

(2008) 09 OHC CK 0069
In the Orissa High Court
Case No : O.J.C. No. 9584 of 2000

Shri Jagannath Sahoo

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 26-09-2008

Acts Referred:

Citation : (2008) CLT 871 Supp

Hon'ble Judges : L. Mohapatra, J;Indrajit Mahanty, J

Bench : Division Bench

Advocate : M.R. Mohanty and G.K. Nayak, for the Appellant;

Final Decision : Allowed

Judgement

Indrajit Mahanty, J.—The Petitioner-Shri Jagannath Sahoo has sought to challenge the order dated 27.7.2000 passed by the Orissa Administrative Tribunal, Bhubaneswar in O.A. No. 9", of 1998, whereby the Petitioner's prayer seeking declaration that he was entitled to draw T.G. scale of pay from 1.12.81 till 30.6.96, i.e. the date of retirement, was turned down/rejected.

2. Mr. Mohanty, learned Counsel for the Petitioner submitted that the Petitioner had joined the service as a teacher under the State Government in the L.S.E.S. Grade on 13.5.1964. It is averred that the Petitioner has passed the B. Ed examination in the year 1979 and was promoted to the post of Jr. S.E.S by order dated 1.12.1981 but such promotion was not given effect to by the authorities since a disciplinary proceeding had been started against the Petitioner was pending at the relevant point of time. Learned Counsel for the Petitioner submitted that the said disciplinary proceeding concluded with a direction to terminate the Petitioner's service w.e.f. 4.9.1982.

3. The Petitioner filed the writ application (O.J.C. No. 9, of 1983) before this Court challenging the order of termination. The said writ application was allowed in favour of the Petitioner and the Petitioner was reinstated in service, on 27.8.1986 as I.A.C.T. teacher in the L.S.E.S. Grade. The Petitioner's grievance is

that on his reinstatement instead of being reinstated in Jr. S.E.S. Grade and paid T.G. scale of pay, he remained as a I.A.C.T. teacher from the date of his reinstatement till the date of retirement in the year 1996. Learned Counsel for the Petitioner submitted that the Petitioner ought to have been reinstated in service in the Jr. S.E.S. Grade and having been denied such direction, he has been deprived of T.G. teacher scale of pay through out the service carrier and after his retirement, he is also getting pension as a I.A.C.T. retired teacher. Learned Counsel for the Petitioner submitted that since the Petitioner has retired from service, he is only entitled to notional computation of salary at T.G. scale to be computed from 1.12.1981 till his retirement on 30.6.96 and consequently, the retiral benefit would have to be recomputed on the basis of the aforesaid notional computation.

4. Learned Counsel for the School and Mass. Education Department submitted that the Tribunal was justified in rejecting the prayer of the Petitioner on the ground that the Petitioner had never joined the promoted post in the Jr. S.E.S grade pursuant to the order of the Director dated 1.12.1981. Therefore, the Petitioner on being reinstated in service was reinstated in his original grade, i.e. in the L.S.E.S Grade. Apart from this, learned Counsel for the Department submitted that the Petitioner after his reinstatement had been invited for the interview by the State Selection Board by letter dated 3.7.1993 and though the interview was held on 12.7.1993 for the post of Jr. S.E.S., the Petitioner never appeared in the said interview and consequently, he can have no grievance for retirement on 30.6.1996 in the L.S.E.S Grade in which he had joined without getting any promotion. It is further averred that since the Petitioner did not perform duties in the Jr. S.E.S. Grade and the question of re computation of his salary even though on notional basis, does not arise.

5. Learned Counsel for the Petitioner in response, submitted that the Petitioner did not appear at the interview before the State Selection Board on 12.7.1993, since the Petitioner had always been requesting the authorities to give effect to their earlier order dated 1.12.1981, whereby the Petitioner had already been promoted to Jr. S.E.S. Grade and since the interview in the year 1993 was not offering the Petitioner retrospective promotion w.e.f. 1.12.1981 i.e. when the original order of promotion was passed, the Petitioner under such compelling circumstances did not appear at the said interview.

Learned Counsel further submitted that in the year 1981 when the original promotion order was passed, the existing rules requiring the interview by the State Selection Board had not come into operation and, therefore, the original order of promotion dated 1.12.1981 was, according to him, legally binding to the parties and after his reinstatement on 27.8.1986, the Petitioner ought to have been reinstated in the Jr. S.E.S. Grade and further directions ought to have been passed declaring him as being entitled to the revised T.G. scale with effect from the said date.

6. On a consideration of the contentions advanced by the learned Counsel for the

parties, we are of the considered view that the following facts remain uncontroverted:

i) The Petitioner joined as a teacher in the L.S.E.S. Grade on 13.5.1964. He passed the B. Ed examination in the year 1979 and was promoted to the post of Jr. S.E.S. by an order dated 1.12.1981. This order though not implemented purportedly due to pendency of a disciplinary proceeding against the Petitioner at that time, this order has never been recalled, revised and remained in operation.

ii) The Petitioner's services were terminated w.e.f. 4.9.1982 on the conclusion of the disciplinary proceeding but the said order having been quashed by the High Court, it was incumbent upon the opposite parties to reinstate the Petitioner in the Jr. S.E.S. Grade and not in the I.A.C.T. Grade as has been done in this case.

7. We are of the view that whereas the order of promotion dated 1.12.1981 was unconditional, the same was not implemented solely on the ground of the pendency of the disciplinary proceeding. Therefore, once the order passed in the disciplinary proceeding was quashed by this Court in the writ application, no impediment existed in not giving effect to the order of appointment dated 1.12.1981. We are of the view that reinstating the Petitioner in the I.A.C.T. Grade on 27.8.1986, was unjustified in law since the Petitioner has already promoted since 1.12.1981, but admittedly" he retired in the same grade that he had originally joined as a teacher i.e. in L.S.E.S. Grade.

8. The writ application is accordingly allowed and disposed of with the following directions:

We declare that the Petitioner is entitled to T.G. scale of pay from 1.12.1981, i.e. the date of his promotion. The opposite parties "are directed to make the calculation on a notional basis and compute the same upto the date of retirement i.e. on 30.6.1996. Since the Petitioner has not worked in the aforesaid grade though promoted, he would not be entitled to back wages, but, the Petitioner shall be entitled to a revision of his retirement benefits on the basis of the aforesaid notional computation. The revision of retirement benefits and payment of arrears thereto, shall be made in favour of the Petitioner within the period of three months from the date of communication of this judgment.

The writ application is allowed to the extent indicated hereinabove.

L. Mohapatra, J.

9. I agree.