

(2005) 02 OHC CK 0043

In the Orissa High Court

Case No : Original Jurisdiction Case No. 4762 of 1992

Smt. Arati Das

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 04-02-2005

Acts Referred:

Orissa Municipal Act, 1950 — Section 124

Citation : (2005) 99 CLT 612 : (2005) 106 FLR 36

Hon'ble Judges : Pradip Mohanty, J;P.K. Mohanty, J

Bench : Division Bench

Advocate : J. Patnaik, H.M. Dhal, B.B. Ray and A.A. Das, for the Appellant; Addl. Standing Counsel, for O.Ps. 1 and 2, K.N. Jena, for O.P. No. 3 and P.K. Jena, Rini Rath, D.K. Mohapatra for O.P. No. 4, for the Respondent

Judgement

Pradip Mohanty, J.—The petitioner, in this Writ Petition, challenges the illegal action of the opposite parties, more particularly Opp. Party No. 3, reverting her from the post of Headmistress to the post of Assistant Teacher with a prayer to allow her to continue in the post of Headmistress and to protect her scale of pay which she was receiving. She has also made a prayer to quash the order of her transfer and direct Opp. Party No. 3 to allow her to continue in the Chhend High School as the Headmistress.

2. The case of the petitioner is that she was initially appointed as an Assistant Teacher in the Girls High School, Basudevpur, which was an aided educational institution, in the year 1975. While so working, she completed B.Ed. in the year 1979. She continued in the said Girls High School till 31.12.1988. During this period, G.P.F. Account No. 7202 SE was allotted in her favour. Subsequently, the petitioner made an application for the post of Headmaster to the management of Chhend Housing Colony High School, a private institution established in the year 1988 within the limits of Rourkela Municipality, and was duly selected for appointment. Accordingly, letter of appointment dated 11.11.1988 (Annexure-2) was issued to her. Since then she was continuing as the Headmistress of the said

school. The Rourkela Municipality vide Resolution dated 26.8.1989 decided to take over the management of the said school. After compliance of all formalities, a notification u/s 124 of the Orissa Municipal Act, 1950 was published on 1.10.1991 by the Government of Orissa in the Housing and Urban Development Department about the transfer of management of the said institution to the Municipal Council, whereafter the management vested with the Rourkela Municipality. On 21.12.1991 the petitioner received a letter from the Executive Officer, Rourkela Municipality, copy whereof is Annexure-9 to the Writ Petition, to the effect that she was appointed provisionally as an Assistant teacher with a consolidated pay of Rs. 1,200/ per month. On 14.1.1992, the petitioner received a letter issued by the Executive Officer, Rourkela Municipality informing her to attend a meeting of the Headmasters of the High Schools of Municipal Council to be held on 16.1.1992. In the self-same letter, the petitioner was described as the Headmaster of the High School. Thereafter, all on a sudden on 13.3.1992, the petitioner received a transfer order to the Municipal High School, Panposh as an Assistant teacher, copy of which is marked as Annexure-12. Three days thereafter, she was relieved from Chhend High School by order of the Headmaster of the said school vide Annexure-13. In this Writ Petition, the petitioner seeks quashing of Annexures-9, 11, 12 and 13. It is worthwhile to mention here that on 13.3.1992, Opp. Party No. 3 had issued an order posting Opp. Party No. 4 as the Headmaster-in-charge of Chhend Housing Colony High School, copy of which is Annexure-11.

3. A counter affidavit has been filed by the Municipality, Opp. Party No. 3. In the said counter, it has been stated that the Municipality had not initiated any proposal suo motu to take over the management, of Chhend Housing Colony High School. On the application of the management of the said High School, the proposal was mooted and a resolution was passed on 20.6.1989 to take over the school subject to approval of the State Government. In pursuance of the notification of the Government, the said school was taken over by the Municipality with effect from 15.12.1991. An agreement was executed between the management of the school and the Municipality stipulating conditions therein that the seniority of the staff would be counted in Municipal service from the date of appointment, that a trained Graduate would get a consolidated pay of Rs. 1,200/-per month, that the post of Headmaster would be filled up by the Municipality from its own panel, and that the teachers of the taken over school cannot claim seniority over the teachers of the Municipality and their seniority would be decided by the Sub-committee constituted by the order of the Chairman. Pursuant to the said agreement, the petitioner gave an undertaking to the effect that she would work as an Assistant teacher in the school and would accept a consolidated pay of Rs. 1,200/- for a period of two years or till the financial condition of the Rourkela Municipality improves. Copy of the said undertaking is Annexure-C/3. Thereafter, the Sub-Committee constituted by the Chairman prepared a gradation list of ten senior trained Graduate teachers and placed before the Selection Committee, which in its turn, vide Annexure-D/3

recommended the case of five persons including Opp. Party No. 4 for filling up of four posts of Headmistress which were lying vacant in Municipal High Schools. Previous appointment of the petitioner in Basudevpur Girls High School has also not been disputed by the opposite parties. Opp. Party No. 4 has also filed a counter affidavit supporting the stand taken by Opp. Party No. 3.

4. A rejoinder has been filed by the petitioner controverting the pleadings of Opp. Party No. 3 that the Municipality did not initiate any proposal suo motu to take over the management of Chhend Housing Colony High School. It has been stated in the said rejoinder that the aforesaid statement is in-correct in view of the fact that in the notification under Annexure-8 it was clearly stated that Rourkela Municipal Council had decided to take over the management of Chhend Housing Colony High School. The agreement in question on which the Municipality has placed much reliance had been prepared subsequent to taking over of the School by the Municipality. Therefore, the same is of little assistance to the Municipality. The petitioner in his rejoinder has further stated that she acquired B.Ed. qualification in the year 1979, whereas Opp. Party No. 4 had passed B.Ed. examination in the year 1984. Therefore, Opp. Party No. 4 can by no stretch of imagination be treated as senior to the petitioner. It has also been stated that the agreement under Annexure-B/3 being subsequent to the notification regarding taking over the school cannot form the basis of terms of appointment of the employees of the School and cannot be pressed into service.

5. Although Opp. Parties No. 3 and 4 were represented by their respective counsel, none appeared for them when the case was taken up for hearing.

6. Admittedly, the resolution was passed on 26.8.1989 by the Municipality deciding to take over the management of the School in question. The Executive Officer, Rourkela Municipality by his letter dated 16.11.1990 requested the District Magistrate, Sundargarh to recommend the aforesaid proposal to the Government to accord sanction for different posts-both teaching and non-teaching-of different schools. In the statement contained in the said letter the petitioner has been described as Headmistress of Chhend High School. The notification u/s 124 of the Orissa Municipal Act was published on 1.10.1991 by which the Government transferred the Management of the School to Rourkela Municipality. By Government Order dated 11.3.1993 vide Annexure-18 approval was accorded inter alia to the post of Headmaster, Chhend Housing Colony, High School.

7. Reliance has been placed by the petitioner on a decision of the Supreme Court in State of Orissa and Another Vs. N.N. Swamy and Others, wherein it has been held that the service rendered by a teacher in an educational institution and the teaching experience acquired before taking over of the institution cannot be obliterated on the ground that the institution is taken over by a new management. It is understandable that the teacher has to join service under a new management for the first time and so could be in that sense regarded as a fresh entrant. But to say that the teaching experience of the teacher in the

institution before its taking over is completely effaced to the extent that he will not be even eligible on the plea of absence of teaching experience under the new management for consideration for promotion is a seriously grim issue.

8. Considering the pleadings of the parties, the submissions made by the counsel for the petitioner and keeping in view the decision cited above, this Court is of the opinion that when the School was taken over by the Municipality, the petitioner was the Headmistress of that School. She had acquired B.Ed. qualification and seven years of teaching experience as a trained Graduate, which was the eligibility criterion prevailing at that time for being appointed as the Headmaster of a High School. The same cannot be completely ignored. That apart, the agreement in question was executed after the notification regarding taking over of the school. Thus, there is no force in the said agreement and the undertaking obtained pursuant to the same. Opp. Party No. 4 had completed B.Ed. course in the year 1984, whereas the petitioner had done so in 1979. Therefore, the Rourkela Municipality (Opp. Party No. 3) is directed to consider the case of the petitioner for promotion as Headmaster along with other senior teachers, if any, as per guidelines prevailing at that time and pass necessary orders within a period of two months of receipt of writ from this Court. If the petitioner is found eligible, she may be promoted to the post of Headmaster from the date(s) when Opp. Party No. 4 and other teachers similarly situated with the petitioner were promoted.

9. The Writ Petition is accordingly disposed of.

P.K. Mohanty, J.

10. I agree.