
(2008) 06 OHC CK 0042
In the Orissa High Court

Smt. Kanaka Sahoo

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 23-06-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227

Citation : (2008) 106 CLT 511 : (2008) 2 OLR 726 Supp

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

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Mahanty, J.—The Petitioner Smt. Kanaka Sahoo has been appointed as a Lecturer in Sociology against the First post on 10.08.1988 in Pattamundai Women's College in the district of Kendrapara. In this writ application, she has sought to challenge the Order Dated 10.02.2003 (Annexure-10) whereby the State Government have refused to accord approval to her appointment and to release consequential service benefits, inter alia, on the ground that the State Government have not yet extended the financial benefits in favour of other similarly situated persons who are eligible for grant-in-aid after 1.6.1994.

2. The Petitioner had earlier approached this Court in O.J.C. No. 16312 of 2001 and that writ application came to be disposed of by this Court by its Order Dated 15.1.2002. By the said order, this Court was pleased to direct the State authorities to take a decision regarding approval of the Petitioner's appointment and release of consequential service benefits within a reasonable time. It appears that pursuant to the aforesaid direction, the State Government vide its Order Dated 10.2.2003 under Annexure-10 passed the following order:

Pursuant to order dt. 15.1.02 of the Hon'ble High Court of Orissa on OJC No. 16312/2001 and M.C. No. 16250/01, Govt. in their letter No. 2932/HE dt. 17.1.03 have been pleased to decide as follows.

3. The Petitioner Smt. Kanaka Sahoo at present working as lecturer in Sociology

in Pattamundai Women's College, Pattamundai, Dist: Kendrapara has prayed for approval of her appointment and sanction of grant-in-aid. As reported by the Director, H.E., the Petitioner's post is not eligible for grant-in-aid up to 1.6.94. The State Govt. have so far taken up proposals, which are eligible up to 1.6.94 for sanction of grant-in-aid. The claim of the present Petitioner seems to be premature at this stage. As such the claim of the Petitioner for approval of appointment and sanction of grant-in-aid is rejected.

4. It is averred by the Petitioner that Pattamundai Women's College in the district of Kendrapara was established in the year 1988 and she was appointed as a Lecturer in Sociology on 2.8.1988 after following due procedure of law as against a yardstick post in terms of the Governing Body resolution dated 4.9.1988. It is further averred that the State Government granted concurrence to the said College vide its letter dated 3.2.1990 for opening +2 Arts stream with various compulsory subjects and thereafter, vide its letter dated 3.4.1992 (Annexure-3) concurrence was granted in respect of Sociology, Education and Economics from the Session 1991-92.

According to her the college in question became eligible to receive grant-in-aid under 1994 grant-in-aid order and accordingly, a proposal in the prescribed form was submitted before the appropriate authority including the name of the present Petitioner with a prayer to release grant-in-aid under the College letter dated 16.12.1995 which was received by the Director of Higher Education on 31.12.1995. It is further averred that the Secretary to the Government of Orissa in Higher Education Department Opp. Party No. 1 and the Director of Higher Education-Opp. Party No. 2 after taking into consideration the proposal submitted by the Governing Body, have been pleased to approve the appointments of teaching and non-teaching staff of the College and sanction grant-in-aid in favour of the Petitioner's college with effect from 1.6.1994 vide the letter under Annexure-8.

5. It appears that while approving the appointment of other teaching and non-teaching staff of the College, the authorities have not approved the appointment of the Petitioner for which the Petitioner had approached this Court in OJC No. 16312 of 2001 which came to be disposed of by this Court vide its Order Dated 15.1.2002 directing the State Government to take a final decision in the matter of approval of the appointment of the Petitioner as well as release of grant-in-aid from the date she is entitled for the same and the State Government was also further directed to look into the grievance of the Petitioner with similarly situated persons who have already received their grant-in-aid under the direct payment Scheme and keeping in view the provisions contained in Section 7-C of the Orissa Education Act, 1969.

6. It further appears that after disposal of the aforesaid writ application, the State Government directed the Director of Higher Education Opp. Party No. 2 to scrutinize the application submitted by the Petitioner's college relating to the claim of the Petitioner and to furnish necessary proposal/recommendation to the

Government for its consideration.

7. Pursuant to the said direction, the Director, in turn, called upon the Principal/ Secretary of the Petitioner's college to furnish the required documents in original for verification. It is stated that the Principal of the College provided all necessary documents in original for verification, whereafter, the Director on verification of the documents issued a letter on 14.1.2002 under Annexure-9 recommending the case of the Petitioner to the State Government for approval of her appointment as against the First post of Lecturer in Sociology.

8. Learned Counsel for the Petitioner submits that from the letter of the Director dated 14.1.2002 (Annexure-9), it would be clear that the College had got concurrence and affiliation of +2 Arts stream with 64 seats for the session 1989-90 vide letter dated 3.2.1990 and 3.4.1992 respectively and thereafter, vide the letter dated 7.1.1992, the State Government have enhanced the strength of the College from 64 to 128 seats from the session 1991-92. The strength of the College was further enhanced from 128 to 256 for the session 1992-93 and therefore, it is submitted that the post of lecturer in Sociology (First Post) held by the Petitioner since 1988 is admissible to the College with effect from 1.6.1994. Learned Counsel for the Petitioner further submits that after the Director's verification of documents and his recommendation under Annexure-9, no lawful ground exists denying the Petitioner the benefit of approval of her post and release of consequential financial benefits. Learned Counsel submits that similarly situated persons who have been appointed much later than the Petitioner, have had their appointments duly approved and they have been released with the financial benefits. Therefore, non-approval of the appointment of the Petitioner and non-release of financial benefits in her favour is highly discriminatory. In support of his argument. Learned Counsel has annexed various documents under Annexures-11, 12, 13 and 14 to illustrate the cases in which the State Government have already approved the appointments and released the financial benefits in favour of the persons who are either similarly situated or appointed after the appointment of the Petitioner. Accordingly, he submits that the writ application may be allowed and a direction may be issued to the State authorities to approve the appointment of the Petitioner as well as release the consequential financial benefits to which she is entitled.

9. Learned Counsel for the Petitioner has placed reliance on a Judgment of this Court in the case of Smt. Pravabati Padhihari v. State of Orissa and Ors. (WPC No. 9586 of 2005, disposed of on 28.9.2005) wherein one of the colleagues of the present Petitioner of the self-same college had sought for similar reliefs and the same have been allowed with a finding that non-approval of service and non-release of grant-in-aid in favour of the Petitioner therein was held to be discriminatory and violative of Article-14 of the Constitution of India and a direction was issued to the State authorities to approve the appointment of the Petitioner therein as against the first post of lecturer in Education and to release all consequential service benefits.

It is asserted by the Learned Counsel for the Petitioner that the circumstances of the present case is squarely covered by the facts and the Judgment of this Court referred to above and therefore, the Petitioner is entitled to the similar remedy.

10. Mr. Swain, Learned Addl. Government Advocate, on the other hand, has placed reliance on the counter affidavit filed by Opp. Party No. 1 Commissioner-cum Secretary to the Government, Department of Higher Education on 13.4.2006 and in particular, placed stress on the averments made in paragraph-4 thereof which runs as follows:

4. That, it is humbly and respectfully submitted that the Petitioner Smt. Kanak Sahoo joined in the College on 10.8.88 duly appointed by Governing Body vide resolution No. 1 dt. 4.9.88 against the 1st Post of lecturer in Sociology.

As per the report of the Director, Higher Education, Orissa the name of the Petitioner was not recommended to Government for sanction of grant-in-aid earlier as the subject Sociology was not admissible to the College on 1.6.94 as per grant-in-aid rule, 994.

11. Mr. Swain, Learned Addl. Govt. Advocate further submits that pursuant to the earlier of this Court in OJC No. 16312 of 2001, the matter was placed before the Empowered Committee in the meeting held on 21.11.2002 and the claim of the Petitioner was rejected as her eligibility comes beyond 1.6.1994. He further asserts that the claim of the Petitioner for approval of her appointment and sanction of grant-in-aid has been rejected by the State Government vide its letter dated 17.1.2003 under Annexure-A/1 to the counter affidavit since "the State Government have in principle not taken up cases for consideration which are eligible after 1.6.94". Apart from the above, it is seen from the counter affidavit and in particular, from paragraph-8 thereof that the defence of the State has been based on the assertion that the economic capacity of the State has become impaired and to add any more liability on account of grant-in-aid is beyond the economic capacity of the State. A further plea has been raised on behalf of the State in the counter affidavit that in view of Section 8(6) of the Orissa Fiscal Responsibility and Budget Management Act, 2005, notified on 6.6.2005, no liability can be created outside the budget provision in any financial year without approval of the Government in Finance Department. It is further seen from the counter affidavit that once the State Government has imposed restrictions and decided not to fill up any post or to admit any post into grant-in-aid fold and therefore, it is contended that the Writ Petition is not maintainable.

12. On a reading of the pleadings of the parties as noted herein above, it is an undisputed fact that the Petitioner is continuing as a lecturer in Sociology as against the first post since 10.08.1988 in Pattamundai Women's College, Pattamundai. It is clear from Annexure-9 dated 14.1.2002 of the Deputy Director, Higher Education that the Petitioner was appointed against the first post of Lecturer in Sociology and that the subject Sociology was granted Government concurrence/affiliation for the session 1991-92. It is further stated therein that

the Petitioner is entitled to receive grant-in-aid with effect from 1.6.1996. Therefore, the claim of the Petitioner was only rejected on the plea that the Government have not yet considered the grant-in-aid beyond 1.6.1994. This fact is further established from Annexure-A/1 to the counter affidavit in which it is noted that the claim of the Petitioner seems to be "premature at that stage" and therefore, the claim of the Petitioner for approval of her appointment and sanction of grant-in-aid was rejected.

13. The only question that arises for consideration in this case is whether the State Government is justified in rejecting the Petitioner's claim for approval of her appointment and release of grant-in-aid and holding it to be "Premature" on the ground that it had not taken up proposals which are eligible beyond 1.6.1994 for consideration on account of the fact that the economic capacity of the State has become impaired.

14. We are of the considered view that since the appointment of the Petitioner has been duly approved by the Government and such appointment is within the yardstick prescribed by the State Government and further, once O.P. No. 2 has declared under Annexure-9 that the Petitioner is entitled to grant-in-aid, the Petitioner is entitled in law to the benefits of such decision. Reference has been made by Opp. Party No. 1 to the enactment of Orissa Fiscal Responsibility and Budget Management Act, 2005. While there can be no doubt that the said enactment stipulates that no liability can be created outside the budgetary provision in any financial year without the approval of Government in Finance Department, yet such limitation only operates so far as statutory authorities are concerned, and does not and cannot limit the High Court's jurisdiction under Articles 226 and 227 of the Constitution of India. Apart from It, the further defence taken by the State in the counter affidavit that the Finance Department vide its letter dated 14.3.2001 has imposed restrictions not to fill up any post or to admit any post into grant-in-aid fold. But, once the State Government have notified Pattamundai Women's College as an aided educational institution vide its Order Dated 14.3.1996 with effect from 1.6.1994, they are bound by the terms of the said Notification and therefore, are obliged in law to act In terms of that Notification.

15. Apart from the aforesaid reasons, we are in respectful agreement with me arguments advanced by the Learned Counsel for the Petitioner that the present case at hand both, in facts and law, is covered by the Judgment of an earlier Division Bench of this Court In WPC No. 9586 of 2005, disposed of on 28.9.2005 (supra). In the present case, even though the Petitioner has categorically pleaded and annexed various documents in order to establish discriminations, no whisper has been made in the counter affidavit in respect of those averments and therefore, we hold that there is no justifiable lawful basis for issue of Annexure-10.

16. In view of the above, the writ application is allowed and the Order Dated 10.2.2003 under Annexure-10 is quashed. The Opp. Parties are directed to

approve the appointment of the Petitioner as against the 1st Post of Lecturer in Sociology in Pattamundai Women's College, Pattamundai and to release all consequential service benefits in her favour as has been done in the case of very many similarly situated persons. The Opp. Parties are further directed to comply with the above directions within a period of three months from the date of communication of this Order.

L. Mohapatra, J.

17. I agree.