

(2015) 03 OHC CK 0022
In the Orissa High Court
Case No : O.J.C. No. 10466 of 2000

Sanghamitra Nayak

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 24-03-2015

Acts Referred:

Constitution of India, 1950 — Article 14
Orissa Education Act, 1969 — Section 3(b)

Citation : (2015) 03 OHC CK 0022

Hon'ble Judges : B.R. Sarangi, J.

Bench : Single Bench

Advocate : M.R. Pradhan and T. Pradhan, for the Appellant; A.K. Pandey, SC, Advocates for the Respondent

Judgement

Dr. B.R. Sarangi, J.—The petitioner has filed this application seeking to quash the order No. 22683 dated 18.11.2005 passed by the Government of Orissa in Annexure-9-G and letter No. 13184 dated 15.03.2007 issued by the Director under Annexure-9-H respectively and further seeks for a direction to opposite party No. 2 to approve her promotion to the post of Trained Graduate Teacher (Arts) of Odisha Police High School, Cuttack with effect from 30.06.2003 as per Resolution of the Managing Committee of the School under Annexure-9-C and grant her all consequential service benefits as due and admissible in accordance with law.

2. The petitioner having B.A. (Sanskrit), B.Ed. qualification being selected by the Selection Board was appointed as Classical Teacher in Lingaraj Girls' High School at Polasara in the district of Ganjam vide order dated 16.11.1991 in Annexure-1. Thereafter, she was transferred and posted as Classical Teacher in Police High School, Tulasipur in Cuttack on 03.04.1992 pursuant to which she joined in Police High School on 01.05.1993. The Police High School, Tulasipur is an Aided Educational Institution within the meaning of Section 3(b) of the Orissa Education Act being a five Class High School, three Additional Sections in each

class. As per the yardstick dated 08.07.1981 as many as 12 T.G. Teachers excluding the Headmaster and three Trained Intermediate and three Trained Matriculates Teachers are admissible to the said School. At present the School is having one Headmaster, 7 Arts Graduate Teachers, one Science Graduate Teacher, 3 Trained Intermediate Teachers and 2 Trained Matriculate Teachers. The petitioner had made a representation to the Managing Committee of the School to give her promotion against the post of Trained Graduate Teacher as she has got requisite qualification (B.Ed) which she had acquired in the year 1987. Along with the petitioner one Ava Mohanty also made representation for her promotion from the post of Trained Intermediate to trained Graduate Teacher. The said Ava Mohanty acquired B.Ed. qualification in the year 1998. So, she is junior to the petitioner in acquiring the B.Ed. qualification. The authority without considering the same, promoted Ava Mohanty from the post of Trained Intermediate to Trained Graduate Teacher and the same is pending before the Inspector of Schools. Being aggrieved by the said action of the Managing Committee, the petitioner made representation to the Inspector of Schools on 29.01.2000 praying to give her promotion to the post of Trained Graduate Teacher, but her representation was not considered. Subsequently, after retirement of Smt. Ava Mohanty from service on 30.06.2003 on attaining the age of superannuation, the Inspector of Schools vide letter No. 13064 dated 25.08.2003 wrote to the Headmaster-in-Charge-cum-Secretary of the Managing Committee, Odisha Police High School, Cuttack instructing to place the case of promotion of the petitioner to the post of Trained Graduate Teacher (Arts) in the meeting of the Managing Committee for consideration and adoption of necessary resolution. But the Headmaster-cum-Secretary did not place the matter before the Managing Committee and consequently, the Inspector of Schools directed to put up the matter before the Managing Committee to consider the promotion of the petitioner under Rule 8(2)(b) of the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of Staff of Aided Educational Institutions) Rules, 1974 (hereinafter referred to "1974 Rules"). On the basis of the instruction of the Inspector of Schools under Annexures-9-A and 9-B, the Managing Committee in its meeting dated 27.12.2003 considered her promotion from the post of Classical Teacher to the post of Trained Graduate Teacher and resolved to give her promotion to the post of Trained Graduate Teacher against the vacancy caused due to the retirement of Smt. Ava Mohanty as per Rule 8(2) (b) of the 1974 Rules and posted her as Trained Graduate Teacher in the School.

After giving promotion, the Managing Committee forwarded the same to the Inspector of Schools for taking necessary steps to get approval of the Director of Secondary Education, Orissa as provided in the Rules. After getting proposal of promotion for approval, against the vacancy of the Classical Teacher, the Inspector of School posted one Madan Mohan Padhi as Classical Teacher in the School. The Inspector of School on receipt of the proposal of promotion of the petitioner from the post of Classical Teacher to the post of Trained Graduate Teacher forwarded the same with recommendation for approval of the Director of

Secondary Education, Odisha under Rule-8(2)(b) of 1974 Rules. But the Director who is the competent authority to grant approval without exercising his statutory power to give approval to the promotion of the petitioner sent the same to the Government vide letter No. 39111 dated 07.09.2004 with a recommendation to give approval to the promotion of the petitioner from the post of Classical Teacher to the post of Trained Graduate Teacher vide Annexure-9-E. In spite of recommendation of the Director, the Government did not give any clearance for approval of the service of the petitioner and on the other hand, approved the promotion of ten teachers of Christ Collegiate School vide letter dated 26.07.2004. The Government vide letter dated 18.11.2005 intimated the Director that pursuant to the judgment dated 19.05.2005 of this Court in W.P.(C) No. 6887/2004, this Court has directed to finalize the Common Cadre of Trained Graduate Teachers of the Aided institutions within a period of six months from the date of communication of the order. Therefore, the Director was directed to comply with the order of this Court without approving the promotion of the petitioner from Classical Teacher to Trained Graduate Teacher and accordingly, returned her Service Book to the Director with a direction that the Director shall communicate the same to the petitioner. Therefore, against non-approval of her promotion to the post of Trained Graduate Teacher by opposite party Nos. 1 and 2 respectively, this application has been filed.

3. Mr. M.K. Mohanty, learned counsel for the petitioner strenuously urged that such action of opposite party Nos. 1 and 2 in not approving the promotion of the petitioner from Classical Teacher to the Trained Graduate Teacher under Rule-8(2)(b) of 1974 Rules with effect from 30.06.2003 is contrary to the provisions of law. To substantiate his contention he has relied upon *Swastik Agency and 2 others v. State Bank of India, Main Branch, Bhubaneswar and 3 others*, 2009 (II) OLR 201, *Competent Authority Vs. Barangore Jute Factory and Others*, and *Selvi J. Jayalalithaa and Others Vs. State of Karnataka and Others*, .

4. Mr. A.K. Pandey, learned Standing Counsel for the School and Mass Education Department while admitting the contention raised by the learned counsel for the petitioner that the petitioner was continuing as a Classical Teacher and seeks for adjustment against the post of Trained Graduate Teacher urged that as per the prevailing rules in respect of Aided Non Govt. High Schools, the promotion was given effect to the existing vacant post treating the School as one unit from among the staff with requisite prescribed Rules. Promotion to the post of Trained Graduate Teacher or next higher post the criteria was followed from amongst the feeding cadre post. The feeding cadre remains in L.S.E.S. Teacher post which means T.M. Teacher, T.I. Teacher, Classical Teacher, Hindi Teacher, PET having the requisite qualification. The petitioner is the junior one from the other staff and also there was availability of feeding cadre teacher in that period for which the claim of the petitioner for promotion was not taken into consideration by the authority. Therefore, no illegality and irregularity has been committed by the authority in not approving the case of the petitioner for promotion though the same was duly recommended by the Inspector of Schools and also Director of

Secondary Education to the State Government. He further urged that the management of the School in their resolution dated 27.12.2003 resolved that the promotion is subject to result of OJC No. 10466/2000. Therefore, due to the pendency of the court case, the promotion of the petitioner has not been approved by the Government. Opposite party No. 1 while considering the proposal relied upon the decision taken by this Court in another case bearing W.P. (C) No. 6887/2004 wherein this Court by order dated 19.05.2003 directed to finalize common cadre of Trained Graduate Teachers in respect of Aided Non Govt. High Schools. Accordingly, opposite party No. 1 instructed to all concerned to prepare the common gradation list of different category of teachers working in Aided Boys/Girls High Schools in order to comply with the order of this Court. Therefore, opposite party Nos. 1 to 3 are justified in not approving the promotion of the petitioner pursuant to recommendation made by the Inspector of School as well as the Director of Secondary Education. But, at the same time it is admitted that opposite party No. 1 approved the promotion of 10 Teachers of Christ Collegiate School as the said School is a minority Aided Non Government High School and stands on a different footing than that of the Petitioner School. So far as consequential benefit is concerned it is urged that the petitioner has already availed the scale of pay at par with the Trained Graduate Teacher as per G.O. No. 17542/SME dated 05.09.2011 from 01.05.1993 in connection with the revised common qualification of M.A. (Sanskrit). She availed all financial benefits at par with Trained Graduate Teacher notionally from 01.05.1993 and actual financial benefits at par with Trained Graduate Teacher from 01.01.2006.

5. Mr. B.S. Mishra-2, learned counsel for opposite party Nos. 4 and 5 while admitting the case of the petitioner submitted that the recommendation has been made by the Managing Committee of the School for promotion of the petitioner from the post of Classical Teacher to Trained Graduate Teacher with effect from the date of superannuation of Smt. Ava Mohanty i.e. from 30.06.2003, but denied the claim of the petitioner from an earlier date. He further disputed the joining of the petitioner at Lingaraj Girls High School, Polasara in the district of Ganjam.

6. On the basis of the above facts pleaded, it is to be considered whether the petitioner is entitled to get the relief sought in this writ petition. Admittedly, the Director of Secondary Education recommended the case of the petitioner to the Government indicating that after retirement of Smt. Ava Mohanty, Trained Graduate Teacher with effect from 30.06.2003, the post of Trained Graduate Teacher fell vacant with effect from 01.07.2003. The Managing Committee of the said School in their resolution dated 27.12.2003 promoted the petitioner who teaches in the School subjects like English, Geography, History, F.L.O. along with Sanskrit in Top three classes. The Inspector of School has submitted the xerox copy of the Managing Committee Resolution dated 18.04.2002 and 27.12.2003 duly countersigned, Staff position of the School duly signed by the Headmaster and countersigned, Roll strength of each class for last three years duly signed by the Headmaster and countersigned by the Inspector of Schools vide Annexure-9-

E. But, the State Government instead of approving the promotion of the petitioner passed the impugned order directing all concerned to finalise the common cadre in compliance with the judgment of this Court in W.P.(C) No. 6887/2004 disposed of on 19.05.2005, but that itself is not a ground in not approving the promotion of the petitioner and no specific reason has been assigned why the petitioner has not been promoted from the post of Classical Teacher to Trained Graduate Teacher.

7. Rule 8(2)(b) of the 1974 Rules states as follows:

"the vacancy in a post carrying higher scale of pay is filled up with prior approval of Government in case of a College and the concerned Director in case of an institution other than a college, by an employee of the same institution who possesses the prescribed qualifications and experience and whose performance in respect of the post he holds has been found satisfactory. Such appointment shall be treated as regular appointment from the date the same is filled up. On ad hoc basis by the Managing Committee or the Governing Body as the case may be in the event of its approval by the competent authority." 8. In view of the above mentioned provisions, it is the Director who is competent authority who can approve the appointment/promotion given by the Managing Committee to an employee of the same institution who possess the prescribed qualification and experience and whose performance in respect of the post he/she holds has been found satisfactory. Admittedly due to retirement of Smt. Ava Mohanty on 30.06.2003, a vacancy occurred in the Trained Graduate Teacher post to which the petitioner who is holding Classical Teacher post and possesses the prescribed qualification and experience and whose performance has been found to be satisfactory was eligible to be promoted and the Managing Committee having considered the same resolved to promote the petitioner to the said post and recommended for approval of the Director of Secondary Education who should have exercised his power under Rule 8(2)(b) instead of referring the matter to the Government for its approval. Inaction on the part of the Director is contrary to the Rules, therefore, the Court has to exercise its jurisdiction to declare such act to be illegal and invalid.

9. In *Swastik Agency and 2 others* (supra) this Court held that when the action of the State or its instrumentalities is not as per the rules or regulations and supported by the statute, the Court must exercise its jurisdiction to declare such an act to be illegal and invalid. In paragraphs 47 to 55 this Court held as follows:

"47. In *Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis*, , the Supreme Court observed that "the ratio is that the rules or the regulations are binding on the authorities."

48. Similarly, a Constitution Bench of the Supreme Court in *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation*, , has observed as under;-

"The statutory authorities cannot deviate from the conditions of service. Any deviation will be enforced by legal sanction of declaration by Courts to invalidate actions in violation of rules and regulations.....In the cases of statutory bodies there is no personal element whatsoever because of the impersonal character of statutory bodiesThis Court has repeatedly observed that whenever a man's rights are affected by decision taken under statutory powers, the Court would presume the existence of a duty to observe the rules of natural justice and compliance with rules and regulations imposed by statute."

49. Similar view has been taken by the Supreme Court in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, : Ambica Quarry Works Vs. State of Gujarat and Others, ; Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, ; Indira Sawhney Vs. Union of India and Others, ; and A.P. Aggarwal Vs. Govt. of N.C.T. of Delhi and Another, .

50. In M.C. Mehta Vs. Union of India (UOI) and Others, , the apex Court observed that rule of law is the essence of democracy, "it has to be preserved. Laws have to be enforced."

51. In Dr. (Mrs.) Meera Massey, Dr. Abha Malhotra and Dr. S.C. Bhadwal and Others Vs. Dr. S.R. Mehrotra and Others, , the Apex Court observed as under:-

"If the laws and principles are eroded by such institutions, it not only pollutes its functioning deteriorating its standard but also exhibits..... wrong channel adopted.....If there is any erosion or descending by those who control the activities all expectations and hopes are destroyed. If the institutions perform dedicated and sincere service with the highest morality it would not only up-lift many but bring back even a limping society to its normalcy."

52. The Supreme Court has taken the same view in Ram Chand and Others Vs. Union of India (UOI) and Others, , and held that "the exercise of power should not be made against the spirit of the provisions of the statute, otherwise it would tend towards arbitrariness."

53. A Constitution Bench of the Supreme Court in Ajit Singh and Others Vs. The State of Punjab and Others, held that any action being violative of Article 14 of the Constitution is arbitrary and if it is found to be de hors the statutory rules, the same cannot be enforced.

54. Thus whenever any action of the authority is in violation of the provisions of the statute or the action is constitutionally illegal, it cannot claim any sanctity in law, and there is no obligation on the part of the Court to sanctify such an illegal act. Wherever the statutory provision is ignored, the Court cannot become a silent spectator to such an illegality, and it becomes the solemn duty of the Court to deal with the persons violating the law with heavy hands. (Vide R.N. Nanjundappa Vs. T. Thimmiah and Another, ; B.N. Nagarajan and Others Vs. State of Karnataka and Others, ; Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others, ; State of Orissa and others

Vs. Smt. Sukanti Mohapatra and others, ; State of Himachal Pradesh, through the Secretary, Agriculture to the Govt. of Himachal Pradesh Vs. Nodha Ram and others, ; Nazira Begum Lashkar and Others Vs. State of Assam and Others, ; Dr. (Mrs.) Chanchal Goyal Vs. State of Rajasthan, ; State of Haryana and Another Vs. Tilak Raj and Others, ; and Sultan Sadik Vs. Sanjay Raj Subba and Others, .

55. Thus, the legal position remains that every statutory provision requires strict adherence, for the reason that the statute creates rights in favour of the citizens, and if any order is passed de hors the same, it cannot be held to be a valid order and cannot be enforced. As the statutory provision creates legal rights and obligations for individuals, the statutory authorities are under a legal obligation to give strict adherence to the same and cannot pass an order in contravention thereof, treating the same to be merely decoration pieces".

10. In J. Jayalalithaa and Others (supra) the apex Court in paragraph-34 held as follows:

"There is yet an uncontroverted legal principle that when the statute provides for a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of the same. In other words, where a statute requires to do a certain thing in a certain way, the thing must be done in that way and not contrary to it at all. Other methods or mode of performance are impliedly and necessarily forbidden. The aforesaid settled legal proposition is based on a legal maxim *expressio unius est exclusio alterius*, meaning thereby that if a statute provides for a thing to be done in a particular way, then it has to be done in that manner and in no other manner and following any other course is not permissible". 11. Considering the above position of law laid down by the apex Court and also by this Court and applying the same to the present context, it appears that Rule-8(2)(b) of the 1974 Rules empowers the Director of Secondary Education to make approval of the appointment/promotion made by the Managing Committee. Instead of exercising of such power, the Director could not have sent the same to the State Government for approval. Therefore, when the statute empowers that the Director to exercise such power either he has to do the same by his own order or he may refuse to do so by giving reasons for the non-approval. But, in no circumstances he could seek approval from the Government as such recourse is not permissible under the law.

12. As it appears, the Director of Secondary Education has not acted in consonance with the provisions of law inasmuch as he has just behaved as if he is rubber stamp of the State. If the Director acts in such a fashion that will lead to arbitrariness and such action is liable to be set aside on the touch stone of the judicial review being contrary to the provisions of law. Even on perusal of Annexure-9-G, the letter of the Government to the Director, it appears that no reasons have been assigned why the petitioner's appointment/promotion from the post of Classical Teacher to Trained Graduate Teacher shall not be approved. The order under Annexure-9-G passed by the State Government is contrary to

the statute and the same is without jurisdiction. More so, direction has been given to prepare the Gradation List in compliance with the order passed in W.P. (C) No. 6887/2004 disposed of on 19.05.2005. That ipso facto cannot deprive the petitioner to get her legitimate claim as due and admissible in accordance with law. Since the order of the State Government in Annexure-9-G is without jurisdiction and is in not in conformity with the Rule 8(2)(b) of the 1974 Rules, the same cannot be sustained in the eye of law. Consequently, the communication made by the Director to the petitioner in Annexure-9-H being passed without application of mind, both the orders under Annexures-9-G and 9-H passed by the State Government and the Director of Higher Secondary Education respectively cannot sustain and accordingly the same are quashed and the matter is remitted back to the Director of Secondary Education, Odisha to reconsider the matter taking into consideration the recommendation made by the Inspector of Schools pursuant to Annexures-9-C and 9-D and take a decision within a period of three months from the date of communication of this order.

13. With the above observation and direction, the writ petition is disposed of.