
(2007) 02 OHC CK 0056

In the Orissa High Court

Case No : Writ Petition (Civil) No. 4317 of 2006

Sanjukta Sahu

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 02-02-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 1 OLR 503 Supp

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Advocate : B. Ch. Sahu, P.K. Singh and G.R. Naik, for the Appellant; A.G.A. for O.P. 1, D.N. Mishra, C.G.C. for O.P. 2, K.N. Jena and G.P. Mohanty for O.P. 3, for the Respondent

Final Decision : Allowed

Judgement

M.M. Das, J.—The writ Petitioner is a post-Graduate and she joined as an instructor in the Anganwadi Training Centre (for short ("AWTC")) under the Integrated Child Development Services Scheme (for short "ICDS") which was being run by the opp. party No. 3, Utkal Navajeevan Mandal, a non-Government Voluntary Organization. The Principal of the said training centre resigned on 31.8.1998 and the Petitioner being the senior most instructor officiated as the Principal of the said centre with effect from 1.9.1998. However, she was confirmed as Principal by opp. party No. 3 with effect from 1.7.2000.

2. The Petitioner's case is that the ICDS Scheme is sponsored by the Central Government and implemented through the State Governments. It gets cent percent financial assistance for recurring and non-recurring expenses from the Central Government and the State Government only provides funds under the minimum needs programme for supplementary nutrition. The policy with regard to the conditions of service of the employees working under such scheme as well as the planning and financial control of the ICDS scheme are formulated by the Department of Women and Child Development, Ministry of Human Resources

Development, Government of India. The said department issues directions from time to time to the State Governments for the effective implementation of such scheme. Notice/directions are also issued by the Central Government from time to time with regard to implementation of the scheme and the Central Government also fixes the remuneration of the training staff and Ors. by formulating annual budget. The Petitioner claims that by letter dated 19.5.1999, the said department of the Central Government intimated the State Government being opp. party No. 1 regarding the revised honorarium to be paid to the beneficiaries of the AWTCs by introducing the World Bank Assisted ICDS Training Programme Project known as Project UDISHA along with other administrative instructions, financial norms and project implementation plans etc. to be effective from 1.4.1999. The Petitioner claims that as per the letter dated 1.5.1999 of the Government of India under Annexure-2 to the writ petition, the State Government was intimated that it has been decided by the Department of Women and Child Development, Government of India that part-time instructors may to be recruited any more by the AWTCs and the existing part-time instructors may be regularized as per the rules. Guidelines were formulated for opening/continuing and closing down training centres under the Project UDISHA as enumerated in Annexure-3 to the writ petition. In Clause-(xiii) of the guidelines under Annexure-3, it was provided that after analyzing the requirements of AWTCs, the State can close down an AWTC by giving them reasonable notice and intimation in this regard should be sent immediately to the Government of India. The Petitioner alleges that when the training centre run by the opp. party No. 3, was continuing and approval of the Central Government for continuing the same for the year, 2006-07 was pending, the opp. party No. 3 without any intimation from the State Government or Central Government for closing down the said training centre, issued the letter dated 6.3.2006 to the Petitioner, inter alia, stating that by letter dated 27.8.2005 of the State Government, running the said training centre was extended up to 31.3.2006 and since the State has not extended the said period, the training centre will be closed down after 31.3.2006. It was further stated therein that in the event any letter will be received from the State Government in this regard, the Petitioner shall be made aware of the same, dues of the Petitioner would be paid within fifteen days after receiving the same from the Government, the house occupied by the Petitioner may be kept by her till 30.4.2006 and thereafter no residential accommodation will be provided and the Petitioner will be required to vacate the said premises. Being aggrieved by the letter dated 6.3.2006 under Annexure-4, the Petitioner has approached this Court in the present writ petition under Article 226 of the Constitution seeking quashing of the said letter under Annexure-4.

3. A counter affidavit has been filed by the opp. party No. 1 being State of Orissa, inter alia, stating that the Government of India in their letter dated 14.6.2005 have accorded the approval for extension of World Bank Assisted ICDS Training Programme Project, UDISHA up to 31.3.2006 and accordingly, the Women and Child Development Department of the State vide its letter dated

27.8.2005 had communicated the continuance of AWTC, Utkal Navajeevan Mandal up to 31.3.2006. Thereafter, the Government of India accorded the approval in their letter dated 19.4.2006 for continuation of ICDS Training Centre during 2006-07 and the State in its Women and Child Development Department have communicated the approval of the Government of India to the opp. party No. 3 regarding the continuance of the Scheme during the period 2006-07, in their letter dated 11.7.2006. The said letter has been annexed as Annexure-A/1 to the counter affidavit. It appears that under the said letter, the opp. party No. 3 was duly communicated regarding extension of the Project during the year 2006-07. However, nothing has been stated in the counter affidavit with regard to the impugned letter under Annexure-4 which has been issued by the opp. party No. 3.

4. The opp. party No. 3 has also filed a separate counter affidavit denying the allegations made by the Petitioner.

5. It is well worthwhile to note that certain developments have taken place during pendency of this writ petition, which are revealed from the Annexures to the Misc. Case No. 9093 of 2006 filed by the Petitioner. From the said Annexures, it is found that on 22.7.2006, the opp. party No. 3 issued a letter to the Petitioner intimating her that the State Government by its letter dated 11.7.2006 has extended continuance of the training centre for the period 2006-07. However, the opp. party No. 3 in the said letter intimated the Petitioner that if she likes to join again in service, she may contact the opp. party No. 3 on 25.7.2006 for discussion. This Court by an interim order dated 5.4.2006 passed in this case, directed that in the meanwhile the Anganwadi Centre which was being managed by the opp. party No. 3 and has been sought to be closed with effect from 31.3.2006 as per Annexure-4 shall be continued to function if no order for closure of the said centre has been received by the opp. party No. 3 from the Union or the State government. It further appears that the opp. party No. 3 again by his letter dated 26.7.2006 intimated the Petitioner that the project is intended to be continued during the period of 2006-07 and the training programme will be started from 27.7.2006 and the Petitioner's employment will be considered to be a fresh appointment purely on temporary basis with effect from 27.7.2006 if she joins. Various other conditions with regard to the service of the Petitioner were also stipulated in the said letter.

6. Learned Counsel for the Petitioner vehemently argued that the service of the Petitioner having been already approved as Principal of the said training centre with effect from 1.7.2000 in accordance with the letter dated 1.5.1991 issued by the Deputy Director, Department of Women and Child Development, Ministry of Welfare, Government of India to all the Secretaries dealing with I.C.D.S. in all States, stipulating therein that the existing part time instructors, if any, may be regularized as per rules, question of the Petitioner being appointed afresh did not arise. Learned Counsel further contended that in view of the interim order passed by this Court as there was no letters/notice issued by the State Government to

close down the training centre which was being run by the opp. party No. 3, question of discontinuance of the service of the Petitioner does not arise, and, therefore, there cannot be a fresh appointment as per letter dated 26.7.2006 issued by the opp. party No. 3.

7. Considering the Clause-(xiii) of the guidelines under Annexure-3 to the writ petition and the counter affidavit filed on behalf of the State along with the letters enclosed to the writ petition and the Misc. Case No. 9093 of 2006, it can be clearly concluded that issuance of the letter under Annexure-4 by the opp. party No. 3, was not warranted, and further the opp. party No. 3 has acted contrary to the guidelines in intimating the Petitioner under the impugned letter under Annexure-4 that the period of the said training centre has to be extended by the Government after 31.3.2006. In view of the letter dated 11.7.2006 under Annexure-A/1 of the Government of Orissa, issued to the opp. party No. 3, it appears that the said training programme has been approved to be continued during the period 2006-2007, and, therefore, the Petitioner could not have been disengaged from the post of Principal of the said AWTC run by the opp. party No. 3 nor she could have been asked to vacate the premises under her occupation, within the said training centre. Considering the fact that pursuant to the letter dated 1.5.1991 of the Union of India vide Annexure-2, the Petitioner's service as Principal of the training centre was approved with effect from 1.7.2000, which has not been controverted by any of the Opp. Parties, coupled with the interim order passed by this Court as stated earlier, question of discontinuance of the Petitioner from the post of Principal of the said training center does not arise, and, therefore, the letter dated 26.7.2006 requiring the Petitioner to join in service as a fresh appointee, purely on temporary basis, is totally misconceived.

8. In view of the above, this Court has no hesitation to hold that the opp. party No. 3 has acted contrary to the guidelines of the ICDS Scheme as well as the Project, UDISHA in issuing the letter under Annexure-4 as well as the letter dated 25.7.2006 to the Petitioner. The said letter bearing No. 759/AWT/05-06 dated 6.3.2006 and also the letter dated 26.7.2006 issued by the opp. party No. 3 to the Petitioner are quashed. Consequently, the opp. party No. 3 is directed to allow the Petitioner to continue in her post which she was previously holding in the said training centre and the period for which she has been out of work pursuant to the impugned letter under Annexure-4 shall not be construed as discontinuance from service by the Petitioner. As a result, she will be treated to be continuing in service without any break and will be entitled to all financial benefits/emoluments flowing therefrom. The opp. party No. 3 is directed to allow the Petitioner to function in her previous post and the said opp. party No. 3 is further directed to release all financial benefits to which the Petitioner may be found to be entitled to, had she not discontinued from discharging her duties due to issuance of the impugned letter under Annexure-4, which has been quashed by this Court.

The writ petition is accordingly allowed.