
(2001) 01 OHC CK 0023
In the Orissa High Court
Case No : O.J.C. No. 12924 of 1997

Smt. Anjali Bala Giri

APPELLANT

Vs

State of Orissa and others

RESPONDENT

Date of Decision : 15-01-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2001) 92 CLT 329 : (2001) 1 OLR 201

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : M/s B. Routray, B. Dash, S.S. Kanungo, B. Parida and A.K. Baral, for the Appellant; A.G.A., for the Respondent

Judgement

L. Mohapatra, J.—The petitioner who is working as a Lecturer in Oriya, has filed this writ application challenging the action of opposite parties 1 and 2 in not approving her appointment. She has further prayed for a direction to approve her appointment and release the grant-in-aid in her favour.

2. The case of the petitioner is that she was appointed by the Governing Body of the Women's College, Nabara in the district of Balasore on 13-7-1987 and she joined against the first post of Lecturer in Oriya on the same day. While continuing as such, the Governing Body of the college passed a resolution confirming the appointment of the petitioner against the said post and the petitioner being the senior most Lecturer in the college was allowed to remain in charge of the Principal by order of the Governing Body in the year 1987-88. The college got concurrence from the State Government with effect from the academic sessions 1989-90 and the Council of Higher Secondary Education also granted affiliation in respect of plus-two Arts stream from the academic session 1989-90. After coming into force of the new grant-in-aid order, the principal of the college was required to submit necessary proposal for approval of the appointment of the staff for release of grant-in-aid and accordingly in the month of February, 1995 a proposal was submitted by the Principal in-charge to the

Director, Higher Education for approval of the appointment of the petitioner against the first post of Lecturer in Oriya and for release of grant-in-aid in her favour. After the proposal was received by the Director, Higher Education, the Principal of the college was directed to produce all the original records for verification which was complied with. The verification of records was also conducted. A notification was published on 8-7-1996 by the State Government wherein a list of non-Government junior colleges were declared to be aided educational institutions with effect from 1-6-1994, The list included the name of the women's college where the petitioner is working, at serial No. 1. The appointments of the staff of the college where the petitioner is working were approved but so far as the petitioner is concerned, no order was passed on the ground that the petitioner did not have the requisite qualification for appointment as Lecturer in the non-Government college.

3. The learned counsel Shri B. Routray appearing on behalf of the petitioner submitted that the petitioner has not only secured 54.4 per cent marks in her Post-Graduate level, has also a good academic career. Shri Routray submitted that the minimum percentage of marks required for appointment as a Lecturer in a Junior College is 48 per cent in M.A. Examination as per the Regulation of 1991, whereas the petitioner had secured more than 54 per cent marks in the M. A. Examination. He further argued that appointments of several other Lecturers working in different Degree Colleges, even though the said Lecturers have secured less than 48 per cent marks in M. A. Examination, have been approved and they have been allowed grant-in-aid. A list of such names has been annexed to the writ application as Annexure-7 and on the basis of the same, Shri Routray submitted that since Lecturers securing less than 48 per cent marks have been granted the benefit of approval of appointment as well as grant-in-aid, there is no reason to ignore the case of the petitioner. It is further submitted on behalf of the petitioner that under the Orissa Higher Secondary Education Act, 1982 which came into force in 1983 there is no bar for giving appointment to an incumbent who has secured 54 per cent marks in M. A. Examination and the petitioner having secured more than 54 per cent marks, there was absolutely no illegality or irregularity in the appointment of the petitioner.

4. Counter has been filed on behalf of opposite party No. 2. In paragraph 3 of the counter the marks secured by the petitioner at different levels have been mentioned. It appears that the petitioner had secured 40.1 per cent at H.S.C. level, 43.5 per cent at I. A. level, 38.3 per cent at Graduate level and 54.2 per cent in Post-Graduate level. It is further stated in the counter that at the time when the petitioner was appointed as a Lecturer, the minimum percentage of marks and qualification at Degree and Post-Graduate levels required for such appointment was as follows :--

(a) 48 per cent at Post-Graduate level with M. Phil.

(b) 54 per cent at Post-Graduate level with second class Honours, or 45 per cent (Degree level) in pass.

(c) 48 per cent at Post-Graduate level with first class Hons.

Since the petitioner does not satisfy any of the three qualifications, her appointment was not approved under the grant-in-aid scheme which came into force with effect from 1-6-1994. In paragraph 5 of the counter it is stated that the State Government have prescribed the minimum 48 per cent marks at Post-Graduate level for appointment as Lecturer in a Junior affiliated college with effect from 8-4-1991. Therefore, the petitioner's appointment is to be approved with effect from 1-6-1996 in case the State Government directs, in view of 5+7+9 years policy of Orissa Grant-in-aid Order, 1994.

5. Shri Routray, the learned counsel for petitioner, has drawn the attention of the Court to the notification dated 1st July, 1983, published in the Extraordinary Gazette on 5th July, 1983, wherein a set of Regulations, namely, Orissa Higher Secondary Education (Amendment) Regulation, 1983 were framed. Under clause 6 of Appendix-I to the said Regulation it is stated that teachers to be appointed in Junior Colleges/Higher Secondary Schools shall have at least 2nd Class Master's Degree in the subject concerned with a minimum of 54 per cent of marks. Relying on the said provision, Shri Routray submitted since the Regulation provides that for appointment as Lecturer in a Junior College, an incumbent has to secure 54 per cent marks at Post-Graduate level only and the said 1983 notification was in force at the time the petitioner was appointed, her appointment cannot be said to be illegal. He further submitted that the said notification does not speak of percentage of marks required to be secured at the graduation level and therefore, the petitioner having secured 54 per cent marks at the Post-Graduate level, her appointment was in terms of the said Regulation. The learned Additional Government Advocate relies upon Resolution of the Government of Orissa in the Department of Education & Youth Services dated 13th September, 1983, wherein the qualification for recruitment of Lecturers in affiliated Colleges of the State of Orissa had been prescribed. Under clause (b) of the first paragraph of the said Resolution it is stated that the qualification for recruitment of Lecturers of affiliated colleges should be a higher second class Master's degree, i.e. 54 percent of marks and a second class Honours/Pass in the B.A./B.Sc./B.Com. examination. Relying on the said Resolution, the learned Additional Government submitted that though the petitioner had secured more than 54 percent marks in Post-Graduate level, she does not have a second class Honours/Pass degree at the graduation level. Reliance was also placed on a clarification issued by the State Government to the Resolution dated 13th September, 1983 wherein the State Government clarified that to ensure maintenance of good academic standard it would be expedient to insist on 45 per cent of marks in aggregate at the graduation level. Admittedly the petitioner has not secured 45 per cent marks in aggregate at the graduation level. I, therefore, do not find any illegality on the part of the State Government in not approving the appointment of the petitioner. Learned counsel for the petitioner submitted that several other Lecturers similarly placed have been allowed the benefit. It appears from the averments in the writ application that the three Lecturers

whose instances have been given therein, had secured less than the required percentage of marks at the Post-Graduate level. It is also admitted in the writ application that their under qualifications were condoned by the University. Therefore, the case of the petitioner cannot be equated with that of the others.

6. Since opposite party No. 2 in paragraph 5 of the counter filed by him has stated that the petitioner's appointment is to be approved with effect from 1-6-1996 in view of 5-7-9 years policy of Orissa Grant-in-Aid Order, 1994, it is open for the opposite parties to consider the case of the petitioner in terms of the said statement made in paragraph 5 of the counter.

The writ application is accordingly disposed of.

7. Application disposed of.