
(2008) 07 OHC CK 0096
In the Orissa High Court
Case No : O.J.C. No. 3985 of 2001

Sri Dilipraj Pradhan

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 14-07-2008

Acts Referred:

Orissa Education Service (Higher Secondary Branch) Method of Recruitment and Condition of Service Rules, 1991 — Rule 4(2)

Citation : (2008) 106 CLT 411

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

Bench : Division Bench

Advocate : B. Routray, B.B. Routray, A.K. Baral, B. Singh, D.K. Mohapatra, P.K. Dash and B.N. Satpathy, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Indrajit Mahanty, J.—This writ application has been filed by the Petitioner who has been working as a Lecturer in Oriya and holding the First Post at Kosala Mahavidyalaya in the district of Angul. He was appointed in the said post on 1.3.1986.

2. It is averred by the Petitioner that sincere had possessed the required percentage of marks and had fulfilled the eligibility criteria, his appointment should have been approved by the concerned authorities and refusal of according approval was allegedly on the basis of an erroneous ground that the Petitioner does not possess 55% marks in the Master Degree Level Examination.

3. This case has originally come to be disposed of by a Judgment dated 27.7.2001 passed by the learned Single Judge of this Court directing the authorities to consider the proposal for approval of the appointment of the Petitioner in consonance with the ratio of the Judgment of this Court rendered in the case of Arjoon Charan Dash v. State of Orissa in O.J.C. No. 6781 of 1993 and in the case of Bijaya Kumar Patra v. State of Orissa in O.J.C. 6102 of 1995. It

appears that this Judgment was sought to be challenged by the State before the Hon"ble Supreme Court along with the batch of similar connected cases being numbered as Civil Appeal Nos. 5211, 5212 and 5213 of 2003 and came to be disposed of by the Hon"ble Supreme Court in a common order dated 25th July, 2003 with the following directions:

The main grievance of the Appellants is that the High Court did not consider decision of this Court reported in State of Orissa and another Vs. Damodar Nayak and another, and the Full Bench decision of the High Court in Civil Review No. 87 of 1996 dated 5.5.1998 titled State of Orissa v. Pranaya Kumar Mohapatra. We feel it would be appropriate if the High Court hears the writ applications afresh. It will be open to the parties to raise all the pleas at the time of hearing of the writ applications including the applicability of the aforesaid decisions. We make it clear that we have not expressed any opinion on the merits of the claim of the parties. The matters are remitted accordingly and the appeals stand disposed of finally. No costs.

This order was heard afresh in this Court in terms of the directions pf the Hon"ble Supreme Court as noted hereinabove.

4. Mr. Routray, learned Counsel for the Petitioner submitted that the Kosala Mahavidyalaya (in which the Petitioner was appointed) got affiliation from the Council of Higher Secondary Education for the Junior College (+2 Wing) for the session 1986-87 and it is submitted that the college presented its students for +2 Council Examination for the Session 1987-88.

It is submitted that one Sanjib Kumar Pradhan had been appointed as Lecturer in Oriya against the First Post and it is stated that he resigned from the said post in the month of January 1986. Thereafter, the Petitioner Sri Dilipraj Pradhan was duly selected and appointed as Jr. Lecturer in Oriya and necessary appointment letter was issued in his favour on 28.2.1986 whereafter, he joined in the said institution on 1.3.1986.

5. It is submitted that the Orissa Education Service (Higher Secondary Branch) Method of Recruitment and Condition of Service Rules, 1991 (in short the "Rules 1991") came into force w.e.f. 8.4.1991. In terms of the said Rules, the method of recruitment to the post of Junior Lecturer was stipulated under Rule-4(2)(d) which is quoted herein below:

"(d) He/she should posses a Masters Degree in the concerned subject from a recognized University with at least 48% of marks or it's equivalent grade and a consistently good academic record".

6. Learned Counsel for the Petitioner submitted that the required percentage of marks as noted hereinabove in the Rules, was enhanced to 55% by an amendment dated 10.6.1997.

It is asserted by the Petitioner that he had secured 53% of marks in M.A. examination and had constantly good academic records and satisfied the norms

of Rules 4(2)(d)(pre-amended). Although the State Govt, approved the appointments of other staff but no order of approval was passed in respect of the Petitioner, on the ground that the Petitioner had not obtained the requisite marks in the Masters Degree Examination, i.e., 55% of marks in M.A. Examination.

It is contended on behalf of the Petitioner that Kosala Mahavidyalaya in the district of Angul where the Petitioner was appointed vide appointment letter dated 28.2.1986, as Jr. College having +2 wing and obviously, at the time of appointment, the 1991 Rules had not come into operation and even then, after the 1991 Rules came into operation, it had originally prescribed 48% marks in M.A. as the minimum marks and since the Petitioner had secured 53% of marks on the date of his appointment in the year 1986, he had possessed the requisite qualification to be appointed as Jr. Lecturer even in terms of Rule-4(2)(d) of the 1991 Rules (pre-amended).

7. Sri Routray submitted that Rule 4(2)(d) of 1991 Rules was amended on 10.6.1997 enhancing requisite marks from 48% to 55% but since neither the Rules 1991 nor 1997 amendment, enhancing the marks was retrospective in operation, and since the Petitioner's institution was Jr. College (+2 wing) which was recognized/approved by the State Govt., his appointment could not be found fault with and ought to have been approved.

Sri Routray further submitted that even if the 1991 Rules are made applicable to the Petitioner (for the sake of argument without admitting) even then, since the 1991 Rules prescribed 48% marks as the minimum requirement for appointment, the Petitioner having obtained 53% marks had also satisfied such criteria. Learned Counsel submitted that the Rules 1997 amending the eligibility criteria and enhancing the percentage requirement to be 55%, could not be given retrospective effect and, therefore, this is a fit case where opposite parties 1 and 2 should have granted approval to the appointment of the Petitioner, consequently, orders should be passed to release grant-in-aid in accordance with grant-in-aid order, 1994.

8. Learned Counsel for, the State, on the other hand, submitted that since the Petitioner does not possess 55% or more marks in M.A. Examination, as required by Rule-4(2)(d) of the 1991 Rules as amended in 1997, the Petitioner is not entitled to the claim either for approval or for a direction for release of grant-in-aid.

9. Before proceeding with the matter, it is incumbent upon us to consider the direction of the Hon''ble Supreme Court in its order of remand and in particular, to take into consideration the decision of the Hon''ble Supreme Court rendered in the case of State of Orissa and another Vs. Damodar Nayak and another, as well as the Judgment of the Full Bench dated 5.5.1998 of the Hon''ble High Court in Civil Review No. 87 of 1996 rendered in the case of State of Orissa v. Pranaya Kumar Mohapatra.

In the case of Damodar Nayak (supra), the question that arose for consideration

before the Hon"ble Supreme Court was: whether the Respondent would be entitled to payment of salary under the Grant-in-Aid Scheme from the date of initial appointment or from the date of his acquiring the requisite qualification. Their Lordships of the Hon"ble Apex Court came to hold that, since on the date of the Petitioner's appointment he did not possess the requisite qualification and acquired the same only on 10th July, 1987, he would be eligible to the benefit of the grant-in-aid w.e.f. 1st August, 1987. It would be important to note herein that the Hon"ble Supreme Court took into consideration the Govt. clarification dated 5.1.1987, to the effect that "unqualified Lecturers having minimum second class, i.e. 48% or above and below 54% of marks in P.G. examination and appointed on or after 1.8.1987 in a recognized Non-Government college would be eligible to receive grant-in-aid". The Hon"ble Supreme Court also took into consideration a further resolution dated 13th Sept. 1985 issued by the Govt, prescribing the qualification for recruitment of Lecturers of affiliated colleges requiring that "candidate not holding an M.Phil degree should possess a high second class Master's degree, i.e. 54% marks and a second class Honours/Pass in B.A./B.Com/B.Sc. examination." In the said case, the Respondent had secured 53.9% marks on 10th July, 1987 i.e. after the Govt. Resolution dated 13.9.1985. Their Lordships came to hold that the Respondent was entitled to grant-in-aid but only from the date of his acquiring the requisite qualification and not on the date of his initial appointment since at that stage the Petitioner did not possess the necessary marks as required by Resolution dated 13.09.1985.

It is important to take note of the fact that in the present case at hand, neither the resolution dated 13.09.1985 of the Govt, of Orissa nor the clarification issued by the State Govt, dated 5.01.1987 are applicable to the Petitioner. They only apply to under-graduate colleges and not to Junior colleges (+2 Wing) into which, the present Petitioner was appointed.

10. The further mandate of the Hon"ble Supreme Court in the order of remand was also to take into consideration the Full Bench decision of the High Court in Civil Review No. 87 of 1996 dated 5.5.1996 in the case of State of Orissa v. Pranaya Kumar Mohapatra. In the Full Bench decision, the Hon"ble Full Bench of Orissa High Court answered the question remanded before it in the following manner:

The Lecturer in an aided college shall be eligible to the benefits of the grant-in-aid with effect from the date, he possess the requisite qualification, as prescribed by the State Govt.

In the light of the aforesaid decision and direction of the Hon"ble Supreme Court, it becomes imperative to consider as to when and the manner in which the State Govt, have prescribed any requisite qualification for the appointment of Lecturers into Junior Colleges (+2 Wing), it was asserted by the learned Counsel for the Petitioner that there was no statutory prescription of requisite qualification for appointment as Lecturers in Junior Colleges (+2 Wing) prior to the enactment of

the Orissa Education Service (Higher Secondary Branch) Method of Recruitment and Condition of Service Rules, 1991 which came into force on 8.4.1991. Therefore, since the Petitioner was appointed on 28.2.1986 and had obtained 53% marks in the M.A. Examination, the Petitioner's appointment could not have been questioned on the ground of not possessing requisite qualification. These rules of 1991 are obviously, prescribed in their operation and could have no retrospective effect. Even then, 1991 Rules prescribed 48% minimum marks in M.A. Degree and since the Petitioner possessed 53% marks, it must be held that the Petitioner's appointment also satisfied the requisite qualification as prescribed by the 1991 Rules. Although in the year 1997 Rule 4(2)(d) was amended and the minimum required percentage was enhanced from 48% to 55%, the said amendment could have obviously, no application to the Petitioner since the Petitioner had been appointed much prior to the said amendment and further, since the 1997 amendment were also not retrospective in their operation.

At this juncture, it is important to take note of the fact that after 1991 Rule was enacted, the Govt. of Orissa issued the grant-in-aid order, 1994. It must be held that the Petitioner having been appointed as Junior Lecturer (+2 Wing) in a recognized non-aided college and possessing 53% marks, was entitled for approval of his services and release of grant-in-aid in his favour.

11. We are of the considered view that whereas no objection could have been taken to the appointment of the Petitioner on 28.2.1986 and that the promulgation with the 1991 Rules, since the Petitioner satisfied the requirement of Rule 4(2)(d) thereof, he became entitled to be declared as a competent and eligible teacher suitable for appointment in Junior College. No doubt, it is true that in 1997, the eligibility requirement was enhanced to 55% marks; Such amendment and enhancement would obviously cover appointments or after the said date of amendment and not earlier thereto. It is well settled that such amendment could have no retrospective operation and would operate prospectively from the date of its enactment.

In the present case, the amendment of 1997 to Rule 4(2)(d) does not contain any stipulation making the said amendment retrospective and obviously, therefore, no objection can be raised neither to the appointment of the Petitioner in the year 1986 and the Petitioner is to be held as a person holding the requisite qualification for holding the post of Lecturer in Junior College. Further even applying the Judgment of the Hon''ble Apex Court in the case of Damodar Nayak (supra) and the Judgment of the Full Bench of Orissa High Court in the case of State of Orissa v. Pranaya Kumar Mohapatra, the Petitioner having possessed the requisite qualification to be appointed as Junior Lecturer on the date of his appointment, as well as on the date of when the grant-in-aid Order 1994 came into force, there is no reasonable basis for denying the Petitioner approval of his service and release of grant-in-aid in his favour.

12. Accordingly, the writ application is allowed with a direction to opposite parties 1 and 2 to accord approval to the Petitioner's appointment in the terms of 1991

Rules and to further release grant-in-aid in terms of grant-in-aid Order 1994 in favour of the Petitioner within a period of six months from the date of communication of this order.

L. Mohapatra, J.

13. I agree.