

(1986) 11 OHC CK 0008
In the Orissa High Court
Case No : O.J.C. No. 571 of 1982

Smt. Snehalata Dei

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 12-11-1986

Acts Referred:

Constitution of India, 1950 — Article 226
Orissa Education Code — Article 336

Citation : (1987) 63 CLT 42

Hon'ble Judges : K.P. Mohapatra, J;B.K. Behera, J

Bench : Division Bench

Advocate : G.A.R. Dora, for the Appellant; M.R. Mohanty, Additional Standing Counsel for Opp. Parties 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

B.K. Behera, J.—The Petitioner has made this application under Article 226 of the Constitution of India for quashing the order as per Annexure-9 passed by the State Government according approval to the promotion of the opposite party No. 4, namely, Smt. Anusuya Mishra, as the Fourth Trained Graduate Teacher in the Sundargarh Girls High School in the district of Cuttack, with effect from March 2, 1981 mentioning therein that the case of the Petitioner would be taken up for consideration against the Fifth Trained Graduate Teacher as per the new yardstick.

2. We have heard the learned Counsel for the Petitioner and Mr. M.R. Mohanty, the learned Counsel for the opposite parties 1 to 3. The Managing Committee which has been added as an opposite party has not entered appearance. None has appeared on behalf of the opposite party No. 4.

3. The fact emerging from the writ application and the counter affidavit put in by the opposite parties 1 to 3 are that the Petitioner was appointed on August 16, 1974 against a Trained Intermediate Teacher's post and the opposite party No. 4 had been appointed on August 19, 1971 against the post of a Trained Matric Teacher. Both the Petitioner and the opposite party No. 4 later became trained

graduates. The Petitioner obtained B.Ed. qualification in the year 1977 and the opposite party No. 4 obtained the same qualification in 1979. While the opposite party No. 4 was senior according to the length of service of both herself and the Petitioner, she has later taken the B.Ed. course. On a suggestion made by the Director (Opposite Party No. 2), the case of the Petitioner was considered for promotion and a Government decision was taken for promotion of the Petitioner to the post of the Fourth Trained Graduate Teacher in the school with effect from July 7, 1980 as per Annexure-13. It would, however, appear from the record of the State Government produced before us and from the statement made by Mr. Mohanty on behalf of the opposite parties 1 to 3 that this decision was not given effect to and the issue of the letter as per Annexure-13 was withheld because of a representation made by the opposite party No. 4 against it. It is, indeed, surprising as to how the Petitioner has been able to get a copy of the letter a true copy of which has been annexed to the writ application. The matter was thereafter considered and the decision taken as per Annexure-13 was reversed and it was decided to promote the opposite party No. 4 as per Annexure-9. This decision had been taken at a time when the decision of the State Government as per Annexure-13 had not been communicated and therefore, it was well within the competence of the State Government to do so.

4. We, however, notice from the record that the sale ground on which the case of the opposite party No. 4 was favourably considered while that of the Petitioner was overlooked by reversing the earlier decision taken as per Annexure-13 was that the services of the Petitioner had not been regularised. The same stand has been taken by the opposite parties 1 to 3 in the counter affidavit.

5. Under the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974, approval of the recruitment could only be made by the State Selection Board. These Rules came into force on and from April 1, 1975. It has been submitted by the learned Counsel for both the sides that prior to the coming into force of these Rules, it was the Managing Committee of the School which had the authority to regularise the services of a teacher. No doubt, as per Annexure-I, the Petitioner had been appointed against a leave vacancy. But by a resolution dated February 23, 1975 as per Annexure-2, the services of the Petitioner as a teacher were regularised and she was appointed as a teacher of the school. The fact of regularisation of her services had been intimated to the Inspector of Schools as per Annexure-3 by the Secretary of the Managing Committee on March 10, 1975. In the last paragraph of the letter, it was mentioned that intimation was sent for the approval of the Inspector and for necessary action. But no such approval was necessary in accordance with the Rules and the Managing Committee had duly made a regular appointment of the Petitioner.

6. Our attention has been invited by the learned Additional Standing Counsel to Article 336 of the Orissa Education Code which reads as follows:

Staff - The appointment and dismissal of every teacher must be notified to the

Director of a duly authorised officer of the Department. No appointment may be confirmed until it has received the sanction of the Director or Officer so authorised, who may enquire into any case regarding the dismissal of a teacher. These powers will ordinarily be exercised by the District Inspector in the case of middle English and Middle Schools and by the Inspector in the case of high schools. Government may forbid the employment in an aided school of any teacher who has been declared by the Director unfit to be a teacher.

As has rightly been submitted by Mr. Dora for the Petitioner, the appointment of a teacher is to be notified to the Director or an authorised Officer of the Department as required under the Code and this had been done in the instant case, but the other part of this Article refers to substantive appointment. It cannot, therefore, be said that the Managing Committee had no authority to regularise the services of the Petitioner in view of the provisions contained in Article 336 of the Code.

7. For the foregoing reasons, we are of the view that the case of the Petitioner for her promotion to the post of the Fourth Trained Graduate. Teacher was unreasonably and arbitrarily rejected on a ground which could not be sustained.

8. In the circumstances of the case, therefore, a direction should be Issued to the Director of Public Instruction (Schools) (Opposite party No. 2) to consider the case of the Petitioner with that of the opposite party No. 4 for her promotion to the post of the Fourth Trained Graduate Teacher with effect from the date of appointment of the opposite party No. 4 to that post on the footing that the services of the Petitioner had duly been regularised and we so direct. The Director (opposite party No. 2) shall take a decision within two months from the date of communication of this order. Till then, the opposite party No. 4 shall not, in any manner be affected because of this order. The decision of the opposite party No. 2 in this regard will carry with it the consequences.

9. The writ application is accordingly allowed the parties to this proceeding to bear their own costs.

K.P. Mohapatra, J.

10. I agree.