
(2001) 11 OHC CK 0005

In the Orissa High Court

Case No : Original Jurisdiction Case No's. 2992, 2994, 2997, 2998, 4371, 5990, 6955 and 11395 of 2000 and 576, 1815, 6953, 7044, 7478, 7479, 7480, 7490, 7690, 7892, 8455, 8456, 8476, 8649, 8656, 8670, 8861, 9046, 9079, 9129, 9130, 9199, 9232, 9234, 9235, 9251, 925

Sanjib Kumar Pattnaik and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 07-11-2001

Acts Referred:

Orissa Aided Educational Institutions (Appointment of Lecturers Validation) Act, 1998
— Section 3(2)

Citation : (2001) 1 OLR 58

Hon'ble Judges : P.K. Tripathy, J

Bench : Single Bench

Advocate : K.K.Swain and Associates in O.J.C. Nos. 2992, 2994, 2997, 2998, 4371, 6955, all of 2000 and 8455, 8456, 8457, 8649, 8656, 10395, 10396, 10397, 10489, 10493, 10643, 10644, 10645, 10646, 10647, 10648, 10649, 10671, 10672, 10674, 10676, 10677, 10678, 10752, 10765, 10923, 10925, 11546, 11547, 11549, 11550, 11551, 11977, 11980, 11982 and 11983 all of 2001, T.N. Pattnayak and Associates in O.J.C. Nos. 5990 of 2000 and 10797 of 2001, L. Samantaray, in O.J.C. Nos. 11395 of 2000, B.S. Tripathy-1 and Associates in O.J.C. Nos. 576, 10547, 10548, 10549, 10550, 10551, 10552, 10553, 10554, 10584, 11998 and 12001, all of 2001, S.K. Das and Associates in O.J.C. Nos. 1815, 7892, 9199, 9641 and 9861, all of 2001, S.C. Pani, in O.J.C. Nos. 6953, 7044, 9993 and 9994, all of 2001, Pitambara Acharya and Associates in O.J.C. Nos. 7478, 7479, 7480, 9079, 10054 and 1005, all of 2001, A.K. Mohanty A and Associates in O.J.C. No. 7490 of 2001, G.P. Mohanty and Associates in O.J.C. Nos. 7690 and 11856 of 2001, A.R. Dash and Associates in O.J.C. No. 8476 of 2001, K.C. Kanungo and Associates in O.J.C. Nos. 8670, 9289, 9290, 9576, 10244, 10375, 11632, 11633, 12109 and 12111, all of 2001, D.K. Mohapatra, in O.J.C. No. 8861 of 2001, S.K. Pradhan-2, in O.J.C. Nos. 9046 and 9869 of 2001, S. Behera and Associates in O.J.C. Nos. 9129 and 9130 of 2001, U.K. Samal and Associates in O.J.C. Nos. 9232, 9234 and 9235 of 2001, P.K. Sahoo and Associates in O.J.C. Nos. 9251, 9806, 10236, 10242, 10843, 11293 and 11417, all of 2001, P.K. Routray and Associates in O.J.C. Nos. 9252, 9253 and 9254, all of 2001, S.K. Swain and Associates in O.J.C. Nos. 9743, 9888 and 10408, all of 2001, B. Routray and Associates in O.J.C. Nos. 9761, 9762 and 10192, all of 2001, P.C. Kar and Associates in O.J.C. No. 9925 of 2001, M.K.

Sahoo, in O.J.C. No. 10143 of 2001, S.K. Dash and Associates in O.J.C. No. 10157 of 2001, P.K. Nayak and Associates in O.J.C. Nos. 10227 and 10650 of 2001, S.K. Mohanty, in O.J.C. No. 10365 of 2001, P. Choudhury and Associates in O.J.C. No. 10431 of 2001, B.N. Mohanty and Associates in O.J.C. Nos. 10453 and 10454 of 2001, P.K. Mohanty-2 and Associates in O.J.C. Nos. 10474 and 10559 of 2001, R.K. Nayak and Associates in O.J.C. Nos. 10494, 10495 and 10959, all of 2001, K.P. Mishra and Associates in O.J.C. No. 10571 of 2001, P.N. Mohanty and Associates in O.J.C. No. 10599 of 2001, S.K. Das-2 and Associates in O.J.C. No. 10769 of 2001, D. Mohanty and Associates in O.J.C. No. 10834 of 2001, B.B. Ray and Associates in O.J.C. No. 10933 of 2001, A.K. Sharma and Associates in O.J.C. No. 10983 of 2001, G.K. Nanda, in O.J.C. No. 10989 of 2001, R. Behera and Associates in O.J.C. No. 11044 of 2001, D.P. Dhalsamanta and Associates in O.J.C. Nos. 11049, 11050 and 11052, all of 2001, S. Ch. Mishra and Associates in O.J.C. No. 11068 of 2001, S.K. Purohit and Associates in O.J.C. Nos. 11312, 11313, 11314, 11315, 11316 and 11317, all of 2001 and K. Lenka, in O.J.C. No. 11393 of 2001, for the Appellant; M.K. Mohanty, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

P.K. Tripathy, J.—The above noted writ applications involving the common question of law and also, inter alia, the same relief by each of the writ petitioners, are disposed of by this common judgment, which shall abide the result in all the writ applications.

2. Keeping in view the dispute in question and inter alia, the relief sought for in accordance with the provision in the Orissa Aided Educational Institutions (Appointment of Lecturers Validation) Act, 1998 (in short, the "Act", 1998) and the Orissa Grant-in-Aid Order, 1994 (in short, "the Order, 1994") and the provision in the Orissa Education Act, 1969 (in short, "the Act, 1969"), a detailed documentation of fact in each of the cases is not necessary. It is the admitted position on record that the appointment of each of the writ petitioners was not made in accordance with the provisions in the Act, 1969 and the Rules framed thereunder. It is also not in dispute that the writ petitioners are working as Lecturers in aided colleges. The Act, 1998 was assented to by the Governor of Orissa on 10th of October, 1998 and the Act, 1998 came into force prospectively validating appointments of :

(i) lecturers of aided colleges; and

(ii) lecturers of aided junior colleges, who have been appointed on temporary basis against approved or admissible posts by the concerned Governing Bodies/ Managing Committees during the period between 1st January, 1985 and 31st December, 1992 and in pursuance of such appointments if they are continuing as such having the requisite qualifications prescribed to hold such posts and are in the Pay Roll in the concerned Colleges against said approved or admissible posts, as the case may be. It was provided in that Act that validation of appointment of

any Lecturer, as aforesaid, shall not put any person regularly and validly appointed or who may be appointed on the basis of recommendations made by the Selection Board prior to the commencement of the Act, 1998 to put such persons so appointed or to be appointed in the aforesaid manner in a disadvantageous position in any manner whatsoever. Thus, far there is no controversy.

3. Sub-section (2) of Section 3 of the Act, 1998 provides that Lecturers whose appointments are so validated shall be governed by the Order, 1994. for the purpose of their entitlements, but they shall be entitled to receive grant-in-aid towards their salary costs only as per the scale of pay admissible to a Lecturer of Non-Government College and shall be entitled to receive the Grant-in-Aid towards the salary cost with effect from the date of commencement of this Act. So far as this provision in the Act, 1998 is concerned, the State Government put an inroad and embargo by issuing letters and Circulars from the Government and the Directorate of Higher Education intimating that payment of Grant-in-Aid shall be subject to stipulation u/s 7 (C) (i) of the Act, 1969 and the Order, 1994. While the contentions of the petitioners in chorus is to the effect that Government cannot play such hide and seek policy by giving a right in one hand and avoiding to pay the entitlement by another measure, they further argued that since the appointments have been validated under the law, they are entitled to their salary which is admissible to them and which, under the provision of law. Government is bound to pay. Accordingly, the thrust of the argument of the petitioners is to issue writ of mandamus directing the State Govt. to make payment of the arrear salary within a stipulated time and the current salary regularly in accordance with the provisions in the Act, 1998 and the Order, 1994.

4. The stand of the State Government and the Directorate of Higher Education is two fold. Their first limb of argument is that the provision in the Act, 1998 cannot supersede Section 7 (C) (i) of the Act, 1969 and secondly the financial stringency of the State Govt. is so acute that it has readily no capacity to bear the burden to pay arrear or the regular salary to the Lecturers whose services have been validated under the Act, 1998. Learned Additional Govt. Advocate, Mr. M. K. Mohanty further stated that in respect of financial crisis the State Government has already issued White Paper. He further argued that in the absence of budgetary provision it will be of utter difficulty for the State Government to make payment of the salary as claimed by the petitioners. Accordingly he argued not to issue a writ of mandamus but to allow the Government some breathing time to make payment of the arrear and current salary of the Lecturers whose services have been validated under the Act, 1998.

5. In course of argument, several decisions were cited by both the parties, and in O.J.C. Nos. 8997 and 9624 of 2000 (Mrs. Laxmipriya Das and Ors. v. State of Orissa and Ors.), while dealing with similar matter, a Co-ordinate Bench of this Court on 16.8.2001 delivered the judgment considering the aforesaid question raised and the above noted citations referred to by the parties. Therefore, a

threadbare discussion of the points raised, the provision of law and the citations is no more necessary for this Court save and except to follow the ratio laid down in O.J.C. Nos. 8997 and 9624 of 2000 (supra) in as much as after a careful perusal of that judgment this Bench respectfully agrees with the view expressed in that judgment. It has been decided therein that :

"24. In view of the aforesaid authoritative pronouncements referred to supra both of this Court and the Apex Court, I have no hesitation to hold that the petitioners whose appointments in the post of lecturers in category "A-1" Non-Government Educational Institutions, have been validated in consonance with the provisions of 1998 Validation Act. are entitled to the benefit of Grant-in-aid with regard to their salary cost in accordance with the provisions of Sub-section (2) of Section 3 of the 1998 Validation Act read with Grant-in-aid Order, 1994, as more fully discussed in the preceding paragraphs. They shall also be entitled to receive arrear salary with effect from the date on which the Validation Act, 1998 came into force, i.e. 17.10.1998 till their date of approval or payment as the case may be. However, in consonance with Clause-12 of the Grant- in-aid Order, 1994, the Government has liberty to either make provision in the Budget for payment of said arrear amount and/or pass necessary orders for investment of the same in Bonds or to merge the said amount in the GPF Accounts whichever is more suitable to the Government. Before extending the benefit of 1998 Validation Act, it would be, however, open for the opp. parties-authorities to scrutinise and assure that the Non-Government Educational Institution where the petitioners are serving belongs to Category "A-I" as defined under the 1994 Orders. The entire exercise should be completed within a period of six months from the date of receipt of this order."

6. As stated above, this Court adopts the said ratio and the decision and accordingly directs the State Government and the Director, Higher Education, Orissa. to complete the entire exercise within a period of six months from the date of receipt of a copy of this order and to make payment of the arrears and the current salaries to the petitioners in accordance with the above quoted judgment.

7. Before parting with the case, this Court wants to put on record that according to the established procedure with the State Government before a law is enacted, it passes through several preliminaries and that includes concurrence of the Government in Finance Department when there is financial implication involved in a proposed law. Therefore, there is no reason for the Government not to make budgetary provision in the subsequent years when the Act, 1998 came into force in 1998 itself. Therefore, the plea advanced by the Government regarding paucity of funds and no provision of funds made in the Budget appears to be unreasonable.

The writ applications are allowed in the manner indicated above. Issue writ to the opposite parties 1 and 2. Requisites by registered post be filed by next week by the concerned petitioner(s) in that respect which shall include copy of the writ

application and the Annexures.