

(1991) 09 OHC CK 0010
In the Orissa High Court
Case No : O.J.C. No. 1399 of 1991

Shri Lakshmi Narayan Pati

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 06-09-1991

Acts Referred:

Orissa Aided Educational Institutions (Appointment of Teachers Validation) Act, 1989
— Section 3

Citation : (1992) 1 OLR 130

Hon'ble Judges : D.P. Mohapatra, J;A. Pasayat, J

Bench : Division Bench

Advocate : P.K. Pattnaik, for the Appellant; Additional Government Advocate and A. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

D.P. Mohapatra, J.—The petitioner Shri Lakshmi Narayan Pati, an Asst. Teacher in an aided school filed this writ application against the State of Orissa, represented by the Secretary, Education and Youth Services, Orissa (opp. party No. 1), the Director, Elementary and Adult Education, Orissa (opp. party No. 2), the Circle Inspector of Schools, Cuttack II Circle, Jaipur (opp. party No. 3), the District Inspector of Schools, Jaipur I (opp. party No. 4) and the Managing Committee of Ganesh Prasad M. E. School, represented by its Secretary (opp. party No. 5) seeking the reliefs, inter alia to direct the opp. parties to approve his ad hoc appointments for the periods 1-11-1984 and 19-1-1985 and from 1-7-1986 till date and to regularise his service under the provisions of the Orissa Aided Educational Institutions (Appointment of Teachers Validation) Act, 1939 (Orissa Act 9 of 1989) (for short, "the Validation Act") read with the Orissa Aided Educational Institutions (Appointment of Teachers Validation) Amendment Act, 1989 (Orissa Act, 18 of 1989) (for short "the Amendment Act").

2. The petitioner, a graduate with certificate of teacher's training (B.A.. C.T.), was appointed on 1-1-1958 in Ganesh Prasad M. E. School, a recognised and

aided school on ad hoc basis for Class VII Section B in an existing vacancy vide order dated 1-11-1984. Annexure 1. The Managing Committee of the School passed a resolution in its meeting held on 17-11-1984 vide Annexure 3. approving the ad hoc appointment of the petitioner. After completion of 89 days service the petitioner was again appointed as additional teacher on 20-1-1985 for 89 days with effect from 21-3-1985 (Annexure 4). The Headmaster of the School by letter dated 30-1-1985 (Annexure 5) requested the District Inspector of Schools, Jajpur 1 to approve the ad hoc appointment to the petitioner. The Secretary of the Managing Committee in his letter dated 22-5-1985 (Annexure 6) requested the District Inspector of Schools to approve the petitioner's appointment and to pay his salary from 1-11-1984 to 19-1-1985. The District Inspector by his letters dated 11-10-1985 (Annexure 7), 12-3-1986 (Annexure 8), 28-5-1986 (Annexure 9) and 12-9-1986 (Annexure 10) approved the ad hoc appointments till 24-5-1986 starting from 30-9-1985. After the summer vacation in the academic year 1986 the petitioner was again appointed on ad hoc basis in his former post by order of the Secretary dated 30-6-1986 (Annexure 11) and discharged his duties from 1-7-1986. Subsequently another order of appointment was issued to him on 1-7-1987 (Annexure 12). The District Inspector by his letter dated 11-7-1988 (Annexure 13) requested the Director of Elementary and Adult Education Orissa to approve the petitioner's ad hoc appointment from 1-11-1984 to 19-1-1985. The Headmaster of the School again requested the District Inspector by his letter dated 31-3-1990 to approve the ad hoc appointment for the said period. The District Inspector of Schools again requested the Director for approval of the ad hoc appointment by his letter dated 3-5-1990 (Annexure 15). After a break in service the petitioner was again approved by the Secretary of the Managing Committee on 1-7-1990 (Annexure 16) which appointment was again approved by the Managing Committee by resolution dated 25-7-1990 (Annexure 18). The petitioner continues to hold the post on ad hoc basis. Repeated requests by the Managing Committee and the Headmaster of the school to the District Inspector of Schools and the Director to approve the petitioner's ad hoc appointment after 24-5-1986 and regularise his service have proved futile. It is contended by the petitioner that in the meantime the State legislature has passed the Orissa Aided Educational Institutions (Appointment of Teachers Validation) Act, 1939 and the Orissa Aided Educational Institutions (Appointment of Teachers Validation) Amendment Act, 1989 which squarely cover his case. In such compelling circumstances the petitioner was put to the painful necessity of filing the writ application seeking the reliefs noticed earlier.

3. The opposite parties 1 to 4 in their counter affidavit have taken the plea, inter alia, that the petitioner's appointment from 1-11-1984 to 19-11-1985 being irregular it was not approved by the District Inspector of Schools. A Circular was issued by the Director to all District Inspectors by letter No. 16174 dated 13-5-1986 not to make any ad hoc appointment of assistant teachers without obtaining further clarification from the Director. Therefore the appointment of the

petitioner made by the Managing Committee after 30-6-1986 is irregular and it has not been approved. The Validation Act is not applicable to the petitioner since he has no approved service and valid appointment for a period of one year with or without break or breaks in one or more aided M. E. Schools.

4. From the pleadings of the parties as discussed in the foregoing paragraphs the main question which, in our view, arises for determination is whether the petitioner's ad hoc service is to be taken to have been validated under provisions of the Validation Act read with the Amendment Act. Section 3 of the Validation Act provides, inter alia. that notwithstanding anything contained in the Education Act or in the Rules or Regulations framed thereunder graduate teachers, intermediate and matriculate teachers, physical education teachers and classical teachers and Hindi teachers of aided schools appointed by the Managing authorities of such schools on ad hoc basis on or after the 1st December, 1976 but not later than the 31st December, 1984 ; who have continuous service as such teachers or for a period of at least one year without any break or with a break or breaks in one or more aided schools and who are continuing as such teachers or whose services have been terminated after the 31st December, 1984 save for misconduct shall for all intents and purposes, be deemed to have been validly and regularly appointed and no such appointments shall be challenged in any Court of law merely on the ground that the appointment was made otherwise than in accordance with the procedure laid down in the Education Act and the Rules and Regulations framed thereunder. The proviso to the section is not relevant for the purpose of this case. By the Amendment Act in Section 3 of the Validation Act for the words "who have continuous service as such teachers or lecturers for a period of at least one year without any break or with a break or breaks in one more Aided Schools or Colleges and who are continuing as such teachers or whose services have been terminated after 31st December, 1984 occurring below Clause(c) the words "who have rendered service as such teachers or lecturers for a period of at least one year without any break or with a break or breaks one or more Aided Schools or Colleges and who were continuing as such teachers or whose services have been terminated after 31st December, 1985" were substituted. Considering the above provisions the Apex Court in the case of Sri Rabinarayan Mohapatra v. State of Orissa and Ors. reported in 71 (1991) CLT 645 held that for application of the statute, the following conditions are to be satisfied:

(1) The appointment by the Managing authority of the School on ad hoc basis must be on or after the 1st December, 1976 but not later than 31st December. 1984 ;

(ii) the service as such teacher is continuous for a period of at least one year without any break or with a break or breaks in one or more aided schools",

(iii) is continuing as such teacher or his services were terminated after the 31st December, 1984 save for misconduct.

Considering the undesirable practice of making ad hoc appointments and the necessity to do away with ad hocism the Apex Court observed that education is the dire need of the country; there are neither enough schools nor teachers to teach, insecurity is writ-large on the face of the teaching community because of nebulous and unsatisfactory conditions of service and in order to make the existing educational set up effective and efficient it is necessary to do away with ad hocism in teaching appointments. The Court further observed that an appointment on S9 days basis with one day break which deprives a teacher of his salary for the period of summer vacation and other service benefits is wholly arbitrary and suffers from the vice of discrimination. The Validation Act covers the field upto 31 st December, 1984. The Court recommended that the State of Orissa will do well to consider the cases of all those who have completed one year or more as ad hoc teachers after 31st December, 1984 and come out with a scheme or any other appropriate measure to regularise their services.

A Division Bench of this Court in the case of Smt. Basanti Pradhan v. State of Orissa and Ors. reported in 1951 (I) OLR 4 considered the question whether a teacher who failed to satisfy the condition that his ad hoc appointments were valid and lawful throughout is entitled to the benefit of the Validation Act and held that if the person had validly and lawfully held the post for some length of time he would be deemed to have continued and he is entitled to the benefit under the Act. Some relevant observations in this connection are extracted here-under:

"...Question is as to what happens to the teachers who were appointed on ad hoc basis between 1-1-1976 and 31-12-1984 and who did not satisfy any of the aforesaid four contingencies during the aforesaid period but continued as such teachers and subsequently their appointments became valid and lawful ? Whether such teachers would be entitled to the benefit of the Act has to be seen. The Act being a beneficial piece of legislation, the same has to be liberally construed and the benefit of the same must be made available to the persons for whom it is meant, and if two views be reasonably possible on the interpretation of the validating clause, one which is favourable to the teachers has to be adopted. This is well settled rule of interpretation. A reference to the statement of Objects and Reasons shows that the benefit of the Act was sought to be given to the ad hoc appointees as they had rendered service for a considerable length of time during which period they had gained experience in teaching. The fact that the teachers might have crossed their age limit to appear at the recruitment test conducted by the Selection Board was also borne in mind in this connection. So the emphasis was on gaining of experience in teaching which would have been so whether a teacher was validly appointed or not. This apart, the petitioner might have become over-aged by now to appear at the recruitment test conducted by the Selection Board.

The third requirement of validation about which reference has been made earlier states that the teacher must have continued in service validly or lawfully. The

relevant date for deciding the continuation in service has to be the date on which the Act came into force which was 29th May, 1989. Now the requirement of valid and lawful continuance as a teacher/lecturer may demand, according to some, that the person concerned must have so continued from the date of his appointment till the Act came into force. According to others, this requirement would be satisfied if the person concerned had validly and lawfully held the post for some length of time because of which it could be said that he had continued to so hold the post. Both the views being reasonably possible, we would adopt the second one as it favours the person for whose benefit the Act was brought into force. As the petitioner had validly and lawfully held the post from 29-1-1986, it can well be said that she had continued to so hold the post by the time the Act came into force, which was 24th May, 1989. More than three years" period is long enough to constitute continuity. We are, therefore, satisfied that the third of the aforementioned conditions is also fulfilled in the present case."

5. Coming to the facts of the present case, as noted earlier, the petitioner was appointed by the Secretary of the Managing Committee on 1-11-1984 and joined the post on that very day vide Annexures-1 and 2. The appointment was ratified by the Managing Committee in the meeting held on 17-11-1984 vide Annexure-3. He continued in the said post till 22-5-1986 with approval of the District Inspector of Schools and thereafter from 1-7-1987 on being appointed by the managing authority of the school. The petitioner having been appointed between the 1st December, 1976 and 31st December, 1984 satisfied the first condition laid down by the Supreme Court. He had definitely put in more than a year's continuous service with breaks and he is continuing as a teacher in the school. Thus he satisfied all the conditions for application of Section 3 of the Validation Act. As such, he is to be deemed to have been validly and regularly appointed notwithstanding the pleas taken by the opposite parties that there were certain irregularities in his appointments for some periods.

6. In the result, the writ application is allowed; the petitioner's service as teacher shall be deemed to have been validated under the provisions of the Orissa Aided Educational Institutions (Appointment of Teachers Validation) Act, 1989 and the Orissa Aided Educational Institutions (Appointment of Teachers Validation) Amendment Act, 1989 and the opposite parties are directed to regularise his service and give him consequential benefits expeditiously. There will however be no order for costs of this proceeding.

A. Pasayat, J.

7. I agree.