

(1989) 09 OHC CK 0054

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1699 of 1981

Smt. Sudharani Dey

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 18-09-1989

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Orissa Education Code — Article 316, 441

Orissa Municipal Rules, 1953 — Rule 427

Citation : (1990) 69 CLT 612

Hon'ble Judges : R.C. Patnaik, Acting C.J.; V. Gopalaswamy, J

Bench : Division Bench

Advocate : B.S. Misra, for the Appellant; Indrajit Ray, N.K. Acharya and G.S. Das, for the Respondent

Final Decision : Allowed

Judgement

V. Gopalaswamy, J.—The Petitioner Smt. Sudharani Dey, a Hindi Teacher, filed this writ application under Articles 226 and 227 of the Constitution of India, against the opposite party No. 1 State of Orissa, represented by the Secretary, Urban Development and Housing Department; opposite party No. 2 State of Orissa, represented by the Secretary, Education and Youth Services Department, opposite party No. 3 Director of Public Instruction (S), Orissa; opposite party No. 6 Bhubaneswar Municipality, represented by its Chairman; and opposite party No. 5 Sri Chandra Mohan Behera, a teacher, praying for quashing the order of the Executive Officer, Notified Area Council, Bhubaneswar, dated 3-3-1977 granting selection grade of pay to opposite party No. 5 (Annexure-9) and for the issuing of a direction to opposite parties 1 to 4 to grant the selection grade pay to the Petitioner with effect from 1-1-1974 besides, granting other consequential pecuniary benefits.

2. According to the Petitioner the following relevant facts have given rise to this writ application:

The Petitioner after passing Matriculation, passed Kovid in Hindi and then during the year 1962-63 she had undergone the Hindi Teachers' Training Course in the Hindi Training Institute at Cuttack. She served as a Hindi Teacher in Nimapara Girl's High School from 1964 to 1966. On 10-11-1966 the Petitioner was appointed as a Hindi Teacher in the N.A.C. Girls' High School at Bhubaneswar and since then she was serving as a Hindi Teacher of that school. The opposite party No. 5 Chandramohan Behera did not pass Matriculation, but passed Kovid in Hindi in the year 1964 and had undergone the Teachers' Training in Basic Education with Hindi as one of the subjects. On 16-8-1965 opposite party No. 5 was appointed as an Assistant Teacher in Bidya Sundari Girls' M. E. School, Bhubaheswar (hereinafter referred to as B.S.G.M. E. School") and he joined that post on 24-8-1965. By G.O. No. 5721/UD dated 3-4-1967 for the first time the post of a Hindi Trained Teacher was created in B.S.G.M.E. School with effect from 24-8-1965. On 15-7-1968 the B.S.G.M.E. School was merged with N.A.C. Girls' High School with effect from 1-7-1968 and by that date the Petitioner was holding the post of a Hindi Teacher in the N.A.C. Girls' High School. By G.O. No. 1038/UD dated 12-1-1977 the post of the Hindi Teacher created in the B.S.G.M.E. School, which was merged with the N.A.C. Girls' High School was upgraded to that of selection grade on permanent basis with effect from 1-1-1974. The Executive Officer, N.A.C. Bhubaneswar, by his order dated 3-3-1977 allowed opposite party No. 5 to draw selection grade scale of pay of Rs. 375-620/- with effect from 1-1-1974. The opposite party No. 5 was transferred to Kapileswar Boys' High School, Bhubaneswar, in the year 1974. He was never appointed as a Hindi Teacher and had all through continued as an Assistant Teacher. As opposite party No. 5 did not undergo the Hindi Teachers' Training, he could never have been appointed as a Hindi Teacher. By the date the Hindi Teacher's post was upgraded to the selection grade post and by 3-3-1977 when orders were passed granting selection grade to opposite party No. 5, the Petitioner was working in the N.A.C. Girls' High School, whereas opposite party No. 5 was working in the Kapileswar Boys' High School and this is another circumstance which should have been considered in favour of the Petitioner. In view of the facts stated above as the Petitioner was entitled to the selection grade pay, and not the opposite party No. 5, the Petitioner made several representations to opposite parties 1 to 4 praying for passing appropriate orders granting her selection grade, but as all such representations were rejected, she had to file the present writ application.

3. The case of opposite party No. 5 may be briefly stated as follows:

On 16-8-1965 opposite party No. 5 got his appointment order as a Hindi Teacher and he joined the B.S.G.M.E. School as a Hindi Teacher on 24-8-1965 and continued as such till the date of the merger of B.S.G.M.E. School with the N.A.C. Girls' High School on 15-7-1968 and even after such merger he continued as a Hindi Teacher. As opposite party No. 5 was appointed on 16-8-1965, whereas the Petitioner was appointed on 10-11-1966, he was senior to her as a Hindi Teacher. As the selection grade was meant for the seniormost Hindi Teacher from out of

the Hindi Teachers working in the several schools under the management of Bhubaneswar N.A.C., the selection grade was rightly given to opposite party No. 5 as he happened to be the seniormost Hindi Teacher at the relevant time. As opposite party No. 5 passed the Teachers' Training in Basic Education in the year 1963 with Hindi as a special subject and as he also passed Ratna examination in Hindi in the year 1971, he was qualified to hold the post of selection grade Hindi Teacher. So the writ application filed by the Petitioner claiming that she is entitled to selection grade is without any merit and the same is, therefore, liable to be dismissed.

4. Opposite parties 2, 3 and 4 did not file any counter. Only opposite party No. 1 State of Orissa represented by the Secretary, Urban Development and Housing Department, filed a counter supporting the case of opposite party No. 5.

5. From the arguments advanced by the parties it is clear that the only point that arises for consideration and decision is whether it is the Petitioner Sudharani Dey or the opposite party No. 5 Chandra Mohan Behera who "is entitled to the selection grade post of a Hindi Teacher, sanctioned by G.O. No. 1038/UD dated 12-1-1977 (Annexure-7).

6. The bone of contention between the Petitioner and opposite party No. 5 is regarding the aspect of seniority, the latter claiming to be the seniormost Hindi Teacher. The learned Counsel for the Petitioner contends that the initial appointment of opposite party No. 5 in B.S.G.M.E. School, Bhubaneswar, "was merely to the post of an Assistant Teacher and not to the post of a Hindi Teacher. Annexure-III is the order of the Executive Officer, Bhubaneswar, N.A.C. dated 16-8-1965 which reads:

Sri Chandramohan Behera is hereby temporarily appointed as the Asst. (Hindi) teacher in the B.S.G.M.E. School, Bhubaneswar....

Opposite party No. 5 relies on Annexure-III and contends that he was appointed as a Hindi Teacher, whereas the Petitioner contends that opposite party No. 5 was appointed only as an Assistant Teacher, but Annexure-III was subsequently manipulated to show as if he was appointed as a Hindi Teacher. From Annexure-III it is seen that the order of appointment of opposite party No. 5 was on 16-8-1965. In pursuance of Annexure-III, the order of appointment, opposite party No. 5 joined as a Teacher in the B.S.G.M.E. School on 24-8-1965. From Annexure-C filed by opposite party No. 1 it is seen that the Government of Orissa in the Urban Development and Housing Department by G.O. No. 5721/UD dated 3-4-1967 had for the first time sanctioned the post of a Trained Hindi Teacher in B.S.G.M.E. School with effect from 24-8-1965. So when the post of a Hindi Teacher in the B.S.G.M.E. School was sanctioned only on 3-4-1967 it is difficult to understand as to how opposite party No. 5 could have been appointed as a Hindi Teacher in that school on 16-8-1965. No doubt, the post of a Hindi Teacher in the B.S.G.M.E. School was sanctioned with effect from 24-8-1965, but then as the order of appointment of opposite party No. 5 was dated 16-8-1965, merely

on the ground that he joined the post on 24-8-1965 it is not open to him to claim that he had joined the post of a "Hindi Teacher" sanctioned under Annexure-C. So merely on the basis of Annexure-III it cannot be said that the initial appointment of opposite party No. 5 in B.S.G.M.E. School was to the post of a Hindi Teacher. Apart from Annexure III, there is no other document in support of the plea of opposite party No. 5 that he was appointed as a Hindi Teacher in the B.S.G.M.E. School. Annexure-2 is the letter of the Headmaster of the B.S.G.M.E. School addressed to the Executive Officer, Bhubaneswar N.A.C. requesting him to accept the joining report of opposite party No. 5. In that letter it was stated that opposite party No. 5 was appointed as an Assistant Teacher and there was no mention that opposite party No. 5 was appointed as a Hindi Teacher. In the order of allotment of quarters by the Executive Officer (Annexure-6) opposite party No. 5 was referred to as an Assistant Teacher, not as a Hindi Teacher. Even in the Peon Book in the entry dated 31-7-1967 which is subsequent to 3-4-1967, the date of the sanction order Annexure-C, opposite party No. 5 was referred to as an Assistant Teacher. On a perusal of Article 316 of the Orissa Education Code it is seen that the standard staff pattern for a Middle English School does not provide for the appointment of a Hindi Teacher. This is an additional circumstance to show that opposite party No. 5 could not have been appointed as a Hindi Teacher in the M.E. School on 16-8-1965. The above facts and circumstances fully support the contention of the Petitioner that the opposite party No. 5 was appointed in the B.S.G.M.E. School only as an Assistant Teacher and not as a Hindi Teacher.

7. The learned Counsel for the Petitioner contended that the opposite party No. 5 was not even fully qualified for being appointed as a Hindi Teacher in a High School. Opp. party No. 5 joined as an Assistant Teacher in the B.S.G.M.E. School on 24-8-1965 and continued as such in that school. So by 10-11-1966 opposite party No. 5 was an Assistant Teacher in the M.E. School. The Petitioner was appointed as a Hindi Teacher in N.A.C. Girls' High School on 10-11-1966 (Annexure-1). So there is considerable force in the contention of the learned Counsel for the Petitioner that as opposite party No. 5 was already teaching Hindi in the M.E. School by 1-11-1966, if he was qualified to be appointed as a Hindi Teacher in the High School, then the N.A.C. would have straightaway appointed opposite party No. 5 as the Hindi Teacher of the High School instead of appointing an outsider like the Petitioner. As earlier stated, the staff pattern of the M.E. School did not provide for a Hindi Teacher. The post of a Hindi Teacher in the M.E. School was created for the first time on 3-4-1967. As by 10-11-1966 there was no room for a Hindi Teacher in the M.E. School according to the prescribed staff pattern it is normally expected of the Bhubaneswar N.A.C. that they would have accommodated opposite party No. 5 as a Hindi Teacher on 10-11-1966 when the occasion had arisen for such appointment if only opposite party No. 5 was qualified for being appointed to that post. So the very fact that on 10-11-1966 the Petitioner, an outsider, was appointed as a Hindi Teacher in preference to opposite party No. 5 leads support to the contention of the learned

Counsel for the Petitioner that from such appointment of the Petitioner, an inference is to be drawn that opposite party No. 5 was not appointed as the Hindi Teacher of the High School, as he was not qualified to hold that post.

8. Article 441(a) of the Orissa Education Code provides that the Hindi Training Institute is an institution maintained by Government to train teachers for teaching Hindi in secondary schools. Note 1 to Rule 427 of the Orissa Municipal Rules provides:

No teacher shall be appointed to a High, Middle or Primary School under a Municipal Council unless he holds a training certificate, i.e. he has passed the B. Ed., Secondary, Elementary Training Certificate Examination as the case may be, Exemption from the prescribed qualifications shall be granted by the State Government on the merits of each case on the recommendation of the Director of Public Instruction and the Municipal Council.

So from Rule 427 of the Orissa Municipal Rules read with Article 441(a) of the Orissa Education Code it is seen that normally a person having the requisite Hindi Teacher's Training should be appointed as a teacher in Hindi in a High School. The Petitioner has successfully completed the Hindi Teacher's Training Course in the recognised Hindi Training Institute at Cuttack and qualified herself for being appointed as a Hindi Teacher in a High School. Admittedly opposite party No. 5 did not pass any Hindi Teacher's Training Course as such, but he had completed the Teachers' Training in Basic Education with Hindi as one of the subjects. It can never be said that Teacher's Training in Basic Education even with Hindi as one of the subjects can be equated with Teacher's Training for teaching Hindi in secondary schools. From the tenor of the averments in the counter of opposite party No. 5 it is seen that even opposite party No. 5 does not claim that Teacher's Training in Basic Education with Hindi as one of the subjects is a substitute for Teacher's Training for teaching Hindi in Secondary schools. But he relies more on the practice obtaining in different Schools since long where persons were being appointed as Hindi Teachers without having Hindi Training qualification. But when a person having the requisite qualification of training for teaching in Hindi is readily available, there is no reason why the Government or a local body should not prefer such a person for appointment instead of going out of its way to appoint somebody without having the requisite training for teaching in Hindi. Like wise when the question is as between two Hindi Teachers similarly circumstanced who should get the selection grade when one of them is trained and the other is untrained, normally a trained teacher should get it in preference to an untrained teacher, as otherwise the very object with which the Government has started the Hindi Training Institute at Cuttack to train teachers for teaching Hindi in secondary schools would be frustrated and there would be no incentive to undergo the training.

9. The opposite party No. 5 claims himself to be a senior Hindi Teacher on the ground that he joined his post on 24-8-1965 whereas the Petitioner joined her post as a Hindi Teacher only on 10-11-1966. The Petitioner was straightaway

appointed as a Hindi Teacher in the Girls" High School on 10-11-1966. whereas by that date opposite party No. 5 was a teacher in the M.E. School. It was only on 15-7-1968 the B.S.G.M.E. School was merged with the N.A.C. Girls" High School with effect from 1-7-1968. Evidently opposite party No. 5 claims that his service in the M.E. School during the period from 24-8-1965 to 1-7-1968 should also be taken into account while determining the seniority between him and the Petitioner. Even accepting such a claim, the opposite party No. 5 would be senior to the Petitioner as a Hindi Teacher provided the opposite party No. 5 was initially appointed as a Hindi Teacher in the M.E. School or appointed as a Hindi Teacher on any date prior to 10-11-1966. In this context opposite party No. 5 relies on Annexure-III dated 16-8-1965, the order of appointment of opposite party No. 5 in the M.E. School. But by that date, as earlier found, there was no post of a Hindi Teacher at all in the M.E. School and so the question of his being appointed as a Hindi Teacher on 16-8-1965 does not arise for consideration. Apart from Annexure-III the opposite party No. 5 has not filed any other document to show that he was appointed as a Hindi Teacher. That the Petitioner was appointed as a Hindi Teacher in the High School on 10-11-1966 is undisputed, whereas there is no reliable material to show that opposite party No. 5 was appointed as a Hindi Teacher prior to that date. Under the circumstances we find that there is no basis for the contention that opposite party No. 5 as a Hindi Teacher was senior to the Petitioner.

10. The issue as to who is entitled to the Selection Grade, whether it is the Petitioner or opposite party No. 5, can be approached from a different angle. The question is whether the selection grade post in question is earmarked for the N.A.C. Girl's High School, as contended by the Petitioner or whether it was meant to be given to the seniormost Hindi Teacher from out of the Hindi Teachers of different schools under the management of Bhubaneswar N.A.C., as contended by opposite party No. 5. The selection grade post was sanctioned by G.O. No. 1038/UD dated 12-1-1977. By that date the Petitioner was serving as a Hindi Teacher in the N.A.C. Girls" High School, whereas the opposite party No. 5 was serving in Kapileswar High School. So if the selection grade post is earmarked for the Hindi Teacher of the N.A.C. Girls" High School, opposite party No. 5 serving at the relevant time in Kapileswar High School cannot have a claim to it. By G.O. No. 5721/ UD dated 3-4-1967 (Annexure-5) sanction was accorded on a permanent basis to the creation of the post of a Trained Hindi Teacher in B.S.G.M.E. School. On 15-7-1968 the said M. E. School merged with the N.A.C. Girls" High School with effect from 1-7-1968. G.O. No. 1038/UD dated 12-1-1977 (Annexure-7) shows that the permanent post of Hindi Teacher sanctioned in the G.O. No. 5721/UD dated 3-4-1967 is upgraded to that of selection grade on permanent basis with effect from 1-1-1974". So on a reading of Annexure-7 in the light of the recitals or Annexure-5 it is clear that it was the post of a Trained Hindi Teacher of originally created in the B.S.G.M.E. School which was subsequently upgraded to a selection grade post. Before the date the post was upgraded there was already merger of the M.E. School and the High

School. The opposite party No. 5 was transferred to Kapileswar Boy's High School in the year 1974. On a perusal of the sanction order (Annexure-7) sanctioning the selection grade post it is seen that the recitals therein go against the contention of opposite party No. 5 that the selection grade post was meant for the senior most Hindi Teacher from out of all the Hindi Teachers of different schools under Bhubaneswar N.A.G.. It is highly significant that in the gradation list published by the N.A.C., Bhubaneswar by Office Order No. 4863 dated 29-5-1975 (vide Annexure-5) the Petitioner was shown as a permanent Hindi Teacher whereas opposite party No. 5 was shown as a temporary Hindi Teacher and this is another circumstance in favour of the Petitioner. So even if it is assumed that opposite party No. 5 was senior to the Petitioner as a Hindi Teacher, by virtue of the fact that the Petitioner continued as a Trained Hindi Teacher in the N.A.C. Girls' High School by the date the permanent post of Trained Hindi Teacher was upgraded to that of a selection grade, the Petitioner became entitled to it.

11. Hence on a careful consideration of the issue as to who is entitled to the selection grade, whether it is the Petitioner or opposite party No. 5, from different angles as discussed above, we find that it is the Petitioner who was entitled to get the selection grade which was sanctioned under Annexure-7.

12. One of the prayers of the Petitioner is for quashing the transfer order dated 10-7-1981 (Annexure-27) transferring her to the Boys' High School at Kapileswar, Bhubaneswar. It needs no argument that as far as possible a lady teacher should be appointed in a Girls High School and a male teacher should be appointed in a Boys' High School. Under the impugned transfer order the Petitioner is transferred to a Boys' High School at Bhubaneswar, while the opposite party No. 5 is transferred to a Girls' High School at Bhubaneswar and it is not known what extraordinary circumstances prompted the Executive Officer, Bhubaneswar Municipality to adopt such a course. However, as it is a matter of transfer we are not inclined to interfere with it.

13. In the result, in view of our finding that the Petitioner Smt. Sudharani Dey is entitled to the selection grade sanctioned under Annexure-7, the order of the Municipality (opposite party No. 4) in Annexure-9 granting selection grade of pay to

opposite party No. 5 Sri Chandra Mohan Behera is hereby quashed and the opposite parties 1 to 4 are hereby directed to grant the selection grade pay to the Petitioner with effect from 1-1-1974 and accordingly the writ application is allowed. No costs.

R.C. Patnaik, A.C.J.

I agree.

Application allowed.