

(1992) 04 OHC CK 0008

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1486 of 1991

Sri Madhab Chandra Podh

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 23-04-1992

Acts Referred:

Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 — Rule 8(2)

Citation : (1998) 2 OLR 334

Hon'ble Judges : S.K. Mohanty, J;L. Rath, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The petitioner has come with the grievance that though he was continuing against a Trained Graduate Post in the Sachidananda High School in the district of Bolangir and acquired the trained qualification in December, 1983, yet he has been refused to be granted the trained graduate scale of pay since the date of his acquiring such qualification. It is the case that he had been appointed against an I.A.C.T. Post on 22.2.1973 in the school and the post he was holding was upgraded with effect from 28.1.1975 to a Trained Graduate Post. He continued in that post in the scale of pay of I.A.C.T. Teacher as he was having the qualification of being only a graduate. In December 1983 he became a Trained Graduate and hence in accordance with the decision of the Government in its letter No. XIV EDET 5/83, 568o EYS dated 7.2.1983 addressed to the Deputy Director of Public Instructions, Orissa, was entitled to the Trained Graduate Scale of pay. On notice being issued, counter affidavit has been filed on behalf of the opposite parties by the Additional Inspector of Schools, Bolangir. Substance of the stand taken by the opposite parties is that since in accordance with the new staffing pattern introduced by the Government with effect from 8.7.1981 every High School is to have in the minimum one Headmaster and four Trained Graduate Teachers of which two must be Trained Science Graduates one with the combination of Physics, Chemistry and Mathematics and the other with the combination of

Chemistry, Botany and Zoology, and the petitioner is a Trained Arts Graduate, he is not entitled to the higher scale of pay as there are already two other Trained Arts Graduate Teachers in the School. There is no further room to accommodate another Arts Trained Graduate Teacher in the School and hence the petitioner is not entitled to the scale of pay. Supporting such stand, it is the submission of the learned Additional Government Advocate that the revised yardstick which has been annexed as Annexure-C to the counter affidavit shows the same to be effective since 8.7.1981.

2. In the decision of the Government communicated to the Deputy Director of Public Instructions on 7.2.1983 it was decided that there is no bar to allow trained scale of pay to all untrained graduate appointed against a trained graduate post as soon as he acquires training qualification. This decision was being taken by the Government in the background of the fact as to whether there was any necessity to amend the Rule 8(2)(b) of the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 (hereinafter referred to as the "1974 Rules"). The decision was that there was no need for amendment of the Rule to achieve the purpose of granting Trained Graduate Scale of pay to a teacher who had been appointed against a Trained Graduate Post but was being paid a lesser scale of pay because of his not having the trained qualification. This was a general decision applicable to all such teachers and undoubtedly since the petitioner was holding the appointment against the Trained Graduate post since 1975, he became entitled to the Trained Graduate Scale on his acquiring the trained qualification. Such right of the petitioner is not to be defeated only because of the revised yardstick. All that the revised yardstick purported to say was that in a school there must be two Trained Science Graduate Teachers and two Trained Arts Graduate Teachers besides the Headmaster. It did never say that the teacher who has become entitled to the Trained Graduate scale of pay would be deprived of the same. Rule 8(2)(b) of the 1974 Rules was the rule which deals with promotion of inservice teachers in a school providing that the managing committee can, with the prior approval of the Government promote a teacher to a post carrying higher scale of pay if there is a vacancy. The decision was being taken in that background that the prior approval of the Government would not be necessary in view of the fact that the Government had no objection to the grant of higher scale of pay to the teachers who had acquired trained qualification while holding their appointments against the Trained Graduate Posts. If as a result of a teacher acquiring trained qualification there was a surfeit of Trained Arts Graduate Teachers or the Trained Science Graduate Teachers in the school, as the case may be, the obvious thing to be done is to transfer the required Teachers to some other institutions and in their place get the teachers as are necessary for the purposes of the school. It is for such reason that the petitioner must succeed to the declaration that he is entitled to be granted the Trained Graduate scale of pay from December 1983 and be placed in the cadre of Trained Graduate Teachers from that date. The authorities are free to transfer the

petitioner, if the necessity so arises, in accordance with the requirement of the yardstick as in Annexure-C. The arrear dues of the petitioner in the Trained Graduate scale of pay be paid to him within three months from the date of receipt of the writ from this Court.

3. The writ petition is allowed with cost. Hearing fee is assessed at Rs. 300/-.