
(2013) 09 OHC CK 0041
In the Orissa High Court
Case No : FAO No. 186 of 2010

Smt. Purnima Swain

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 12-09-2013

Acts Referred:

Orissa Education Act, 1969 — Section 24C

Citation : (2013) 09 OHC CK 0041

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Advocate : B. Routray, A.K. Mohanty, R.K. Behera, R.C. Pradhan, D. Ray and S. Nayak, for the Appellant; J.K. Rath, Bimbisar Dash, Chhabilendu Mohanty for R. No. 4, K.K. Swain, P.N. Mohanty, P.K. Mohanty, J.K. Nayak for R. No. 5 and Addl. Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Das, J.—This appeal has been filed u/s 24-C of the Orissa Education Act, 1969 calling in question the judgment dated 31.3.2010 passed by the State Education Tribunal, Bhubaneswar in G.I.A. Case No. 84 of 2008. Exposition of facts shows that Gadibrahma Girls' High School, Jagannathpur was established in the year, 1987, which got recognition in the year, 1992 and has become eligible to receive Grant-in-aid from the year, 1997. On 15.1.1991, the appellant was appointed as Asst. Teacher by the Managing Committee of the School. The School being a 3 Class High School as per the yardstick, over and above the Headmistress, there should be 4 Trained Graduate Teachers, two in Science faculty and 2 in Arts. The appellant when appointed was not a Trained Graduate, but a simple Graduate. Originally, the appellant along with other Trained Graduate Teachers were appointed in the School when she was untrained. In the appointment letter of the appellant, it was mentioned that she has to acquire the training qualification within two years.

2. As the appellant was untrained, she applied to undergo in-service B.Ed.

Training. In 1992, the Managing Committee allowed the appellant to undergo in-service training so as to acquire B.Ed. qualification. Duration of such training was ten months. The appellant having become unsuccessful in completing the training by not qualifying in the examination again made an application to the Managing Committee to allow her to complete the B.Ed. Examination in the next academic session. The Managing Committee vide its resolution dated 14.12.1993 extended the period to acquire B.Ed. qualification by the appellant till the next academic session. The appellant, however, qualified in the B.Ed. Examination on 4.10.1994.

3. It is the case of the Managing Committee that the Board of Secondary Education, Orissa vide its letter dated 5.1.1994 addressed to the Secretary of the Managing Committee of the School instructed to replace untrained hands by trained teachers, failing which the recognition of the School shall be held up for the academic session 1993-1994 for which the Managing Committee terminated the service of the appellant with effect from 10.1.1994 and appointed the respondent No. 5, who was a Trained Graduate Teacher (Arts) due to the vacancy caused on account of resignation of Krishna Kumar Senapati, who was originally functioning as Headmaster and thereafter, one of the Trained Graduate Teachers i.e. Rekha Nayak was kept in-charge of the post of Headmistress. The order of termination was challenged by the appellant before the Director of Secondary Education, Orissa, who by his order dated 19.8.1996 set aside the order of termination of the appellant and directed the Managing Committee to take her back into service and adjust her against the post of Trained Graduate Teacher in the School as by that date she already acquired B.Ed. qualification. The said order of the Director of Secondary Education was challenged before this Court by the Managing Committee in a writ petition, which was ultimately dismissed by this Court. The appellant claiming to be senior to the respondent No. 5 filed OJC No. 18689 of 1997. In view of Section 24-B of the Orissa Education Act, this Court transferred the said writ petition to the Tribunal for being adjudicated as a G.I.A. case after which it was registered as G.I.A. Case No. 84 of 2008 in which the impugned judgment has been passed by the Tribunal.

4. It is contended on behalf of the appellant that the Managing Committee has taken a prevaricating stand before the State Education Tribunal and before this Court in the present appeal. It is submitted on behalf of the appellant that her termination having been set aside by the Director of Secondary Education and it having been directed to take her back into service as a Trained Graduate Teacher, she being appointed earlier to the respondent No. 5, should be considered to be senior to the respondent No. 5 and entitled to receive Grant-in-aid.

5. The State Education Tribunal, however, considering the fact that the respondent No. 5 by the date of her appointment was a Trained Graduate and by that date, the appellant did not acquire training qualification for which she was terminated from service and was allowed to join pursuant to the order of Director of Secondary Education, Orissa on 23.11.1994 and she having acquired such

training qualification after the respondent No. 5, it cannot be construed that the appellant is senior to the respondent No. 5, dismissed the G.I.A. case placing reliance on the decision in the case of Prafulla Kumar Dash v. State of Orissa, 85 (1998) CLT 300. The learned Tribunal in paragraph-9 of the impugned judgment concluded as follows:

For recognition of a school and its renewal required the compliance of the provision u/s 6 of the Act, so also for the provision for admitting grant-in-aid. Since the recognition has got priority over the fate of continuance of an unqualified person there is nothing wrong with the order or termination of the Applicant and appointment of O.P. No. 5 a qualified person for the post on 10.1.94. Though as per the order of the Director, Secondary Education to adjust the Applicant against a T.G.T. post mean to adjust her within the yardstick, in view of the provision of law in the case of Prafulla Kumar Dash (supra), she is not entitled to it nor can claim seniority over O.P. No. 5. Therefore, in no circumstances, she can claim seniority over O.P. No. 5 who had acquired training qualification appointed by the date Dy. Director, Secondary Education asked the Managing Committee for compliance of requisite criteria for renewal of recognition.

6. It is well settled in law that seniority of an employee can be examined in relation to a cadre. When the respondent No. 5 was appointed, she was already a Trained Graduate and by that date, the appellant had not acquired training qualification. After appointment of respondent No. 5 as the School had four Trained Graduate Teachers over and above the Headmistress i.e. two in Science and two in Arts, the appellant even though reinstated pursuant to the order passed by the Director of Secondary Education, Orissa, but the respondent No. 5 having acquired training qualification much prior to the appellant, the appellant cannot be considered to be senior to the respondent No. 5 as the yardstick did not permit for adjustment of a 5th Trained Graduate Teacher and the appellant should be considered to be a teacher under the management of the School and is not entitled to Grant-in-aid for the present till new sections are opened in the School requiring extra Trained Graduate Teachers as per the yardstick and staffing pattern. In the case of Ananda Sahu v. State of Orissa and others, 32 (1990) O.J.D. 60, a Division Bench of this Court on similar facts situation held that appointment of a teacher who was not a Trained Graduate against the Trained Graduate post, does not make the appointment into the cadre. Consequently, the period during which the petitioner therein was not a Trained Graduate even if had he been appointed as a Trained Graduate Teacher in a Trained Graduate scale, the same cannot be taken into account for determining him senior to the opposite party No. 5 in the said case, who had joined in the Trained Graduate post having Trained Graduate Teacher qualification acquired prior to the petitioner in the said case.

7. In view of the above position of law and the facts in the present case being clear that the appellant was not a Trained Graduate by the time, she was initially

appointed by the Managing Committee of the School and by the time, she acquired Trained Graduate qualification, the respondent No. 5 joined as Trained Graduate Teacher in the said school, the views expressed by the State Education Tribunal in the impugned judgment cannot be faulted with and no interference with the said judgment is warranted in the present appeal. The FAO being devoid of merit stands dismissed, but in the circumstances, without cost.