession as on 1st January, 1986 that is to incumbents holding such posts prior to that date. As far as Petitioners were concerned, they had been redesignated as Demonstrators even prior to 1st January, 1986.

15. A meeting was convened by the Minister of Higher Education on 27th December, 1996 whereby it was decided that those who were in service up to 1st January, 1986 and were continuing as such as Demonstrators were entitled to UGC scale and would be paid from 1st January, 1986 to 31st March, 1990. 80% of which expenditure was to be undertaken by the Central Government and the remaining 20% to be shared by the State Government. After 31st March 1990, 100% payment would be paid by the State Government. Based on this meeting on 27th March 1997, an office order was issued by the Department of Higher Education to the Universities and Principals of Government and Non-Government Colleges for submissions of statements assessing the requirement of additional funds for extending UGC scale of pay to Demonstrators. It was pursuant to the above decision that Utkal University decided to extend the UGC scale of pay to its Demonstrators by the letter dated 31st May, 1997.

16. The Petitioners refer to a letter dated 9th June, 2008 of the Department of Higher Education whereby States were asked to be taken to appoint Demonstrators as practical examiners since UGC had in support placed Demonstrators in the teaching category. When despite all of the above measures, the Petitioners were not granted the UGC scale of pay, they approached this

Court in the present writ petition in which notice was directed to issue on 18th October, 2011.

17. A counter affidavit was filed on 18th October, 2012 by the Department of Higher Education, where a reference was made to the fact that the General Secretary, Utkal University Demonstrators' Association had filed OJC Nos.1088 of 2000 and 13156 of 1998 with the prayer to extend the UGC scale of pay of Rs.1740-3000/- to Demonstrators who have reached the stage of Rs.2700/- as per the recommendation of the UGC with effect from 1st January, 1986. In its judgment dated 30th September, 2011 in OJC Nos.1088 of 2000 and 13156 of 1998 (General Secretary, Utkal University Demonstrators' Association v. Utkal University), this Court concluded that since the UGC had already approved the pay scale of the Demonstrators/Tutors, the guideline could not discriminate between the Demonstrators working in the Colleges and those working in the University. It was directed that the pay scale of the Members of the Petitioners' Association would be fixed notionally and annual increment would be allowed till 1st January, 1986 but no financial benefit would be given from 1st January, 1986 to 1st January, 1996. It was further directed that the scale of pay of the Tutors would be Rs.1740-3000/- and Demonstrators Rs.2200- 4000/-, who have reached the stage of Rs.2700/- and that shall be fixed with effect from 1st January, 1986.

18. Although in the counter affidavit it was stated that a decision was taken to prefer an SLP in the Supreme Court of India, such an SLP was in fact filed i.e. SLP (Civil) [CC15229 of 2012], which came to be dismissed on 10th September, 2012. Therefore, in the counter affidavit, there is no basis in claiming that the Petitioners "although treated teaching, they cannot be equated or treated at par with lecturers even though they are taking practical classes."

19. A separate counter affidavit had been filed by the UGC on 8th April 2013, claiming that the scale of pay notified for Demonstrators was different from the pay scale of lectures and, therefore, the Demonstrators cannot be treated on par with lecturers.

20. On 22nd July 2014, the Department of Higher Education again sought information on the following:

"(1) List of Demonstrators working in Govt. and Non-Govt. Aided Colleges eligible for UGC scale of pay on or before 01.01.86 and the financial involvement thereon.

(2) List of Demonstrators continuing in Govt. and Non-Govt. Aided Colleges after 01.01.86.

(3) The Status of Nine(9) petitioners in GIA Case No. 375/11 working in different Colleges. As the matter relates to the case in Learned Tribunals. This may be treated as most important and furnish the required information within 15 days to this Department."

It is stated that the Christ College, Cuttack by their letter dated 2nd September,

2014 sent the requisite information.

21. This Court has heard the submissions of Ms. Pami Rath, learned counsel for the Petitioners and Mr. P. K. Muduli, learned Additional Government Advocate appearing for the Opposite Parties.

22. The repeated letters written by the Department of Higher Education on the topic of "Implementation of UGC scale of pay to Demonstrators working in Government and Non-Government Aided Colleges" on 27th March, 1997 and 22nd July, 2014 show that the Government have accepted that the Demonstrators working in Government and Non-Government Aided Colleges are to be treated as teaching staff entitled to UGC scale of pay on or before 1st January, 1986. There appears to be no basis for discriminating against any of the Petitioners particularly in view of the judgments of this Court itself in Smt. Gitanjali Mishra (supra), Bijay Kumar Swain (supra) and General Secretary, Utkal University Demonstrators' Association (supra).

23. In fact, the cases of the present Petitioners are more or less similar to the Petitioners in the last-mentioned decision in General Secretary, Utkal University Demonstrators' Association (supra). The need for the Demonstrators of Utkal University to go back to the Court was because despite Utkal University passing orders on 31st May 1997 that the Demonstrators would be allowed the UGC pay scale, a direction was issued subsequently for withdrawal of the decision and recovery of the excess salary. That was challenged in OJC No.13156 of 1998. The UGC appears to support the case of the Petitioners there that "the State Government while recommending the case of the Demonstrators working under the Universities could not have ignored the Demonstrators working in Government Colleges and Non-Government Aided Colleges as they are on the same footing."

24. This Court in General Secretary, Utkal University Demonstrators' Association (supra) examined all the letters, circulars and schemes, which have been referred to hereinbefore as well as decision of this Court in Smt. Gitanjali Mishra (supra) and came to the conclusion that there could be no discrimination between Demonstrators in Universities and Demonstrators in Colleges and both were to be treated as teachers. The stand taken by both the State Government and the UGC in the present petition however is at variance with the stand taken in the Utkal University Demonstrators' Association's case.

25. Meanwhile in two other cases, a learned Single Judge of this Court by order dated 9th August, 2021 in WPC(OAB) No.3 of 2012 (Chakrapani Patnaik v. State of Orissa) and order dated 25th February, 2022 in WPC (OAC) No.953 of 2013 (Rabi Narayan Samal v. State of Orissa) granted that Petitioners in those cases the same benefit as granted in the case of Chakrapani Patnaik (supra). In other words, the UGC pay scale was granted for Demonstrators working in both the Khallikote College and the Ravenshaw University.

26. The Court sees therefore no difficulty in accepting the prayer of the present

Petitioners since their case is not different from all the cases discussed hereinbefore.

27. It is accordingly directed that the Petitioners would be granted the UGC scales of pay in terms of the decision already taken to implement the scheme of the Central Government whereby for the period from 1st January, 1986 to 31st March 1990, 80% of the financial burden would be borne by the Central Government and 20% by the State Government and thereafter entirely by the State Government.

28. A direction is accordingly issued that each of the Petitioners be granted the aforementioned scale of pay of Rs.1740-3000/-with effect from 1st January, 1986 in terms of the circulars and schemes already referred to hereinbefore and the arrears will be paid to the Petitioners within a period of twelve weeks from today. This will apply notwithstanding the fact that the Petitioners may have been superannuated during the pendency of the present petition. Where applicable, the legal representatives of any of the Petitioners would be paid the above financial benefits in the absence of the concerned Petitioners.

29. The writ petition is allowed in the above terms, but in the circumstances, with no order as to costs.

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