
(2015) 12 OHC CK 0024
In the Orissa High Court
Case No : O.J.C. No. 3132 of 2002

Santanu Kumar Mishra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 02-12-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Orissa Aided Educational Institutions (Appointment of Lecturers Validation) Act, 1998
— Section 3(1)
Orissa Education Act, 1969 — Section 3(b)

Citation : (2015) 12 OHC CK 0024

Hon'ble Judges : S.N. Prasad, J.

Bench : Single Bench

Advocate : S.K. Das, R.N. Mihsra and S.K. Swain, for the Appellant; Amit Patnaik, Additional Government Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

S.N. Prasad, J.—In this writ petition filed under Articles 226 and 227 of the Constitution of India sought for direction upon the opposite parties 1 to 2 to approve appointment of the petitioner under the Validation Act, 1988 and to release consequential benefits.

2. Case of the petitioner is that Nachuni Mahavidyalaya, Nachuni in the district of Khurda was established in the year 1981 with Intermediate Arts Stream which was subsequently been changed to +2 Arts and the Government has given concurrence and affiliation from the Council of Higher Secondary Education, Orissa for 128 seats in +2 Arts to the college from the year 1983. +2 Science was opened with due concurrence of the State Government from the session 1986-87, College received grant-in-aid from the State Government w.e.f. 1.16.1988 only for the +2 Arts stream.

3. College in question has been brought under the purview of the Orissa Aided Educational Institutions (Appointment of Lecturers Validation) Act, 1998 and as

such the provision as contained in Section 3(1) of the same is applicable to the petitioner.

Thereafter +3 Degree in Arts was opened in the college which got government concurrence and affiliation from the Utkal University from the session 1988-89, seats in +2 Arts have been enhanced from 128 to 256 with effect from the session 1990-91. It has been stated that +2 and +3 Wings were functioning in one campus.

4. Petitioner was appointed against the 3rd post of Lecturer in Political Science of +2 wing which was initially ad hoc in nature and for want of validation under the Validation Act, 1998 in view of the provision as contained in Section 3(1) of the Validation Act, 1998, proposal has been sought for by the State Government vide letter dated 14.1.1999 to submit proposal to take appropriate decision in pursuance to the Validation Act, 1998 and the Principal of the College vide letter dated 6.2.1999 submitted necessary proposal with all relevant records for approval of the State Government, but no decision has been taken by the competent authority i.e. Director, Higher Education.

5. Grievance of the petitioner that opposite party No. 3 i.e. the College in question is an aided educational institution and the petitioner was appointed on 8.10.1992 against 3rd post of Lecturer in Political Science, the petitioner joined the post on 20.10.1992 and as such as per the provision of Section 3(1) of the Validation Act, 1998 appointment of the petitioner deemed to have been validated. Since the Government has not taken any decision petitioner has approached this Court in this writ petition.

6. It has been submitted by learned counsel for the petitioner-

(i) that the moment the Orissa Aided Educational Institutions (Appointment of Lecturers Validation) Act, 1998, hereinafter referred as Validation Act, 1998 has come into effect by the Legislature of the State of Odisha wherein specific provision as contained in Section 3(1) which provides validation subject to condition that Lecturers of Aided Colleges have been appointed on temporary basis against approved or admissible posts by the concerned Governing Bodies during the period between the 1st January, 1985 and the 31st December, 1992 and are continuing as such, having the requisite qualification prescribed to hold such post and are in pay roll of the concerned College against the said approved or admissible post, as the case may be, shall be deemed to have been validated and regularly appointed, and no such appointment shall be challenged in any court of law merely on the ground that such appointment was made otherwise than in accordance with the procedure laid down in the Education Act or the rules framed thereunder.

Case of the petitioner here is that he has been appointed on 8.10.1992 having requisite qualification and as such he is within the period of 1.1.1985 and 31.12.1992 hence his services deemed to have been validated and regularly appointed.

(ii) It has been contended that even on the basis of provisions of Order 9(c) of the Orissa (Non-Government Colleges, Junior Colleges and Higher Secondary Schools) Grant-in-Aid, Order, 1994 which is now repealed but relevant for the purpose of consideration of the case of the petitioner because during the relevant time provision of Order, 1994 was applicable.

Referring to the provision of Order 9(c) of the Order, 1994 it has been contended that since +2 and +3 wings of the college in question is conducted in a institution where the petitioner is imparting study in +2 Arts wing as such total workload for determining admissibility of a post has to be taken into consideration but the opposite party-State has taken ground at paragraph-8 of their counter affidavit that case of the petitioner does not deserve to be considered because +2 and +3 wings are being separately treated.

7. It has been contended by referring to paragraph-8 of the counter affidavit that the authorities have also asserted in that paragraph that post on which the petitioner is working was admissible on the basis of composite workload of the college taking into account such workload of both +2 and +3 wings of the college, but was not admissible on the basis of the workload of +2 wing.

8. Principal of the College in pursuance to the decision taken by the State Government has submitted D-format showing third post of Lecturer in Political Science as admissible by making workload statement along with copy of the statement but no decision has been taken by the Director since the Director is the competent authority to take decision in view of the power having been conferred upon him under the provision of Order-9(c) of the Order, 1994.

It has been contended that similar issue was fell for consideration before this Court in the case of Ms. Bilkesh Parveen and another v. State of Orissa and another reported in 2007 (1) OLR 133 and the Division Bench of this Court, after taking into consideration the provisions of Order 9(c) of the Grant-in-Aid Order, 1994 stated that workload to be determined for admissible post by computing total workload on account of Degree Course and Higher Secondary Course in all streams conducted in that institution. Said judgment rendered by this Court in Ms. Bilkesh Parveen (supra) has been affirmed by the Hon"ble Supreme Court in Civil Appeal No. 2401 of 2011 vide order dated 20.8.2015.

As such it has been contended that there is no dispute over the issue that since the College in question is running with two streams i.e. +2 and +3 Wings, as such total workload has to be considered for passing an order for admissibility of the post.

9. Opposite party-State has appeared and contested the case by filing detail counter affidavit wherein it has been stated that the petitioner was appointed against 3rd post of Lecturer in Political Science by the Governing Body of the college in question on 20.10.1992. +2 wing of the said college became an aided educational institution w.e.f. 1.1.1988 within the meaning of Section 3(b) of the Orissa Education Act, 1969 hence the said college is a category I of the college in

respect of its +2 wing as per the provisions in Paragraph 4(A) of the Grant-in-Aid Order, 1994.

It has further been stated that +3 wing of the said college became aided educational institution w.e.f. 1.6.1994 vide order passed in this regard by Director of Higher Education Officer Order No. 15978 dated 3.4.1997, hence said college is a category-II college in respect of its +3 wing as per the provisions under paragraph 4(B) of the G.I.A. Order, 1994. It has been stated that when the petitioner was appointed on 20.10.1992 3rd post of Lecturer in Political Science against which the petitioner has claimed for validation was not admissible to the college on the basis of workload of the Aided +2 wing although the said post was admissible on the basis of composite workload of the college taking into account such workload of both +2 and +3 wings of the college.

It has further been stated that although petitioner has joined in the said college within the period i.e. in between 1.1.1985 and 31.12.1992 but since +3 wings of the college by then was unaided which received aid at a subsequent date i.e. 1.6.1994 and become aided. Therefore, workload of such an unaided wing cannot be taken into account to count admissibility of the post by the time of appointment of the petitioner.

At paragraph-9 it has been stated that similar matter is pending before the Hon"ble Apex Court in Civil Appeal No. 2401 of 2011 (State of Orissa and others vs. Ms. Bilkesh Parveen and another) regarding the same issue.

10. Rejoinder has also been filed by the petitioner giving response to the statement of the opposite parties-State regarding counting of workload of an unaided +3 wing of the college by stating that one Prasana Kumar Satpathy was appointed against the 1st post of Lecturer in Political Science on 31.7.1981 and has already been approved and paid grant-in-aid from 1.16.1988 and his appointment has been counted towards workload of +2 wings.

Similarly one Manmohan Baliarsingh who was appointed in the college as another Lecturer in Political Science on 4.7.1988 whose service was approved and paid grant-in-aid against +3 wing of the college w.e.f. 1.6.1994.

It has been contended that Civil Appeal No. 2401 of 2011 has been dismissed by the Hon"ble Supreme Court and as such proposition laid down by this Court regarding the issue has attained its finality.

11. Heard learned counsel for the parties and perused the documents available on record.

12. Sole question in this case is regarding approval of appointment of the petitioner against 3rd post of Political Science in view of provisions as contained in Section 3(1) of the Validation Act, 1998.

13. Contention of learned counsel for the petitioner is that he having been appointed between the period i.e. in between 1.1.1985 and 31.12.1992 on

8.10.1992 as 3rd post of Lecturer in Political Science, as such he will be deemed to have been approved in service in view of the provision as laid down in Section 3(1) of the Validation Act, 1998.

While on the other hand opposite party-State has controverted this stand of the petitioner by stating that post against which the petitioner is functioning is not an approved post or admissible post as per the workload of the college in the said subject.

14. In order to examine this rival submission it is relevant to quote the relevant provision of the statute i.e. Validation Act, 1998 wherein provision has been made as contained in Section 3(1) which is being quoted for ready reference:

"Notwithstanding anything contained in the Education Act or in the rules framed thereunder, the Lecturers of Aided Colleges and aided Junior Colleges who have been appointed on temporary basis against approved or admissible posts by the concerned Governing Bodies during the period between the 1st January, 1985 and the 31st December, 1992 and are continuing as such, having the requisite qualification prescribed to hold such post and are in pay roll of the concerned College against the said approved or admissible post, as the case may be, shall be deemed to have been validly and regularly appointed, as no such appointment shall be challenged in any Court of law merely on the ground that such appointment was made otherwise than in accordance with the procedure laid down in the Education Act or the rules framed thereunder.

Provided that the validation of the appointments as aforesaid shall not put persons already appointed regularly and validly or persons who may be appointed on the basis of the recommendation made by the Selection Board prior to the commencement of this Act, in a disadvantageous position in any manner whatsoever.

15. Provision of Order No. 4 of Grant-in-Aid Order, 1994 is also needed to be referred which contains description of the educational institution category wise.

"Category-I-(i) Non-Government Educational Institutions and approved posts in such institution which have received grant-in-aid from Government or in respect of which grant-in-aid has been sanctioned by Government prior to the commencement of the Amendment Act;

(ii) Other posts in Non-Government Educational Institutions covered under Category-I(i) which were admissible on the basis of workload and prevalent yardstick and had been filled up prior to commencement of the Amendment Act, but in respect of which no grant-in-aid had been sanctioned.

Category-II-(i) Colleges imparting institutions in and presenting regular candidates for the B.A., B.Sc., or B.Com. examinations with or without Honors of any of the Universities which have been functioning regularly for five years or more by the 1st June, 1994 after obtaining Government concurrence recognition and affiliation of any University, or for three years or more if such institution is

located in an educationally backward district, which has not been notified as an Aided Educational Institution and has not received grant-in-aid from Government for any post.

(ii) Higher Secondary Schools and Junior College conducting courses in Arts, Science and Commerce which have been functioning regularly for 5 years or more by the 1st June, 1994 after obtaining Government concurrence or recognition and of the Council, or for 3 years or more if such an institution is located in an educationally backward district, which has not been notified as an Aided Educational Institution and has not received grant-in-aid from Government for any post."

Order No. 9(c) of the G.I.A. Order, 1994 needs to be referred which is being quoted.

The workload for determining admissibility of a post shall be computed by taking into account the total workload on account of Degree course and Higher Secondary Course in all streams conducted in that institution. If a question arises as to whether a post is admissible on the basis of workload and/or yardstick the decision of the Director thereon shall be final.

16. Section 3(1) of the Validation Act, 1998 provides regarding validity of service of Lecturer of aided College subject to certain conditions:

(i) Appointment to such Lecturer must be made by the Governing Body of the College during the period 1.1.1985 and 31.12.1992.

(ii) Such employee is appointed in service having requisite qualification prescribed to hold such post.

(iii) The post must be approved or admissible by the concerned Governing Body.

17. In the light of the provision as contained in Section 3(1) of the validation Act, 1998 name the case of the petitioner needs to be examined as to whether he is coming under parameter of Section 3(1) or not.

There is no dispute that the petitioner has been appointed on 8.10.1992 in 3rd post of Lecturer in Political Science in the college in question; hence he is coming in between 1.1.1985 and 31.12.1992. Opposite parties has not raised any objection regarding eligibility on account of qualification. There is no dispute that the petitioner has not been appointed against approved post. Case of the petitioner is that he has been appointed against admissible post which is being disputed by the opposite party-State, hence the only question to be examined is

(i) whether post against which the petitioner is performing his duty will be said to be admissible? and

(ii) what is the parameter to declare a post admissible in an institution which is aided college.

Stand has been taken by the opposite parties that as per the provision as

contained in Order-4 of G.I.A. Order, 1994 the college in question is coming under Category-I so far as +2 wing is concerned and as such will be governed by the provision as contained in Para-4(A) of the GIA Order, 1994. Order 4(A) of the GIA Order, 1994 stipulates that Non-Government Educational Institutions in Category-I which deals with approved post and Category-II deals with admissible post and according to which Non-Government Educational Institutions covered under Category-I(i) which were admissible on the basis of workload and prevalent yardstick and had been filled up prior to commencement of the Amendment Act, but in respect of which no grant-in-aid had been sanctioned.

18. According to the opposite party-State grant-in-aid for +2 wing of the college has been sanctioned while regarding +3 wing it has been asserted by learned counsel for the opposite party-State that +3 wing is under category-II college, replying this argument the petitioner's stand is that there is specific provision as contained in Order 9(c) of the GIA Order, 1994 to determine the admissibility of a post in a subject. It has been submitted that the workload for determination of admissibility of a post shall be computed by taking into account the total workload on account of +2 Wings and +3 Wings conducted in that institution.

19. After examining the rival submission of the parties there is no dispute that the College in question may come under Category I and II but the foremost consideration is to decide workload of the college for determination of admissibility of the post and from perusal of the Order No. 4 of FIA Order 1994 categories has come to declare the post approved or admissibly but what is the method to declare the post as approved or admissible provided in the provision as contained in Order 9(c) after taking into consideration of Category-I and Category-II of Non-Government Educational Institution it has been provided under Order 9(c) that the workload for determining admissibility of a post shall be computed by taking into account the total workload on account of Degree Course and Higher Secondary course in all streams conducted in that institution. Thus the statute is very clear in deciding a post as admissible or not for which provision has been made under Order No. 9(c) of the Order, 1994.

Opposite party-State at para-8 on the one hand stated that the petitioner has claimed for validation was not admissible to the college on the basis of workload of the Aided +2 wing in continuation of the said statement while on the other hand it has been stated that the said post was admissible on the basis of composite workload of the college taking into account such workload of both +2 and +3 wings of the college, relevant part of such statement is quoted for ready reference.

"xxx Admittedly, when the petitioner was appointed on 20.10.1992 the 3rd post of lecturer in Political Science against which the petitioner has claimed for validation was not admissible to the college on the basis of workload of the aided +2 wing although the said post was admissible on the basis of composite workload of the college taking into account such workload of both +2 and +3 wings of the college. xxx."

20. Opposite party-State has taken stand at para-9 of the counter affidavit that similar matter was before this Hon''ble Court in Ms. Bilkesh Parveen (supra) and the matter is pending before the Hon''ble Supreme Court but the judgment in the case of Ms. Bilkesh Parveen (supra) has been confirmed by the Hon''ble Apex Court in Civil Appeal No. 2401 of 2011 vide order dated 20.8.2015.

It is evident that Division Bench of this Hon''ble Court after taking into consideration the provision of Order 9(c) of Grant-in-Aid Order, 1994 has observed that the workload to be determined for declaring a post as admissible by computing total workload of Degree course and Higher Secondary course in all streams conducted in that institution.

21. Since it is the admitted case of the opposite party-State that if composite workload of the college in question will be taken into consideration the case of the petitioner will be deemed to have been validated under the Validation Act, 1998. It is also admitted on the part of the opposite party-State made at paragraph-8 that the +2 and +3 wings are going on in that Institution hence taking into consideration the composite workload of both +2 and +3 wings of the college, post in which petitioner is continuing as Lecturer in Political Science will be said to be validated under the Validation Act, 1998 and as such it is held to be validated.

22. In view thereof, this writ petition is disposed of directing the competent authority to decide the claim of the petitioner in the light of the observations made hereinabove and accordingly release consequential benefits in accordance with rule applicable within period of eight weeks from the date of receipt of copy of the order.