
(1996) 09 OHC CK 0031

In the Orissa High Court

Case No : Original Jurisdiction Case No. 8664 of 1993

Smt. Bandita Dash

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 20-09-1996

Acts Referred:

Citation : (1997) 83 CLT 700 : (1997) 2 OLR 241

Hon'ble Judges : R.K. Patra, J;C.R. Pal, J

Bench : Division Bench

Advocate : G. Rath, P. Acharya and R.K. Nayak, for the Appellant; R.K. Mohanty, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—Is the petitioner entitled to the revised U.G.C. pay scale in terms of the Government resolutions dated 6.10.1989 and 6.11.1990 at Annexures-4 and 5 ? This is the core question that comes to the fore for decision in this writ petition. Although the petitioner has made a prayer to declare the cut-off date "1.4.1989" mentioned in the aforesaid Government resolutions ultra vires the Constitution, no argument was advanced on that score at the time of hearing.

2. A narration of skeletal facts is necessary for proper appreciation of the controversy raging between the parties.

The Selection Board of the Education and Youth Services Department issued advertisement No. 1 of 1989 at Annexure-1 inviting applications for the post of lecturers in aided Colleges". The advertisement required that the applications should reach the concerned authority for preparation of a list of successful candidates in order of merit for appointment of 135 lecturers in different subjects. Since the case at hand relates to the subject political science, we need not refer to the number of posts in respect of other subjects. So far as Political Science was concerned, 18 posts were to be filled up. Paragraph 4(b) of the said advertisement provided, inter alia, that the candidates should have the following

qualifications :

- (i) Candidate should have an M. Phil degree or a recognized degree beyond Master's level with at least a second Class Master's degree or
- (ii) Candidate not holding an M. Phil degree should possess a high Second Class Master's degree, i.e. 53% of marks and second class Honours/Pass in the B.A./B.Sc./B.Com examination. Or
- (iii) Candidate not holding on M. Phil degree, but possessing a second class Master's degree should have obtained a first class in the Honours/Pass in the B.A./B.Sc./B.Com. examination."

Paragraph 4(e) of the advertisement also stipulated that candidates recruited to the post of lecturers of aided. colleges having the qualifications as at (ii) and (iii) above would be allowed the scale of Rs. 1350-1975/- and those having the qualification as at (i) above would be allowed the scale of Rs. 700-1600/-. The petitioner having been selected and recommended by the Selection Board, the Director, Higher Education, Orissa, Bhubaneswar - opposite party No. 2 in the order dated 23.8.1990 at Annexure-6 sponsored her to Salipur College, Salipur, Cuttack, for appointment as Lecturer in Political Science in the pay scale of Rs. 1350-2975/- plus usual D.A. and A.D.A. against the 5th post (Management payment). Pursuant to the said order, the Governing Body of the College issued appointment order on the" basis of which she joined her duty in the college on 8.10.1990. The Director in the order dated 29.11.1990 at Annexure-8 approved her appointment as Lecturer in Political Science (5th post. M.P.) in Salipur College on regular basis for the purpose of management payment in the scale of Rs. 1350-2975/- with effect from 8.10.1990 (the date she joined the post). Consequent upon her transfer to K..B. College, Barang the Director in the order dated 20.10.1991 at Annexure-9 adjusted her against D.P. post of Lecturer in the scale of Rs. 2000- 3500/- with continuity of her previous service. Pursuant to the aforesaid order the petitioner joined in K. B. College, Baranga on 1.11.1991. The Director in his order dated 30.11.1991 at Annexure-10 accorded his approval to the same from the date of her joining i.e. 1.11.1991 with continuity of her previous service in the existing pay scale. She came to be further transferred by office order No. 31052 dated 1.6.1994 (Annexure-17) to Cuttack College, Nayabazar.

During this interregnum, the State Government in the Education and Youth Service Department issued resolutions on 6.10.1989 and 6.11.1990 at Annexures-4 and 5 for Implementation of the revision of pay scale of teachers in colleges and other measures for maintenance of standard in higher education. By the said resolutions, the existing scales, of pay,(Rs. 700- 1600/-and Rs. 1350-2975/-) of lecturers were revised to Rs. 2300-4000/-. The case: of the petitioner is that she having been appointed on the recommendation of the Selection Board against a sanctioned post as a lecturer in a degree college, she is entitled to draw the revised scale of pay of Rs. 2300-4000/-as envisaged in the

Government resolutions at Annexures-4 and 5. The opposite parties on the other hand contended that the petitioner was appointed as a lecturer after 1.4.1989 and at no point of time she was appointed as a lecturer to teach in degree colleges and as such, she is not eligible to receive the U.G.C. pay scales as envisaged in the Government resolutions at, Annexures-4 and 5.

3. In view of such rival contentions, it is necessary for us to refer to the aforesaid two Government resolutions in detail. The resolutions dated 6.10.1989 at Annexure-4 speaks about the Government decisions to implement the scheme of revision of pay scale of college teachers. In paragraph 3.3. of the said resolution, the existing pay scales with their corresponding revised pay scales are indicated. The existing scales of pay (Rs. 700-1600/- and Rs. 1350-2975/-) of lecturers are revised to Rs. 2200-75-2800-100-4000/-. This revised pay scale is being denied to the petitioner basing on paragraph 3.1 of the resolution, we may quote its relevant portion:

"3.1 Coverage- The revised scales and other measures for improvement of standards in Higher Education shall be applicable to all categories of full time Teachers working in all affiliated Government Colleges and aided non-Government Colleges either covered or eligible to be covered under direct payment schemes till the 1st April, 1989....."

On careful reading of the aforesaid paragraph it would appear that the benefits of revised scale are available to such of the categories of full time teachers working in all aided non-Government colleges either covered or eligible to be covered under direct payment scheme till 1.4.1989. It is the case of the opposite parties that the petitioner having joined the college on 8.10.1990 i.e. after the cut-off date 1.4.1989, she is not eligible to the revised pay scale. It appears that by order dated 23.8.1990 at Annexure-6, the petitioner was sponsored by the Director Higher Education to Salipur College. Salipur for being appointed as a lecturer in Political Science; 5th post (Management payment) in the pay scale of Rs. 1350-2975/- plus usual D.A. and A.D.A. as admissible from time to time. The Director, Higher Education in his order dated 13.11.1990 at Annexure-8 approved the appointment of the petitioner as a lecturer in Political Science against 5th post in Salipur College on regular basis in the pay scales of Rs. 1350- 2975/- with effect from 8.10.1990. the day she joined in the post. The 5th post of lecturer in Political Science in Salipur College was created by the State Government with effect from 1.6.1980 as communicated by the Government letter No. 10619/EYS dated 15.3.1980 at Annexure-A/1. In the said Government letter, it was mentioned that the grants for the post should be paid in a phased manner at the rate of 1/3rd, 2/3rd and full deficit of the salary cost after 5, 7 and 9 years respectively from the date of creation of the post. That means the post in question matured to receive 1/3rd salary cost with effect from 1.6.1985 2/3rd from 1.6.1987 and full deficit of the salary cost from 1.6.1989. We may mention here that earlier the petitioner filed writ petition bearing O.J.C. No. 659 of 1992 alleging that although she was sponsored by the Director, Higher

Education to be appointed as a lecturer against 5th post (Management payment) in the pay scale of Rs. 1350- 2975/- the Secretary of the Governing Body of the College issued order appointing her as a lecturer against the 5th post with a consolidated pay of Rs. 3000/- per month and prayed for a direction to the State Government and the Director, Higher Education to pay her the differential pay etc. This Court by Judgment dated 4.11.1992 (vide 76 (1993)CLT 942) allowed the writ petition by directing the State Government and the Director, Higher Education to pay her the differential pay. By referring to the aforesaid Government letter No. 10619/EYS dated 15.3.1980 (Annexure-A/1 which was Annexure-B in that case), the Court observed in ra :

"..... It is very clear from Annexure-B annexed to the counter filed by opp. party No. 9 which has been quoted earlier that the grants for the post are to be paid in phased manner i.e. 1/3, 2/3 and full deficit after, 5, 7 and 9 years respectively from the date of creation and the only mandate in the order of approval of the said post was not to fill up the post before June, 1980. Additionally the petitioner joined in the post after ten years of the creation/ approval of the said post in Salipur College. Also in the order of recommendation and in the order of approving the appointment of the petitioner the scale of pay of the petitioner was indicated to be Rs. 1350 - 2975/-. After considering all the aforesaid documents and the facts and circumstances of the case, we are of the opinion that the petitioner is entitled to the differential pay from opp. parties 1 and 2 from the date of joining i.e. 8.10.1990 till she was relieved from Salipur College on 31.10.1991 to join in K. B. College..... Baranga...."

In pursuance of the decision referred to above, the Government by order dated 5.11.1993 at Annexure-18 sanctioned the payment of recurring grant-in-aid of Rs. 26,266/- in favour of Salipur College towards payment of grant-in-aid under direct payment scheme. From the aforesaid, it is evident that the post against which the petitioner was appointed in Salipur College was covered under the direct payment scheme with effect from 1.6.1985 and as such, the petitioner comes within the sweep of "coverage" envisaged in paragraph 3.1 of the resolution dated 6.10.1989 at Annexure-4.

4. Following the decision to implement the revision of pay scale of college teachers as per the resolution dated 6:10.1989. at Annexure-4, the State Government issued another resolution dated 6.11.1990 at Annexure-5, prescribing certain instructions to regulate the revision of pay scales of different categories of teachers serving in aided non-Government Colleges of the State. The Fifth Schedule of the said resolution has catalogue certain posts indicating their existing scales of pay with corresponding revised scales of pay. So far as the post of lecturer is concerned, the existing scales of pay of Rs. 700-1600/- or Rs. 1350 - 2975/- is revised to Rs. 2200 - 4000/-. Paragraph 2(1) of the resolution (Annexure-5) provides that the instructions contained in the resolution shall apply to all categories of full time teachers working in all aided non-Government Colleges either covered or eligible to be covered under direct

payment scheme till 1.4.1989. In (he "Note" appended to the said paragraph-2. it has been mentioned that "college mean aided colleges which have been given Government concurrence and University affiliation for opening of 3 plus Degree courses by the 1st April. 1989 and not thereafter. Paragraph 2(2) of the resolution further states inter alia, that the instruction shall not apply to teachers appointed after 1.4.1989 to teach in plus 2 courses in existing degree colleges or plus 2 institutions. Relying on the aforesaid paragraphs of the resolution (Annexure-5), the learned Additional Government Advocate contended that the petitioner having been appointed after the cut-off date 1.4.1989 to teach in plus 3 courses in Salipur College. she is not eligible to draw the revised scale of pay. On careful consideration, we do not find any merit in the aforesaid contention of the learned Additional Government Advocate for the following reasons :

The Advertisement (Annexure-1) pursuant to which the petitioner applied for the job stated that it was an advertisement for appointment of lecturers in aided colleges. Paragraph 4 (c) of the said advertisement indicated that candidates would be recruited to the post of lecturers of aided colleges having the qualification of M. Phil degree or a recognised degree beyond Master's level with at least a second class Master's degree or "not holding an M.Phil degree but possessing a second class Master's degree with first class in Honours/Pass in the B.A/B.Sc./B.Com. examination", and such candidates will be allowed the scale of pay of Rs. 1350 - 2975/-. There is no dispute that the petitioner fulfilled the eligibility criteria. After the petitioner was selected by the Selection Board, the Director in the order dated 23.8.1990 at Annexure-6, sponsored her for appointment as lecturer in the pay scale of Rs. 1350 - 2975/- as a lecturer in Salipur College, Salipur against the fifth post (MP). The Director in the order dated 13.11.1990 at Annexure-9 approved the appointment of the petitioner as lecturer in Political Science against the fifth post in the Salipur College in the same scale of Rs. 1350 - 2975/- with effect from 8.10.1990 (the day she joined in the college). Neither the advertisement at Annexure-1 nor the order sponsoring the petitioner to Salipur College nor the order of approval at Annexure-8 indicated that she was appointed to teach in plus 2 courses. Similarly, the order transferring the petitioner from Salipur College to K. B. College, Baranga at Annexure-9 did not mention that she was appointed as a Junior lecturer. Perusal of Annexure-9 would show that she was adjusted on her transfer to K. B. College Baranga against the first post covered under direct payment scheme. Besides this, the petitioner has asserted that she had been taking classes in the degree courses from the initial date of her appointment in Salipur College. The certificate granted by the Principal of Salipur College, Salipur at Annexure-13 shows that she was taking classes in both Honours and Pass subjects in the degree stage during her incumbency in the said college. As already mentioned, the petitioner was appointed in the pay scale of Rs. 1350-2975/-. We have already recorded a finding in the preceding paragraph that the petitioner is covered under the "coverage" envisaged in paragraph 3.1 of the resolution dated 6.10.1989 at Annexure-4. We have also in the preceding

paragraph given reasons indicating that the Government resolution dated 6.11.1990 at Annexure-5 does not stand on the day of the petitioner.

5. We may note another contention of the learned Additional Government Advocate. According to the learned counsel, the fifth post in Salipur College against which the petitioner was appointed, was created for intermediate class in Political Science and as such, the bar contained in paragraph 2(2)(vi) of the resolution at Annexure-8 would operate against her., We may state that the creation of the fifth post of lecturer in Political Science for intermediate class in Salipur College during the financial year 1979-80 by the Government order dated 16.3.1980 at Annexure-A/1 is wholly irrelevant to determine the question of eligibility to draw the revised scale of pay in the facts and circumstances of the case. In the Government order creating the said post, it was mentioned that the post in question would carry the pay scale of Rs. 525 - 1150/-. but the Director appointed the petitioner as a lecturer in Salipur College in the pay scale of Rs. 1350 - 2975/-. As already noted, the petitioner was taking classes in the degree courses from the start of her career at Salipur College, Salipur. Apart from this, the petitioner in her rejoinder has asserted that in the Government order dated 15.3.1980 at Annexure-A/1, three more posts of lecturers for intermediate classes in education, English and Oriya were created along with the post of lecturers or intermediate class in Political Science in Salipur College and the incumbents appointed against the posts in the department of Education, English and Oriya, namely, G.P. Puan, B.H.Sahu/S.Samal and Smt. S. Prusty are now drawing the revised U.G.C. pay scale and she (petitioner) has been discriminated. The opposite parties have not filed any reply to the rejoinder. As such, the allegation of the petitioner that the lecturers who were appointed along with her in the departments of Education, English and Oriya are getting the revised pay scale stands unrebutted. No material is placed before us to show that the petitioner stands on a different footing than those of her colleagues who were also appointed against the posts created for intermediate classes in three other faculties. In the circumstances, we do not find any merit in this contention of the learned counsel for the State.

6. For the reasons aforementioned, we are of the considered opinion that the objections raised by the opposite parties against the claim of the petitioner for the entitlement of revised U.G.C. pay scale are devoid of any merit. As a consequence, we declare that she is entitled to the (revised) U.G.C. pay scale in terms of the Government resolutions dated 6.10.1989 (Annexure-4) and 6.11.1990 (Annexure-5) from the date of her joining at Salipur College, Salipur. The opposite parties are directed to calculate the arrears and pay the same to the petitioner within six months from the date of receipt of the writ.

7. In the result, the writ petition is allowed. No costs.

C.R. Pal, J.

8. I agree.