
(2003) 01 OHC CK 0055
In the Orissa High Court
Case No : O.J.C. No. 4882 of 1994

Smt. Saudamini Pattnaik

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 08-01-2003

Acts Referred:

Board of Secondary Education Regulations — Regulation 17

Constitution of India, 1950 — Article 226, 227

Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 — Rule 8(3)

Citation : (2003) 95 CLT 206

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

Bench : Division Bench

Advocate : J.K. Mohanty, N.S. Ghose, P.K. Tripathy and R. Mohanty, for the Appellant; J. Rath, A.S.C. for O.P. No. 4, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Mohanty, J.—The petitioner claims to have been appointed as an Assistant Teacher by the Managing Committee of Sadasiva Tripathy Girls' High School, Khatribarpur with effect from 2.8.1982. She acquired B.Ed. qualification on 9.3.1983. She being the only available senior-most teacher, the Managing Committee of the School appointed her as the Headmistress with effect from 9.3.1983 and continuing as such. Undisputedly, the school in question where the petitioner is serving, was a private aided school under the Ganjam Education Circle. The grievance of the petitioner is that even though she was appointed as a Headmistress in terms of Rule 8(3) of Orissa Education (Recruitment and Conditions of Services of Teachers and Staff of the Aided Educational Institution) Rules, 1974, the educational authorities have not accorded approval to such appointment, but she has been treated and shown as Headmistress-in-charge and denied the scale admissible to a Headmistress. The claim is laid in terms of the decision rendered by this Court in O.J.C. No. 5661 of 1993 and it is submitted that the petitioner is eligible and qualified to be appointed as

Headmistress and, as such, she having been duly appointed as the Headmistress of the School, the educational authorities could not have refused approval of her appointment and denied her the admissible scale of pay. It is further submitted that in view of the provision of Rule 8(3) of the Orissa Education (Conditions of Service of Teaching and Non-teaching Staff of Aided Educational Institution) Rules, 1984, in absence of a common cadre of trained Graduate teachers and the gradation list of such teachers, the Management is otherwise empowered to appoint a person to the post of Headmistress from among the eligible Trained Graduate Teachers of the school and in such event, the selection would be made on the basis of the length of service and performance as Trained Graduate Teacher.

2. The petitioner was appointed as Assistant Teacher on 2.8.1982 when she had no training qualification. Only on 9.3.1983 she obtained the training qualification and the Managing Committee on the day she acquired B.Ed. qualification, appointed her as the Headmistress by its Resolution, as would be evident from the letter dated 1.8.1983, copy whereof is Annexure-1.

3. This question, as to whether a teacher without having minimum seven years of experience after obtaining the training qualification could be appointed as a Headmaster, was under consideration of a Special Bench of this Court in Priti Ranjan Pradhan and Others Vs. State of Orissa and Others, and a batch of other writ petition. The Special Bench held that after the amended provision of Regulation 17(ii) in Chapter 9 of the Board's Regulation came into force with effect from 29.4.1977, any person without having seven years of teaching experience after training could not be appointed as a Headmaster, and appointment if any of such person has no force in the eye of law. The matter went up to the Apex Court and the Supreme Court in Pabitra Mohan Das etc. v. State of Orissa and Ors. 91 (2001) CLT 615 (SC) affirmed such decision and held that if subsequent to 29.5.1977, any appointment has been made to the post of Headmaster contrary to the provision of Regulation 17 of the Board of Secondary Education Regulation, then the said appointment would be invalid appointment and would not confer any right on the appointee. In view of the aforesaid decisions, there cannot be any manner of doubt that the appointment of the petitioner as a Headmistress of the School just after obtaining the training qualification without the required teaching experience of seven years after obtaining the training qualification is an invalid appointment and confers no right on the petitioner.

4. In such view of the matter, the writ petition is devoid of any merit and accordingly, it is dismissed. However, in the fact situation of the case, there shall be no order as to costs.

L. Mohapatra, J.

5. I agree.