

(2002) 08 OHC CK 0053

In the Orissa High Court

Case No : Original Jurisdiction Case No. 10961 of 2000

Sri Parameswar Naik

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 23-08-2002

Acts Referred:

Citation : (2002) 08 OHC CK 0053

Hon'ble Judges : M. Papanna, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : G.K. Behera, for the Appellant; R. Behera, A.S.C. for Respondents
Nos. 1 ot 3, for the Respondent

Judgement

A.K. Patnaik, J.—The petitioner was appointed as a 4th Peon in Panchayat High School, Kashipal, Pursuant to the resolution No. 35 dated 28.8.1991 of the Managing Committee of the said School, he joined as the 4th Peon in the said school on the said date. A proposal was submitted to the Inspector of Schools. Keonjhar Circle, Keonjhar for approval of the appointment of the petitioner and for payment of grant-in-aid to him because the aforesaid school had been brought into grant-in-aid with effect from 1.6.1994. The said proposal was not considered by the Inspector of Schools. The petitioner then filed writ petition O.J.C. No. 14974 of 1996 before this Court and on 30.1.1997. this Court disposed of the writ petition with a direction to the Inspector of schools to consider the proposal for approval of the appointment of the petitioner as a 4th Peon keeping in view the yardstick prescribed by the Government in its letter dated 8.7.1981. Thereafter, the Inspector of Schools rejected the proposal relying on the yardstick prescribed in the Government order dated 27.3.1992. The petitioner again moved this Court in O.J.C. No. 13068 of 1997 which was disposed of by order dated 5.1.1998 with the direction to the Inspector of Schools. Keonjhar Education Circle. Keonjhar to take into consideration the date of appointment and eligibility of the petitioner as the petitioner's case was that he was appointed on 28.8.1991 when the 1992 yardstick was not in operation.

Pursuant to the said order dated 5.1.1998 the Inspector of Schools approved the appointment of the petitioner as a 4th Peon in the school with effect from 1.6.1994 by order dated 31.12.1998. The said order dated 31.12.1998 has been annexed to the writ petition as Annexure-4 and is extracted hereunder.

OFFICE OF THE INSPECTOR OF SCHOOLS : KEONJHAR CIRCLE KEONJHAR.
OFFICE ORDER Dated the 31st Dec. 98

No. 13370/After careful consideration in the matter of an approval in respect of the appointment of the petitioner Sri Pafameswar Naik as 4th Peon in Panchayat High School. Kashipal made in pursuance of the Managing Committee resolution No. 35 dt. 28.8.91 is hereby accorded w.e.f. 1.6.94 (the date of receipt of G.I.A.) in the scale of pay Rs. 750-940/- the petitioner was appointed on 28.8.91 when the yardstick of 1992 was not in operation.

Since the post held by the petitioner is not admissible for grant-in-aid as per instructions contained in the letter No. 11690/21.3.96 of the Directorate Secondary Education, Orissa. salaries shall be made available to the petitioner on provision of funds from the Govt.

The matter is disposed of today the 31st Dec. 98" in compliance to the order No. 4 dtd. 5.1.98 passed by the Hon"ble High Court of Orissa in O.J.C. No. 13068/97.

Sd/L. Dalai inspector of Schools

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By the aforesaid order, although the Inspector of Schools approved the appointment of the petitioner, he made an observation that since the post held by the petitioner is not admissible for grant-in-aid as per the instructions contained in the letter dated 21.3.1996 of the Directorates of Secondary Education, Orissa, salaries shall be made available to the petitioner on provision of funds from the Government. Aggrieved by this portion of the order by which salaries payable to the petitioner with effect from 1.6.1994 has been held, up, the petitioner has filed this writ petition for directing the opp. parties to release the current monthly salary and arrear salary of the petitioner out of the grant-in-aid amount.

2. Mr. G.K. Behera. learned Counsel for the petitioner submitted that the petitioner's appointment as a 4th peon in the school on 28.9.1991 was justified on the basis of the yardstick as prescribed by the Government in letter dated 8.7.1981 which was in force at the time of making the appointment. Hence, the denial of salaries to the petitioner on the ground that the post held by the petitioner was not admissible for grant-in-aid as per the instructions in the letter dated 21.3.1996 of the Directorate of Secondary Education Orissa which were issued subsequently is illegal. Mr. Behera cited a Division Bench decision of this Court in Dipak Kumar Sahoo Vs. State of Orissa and Others, . in which the Division Bench of almost similar facts held that a person appointed to a post of 4th peon on the basis of the yardstick in the letter dated 8.7.1981 cannot be

denied approval and grant-in-aid on the ground that a subsequent yardstick prescribed by the Government in the letter dated 27.3.1992 does not justify his appointment. He, has, therefore, submitted that this is a fit case in which this Court should direct the 6pp. parties to pay the salary of the petitioner with effect from 1.6.1994.

3. Mr. R. Behera, learned Addl. Standing Counsel, on the other hand, relied on the counter affidavit filed on behalf of the opp. party 3 and submitted that in view of the instructions of the Directorate of Secondary Education, Orissa in his letter dated 21.3.1996, the petitioner is not entitled to his salaries. He further submitted that in the letter dated 8.7.1981 of the Government prescribing yardstick for staffing pattern of the school, there was no 4th post of peon but a post of Duftary and that the said post of Duftary is a promotional post and a person cannot be appointed in the said post as a 4th peon. He relied on a Division Bench decision of this Court in *Kamala Kanta Kar v. State of Orissa* and 3 Ors. 88 (1999) C.L.T. 75 in support of his submission.

4. We have perused the decisions of this Court in the cases of *Dipak Kumar Sahoo v. State of Orissa* and Ors. and *Kamala Kanta Kar v. State of Orissa* and 3 Ors. (supra) cited by the learned Counsel for the parties and found that as per the yard stick prescribed by the Government in letter dated 8.7.1981 a post of Duftary was admissible where the roll strength of the school exceeded 100. By a subsequent Government letter dated 27.3.1992 prescribing the yardstick with effect from 1.1.1992 a post of Duftary was admissible if the roll strength of the three classes High School exceeded 500 or more. Thereafter, by a Government letter dated 31.3.1996 it was clarified that the post of Duftary shall be filled up either by direct recruitment or by promotion from Class-IV employees of the same school. In *Dipak Kumar Sahoo v. State of Orissa* and Ors. (supra) the petitioner had joined as a 4th peon on 18.12.1991 in a school which had roll strength of more than 100. A contention was raised on behalf of State of Orissa that in the post of Duftary, a person cannot be appointed as a 4th peon as that was a promotional post from Grade-IV to which the post of peon belonged. But the Division Bench held that the post Duftary became a promotion post only pursuant to the clarification of the Government in the letter dated 13.11.1996. In *Kamala Kanta Kar v. State of Orissa* and 3 Ors. (supra), similarly, the petitioner had been appointed as a 4tr. peon in the school and had joined on 15.12.1987 prior to the year 1996. The Division Bench reiterated that the post of Duftary was not a promotional post at the relevant time when the petitioner was appointed and it became a promotional post only after the letter dated 13.11.1996 of the State Government and followed it earlier decision in *Dipak Kumar Sahoo v. State of Orissa* and Ors. (supra) The relevant portion of the said judgment in *Kamala Kanta Kar v. State of Orissa* and Ors. (supra) is extracted herein below:

The Inspector of Schools has further noted that the roll strength of the institution does not warrant to SB up a duftary post as per Government Order No. 15500/-

SME dated 27.3.1992. The impugned order dated 30.9.1994 cannot be sustained in law. This Court in its previous order dated 15.5.1998 clearly held that the yardstick prescribed by the Government in Order No. 15500/- SME dated 27.3.1992 is not applicable to the petitioner, inasmuch as, by the time of his appointment, the previous yardstick of the year 1981 was in force, and the question of approval of his appointment ought to have been decided basing on the yardstick of the year 1981. Besides this, the post of daftary was not a promotional post at the relevant time, so far as Non-Government Aided High Schools are concerned. The State Government, for the first time, in letter No. 36118/SME, dated 13.11.1996 indicated that the post of daftary in Non-Government Aided High Schools is to be filled up by way of promotion from amongst the peons. This position has been clarified by this Bench in *Dipak Kumar Sahoo. v. State of Orissa and Ors.* O.J.C. No. 13911 of 1996 disposed of on 22.12.1998. As the aforesaid Government circular dated 13.11.1996 is not applicable to the case of the petitioner, the Inspector of Schools erred in holding that the post of daftary is a promotional post, for which the petitioner's appointment as 4th peon (daftary) cannot be approved".

5. In view of the aforesaid two decisions of the Division Bench of this Court, in our considered opinion, the petitioner cannot be denied grant-in-aid on the ground mentioned in the letter dated 21.3.1996 of the Directorate of Secondary Education, Orissa that in no case the Class-IV staff can be appointed in the post of Daftary. As indicated above, no appointment of 4th peon can be made in the post Daftary after the Government matter dated 13.11.1996 but appointment made prior to 13.11.1996 on the basis of the yardstick in letter dated 8.7.1981 of the Government as a 4th peon as in the present case cannot be said to be unjustified and illegal.

6. For the aforesaid reasons, we quash the portion of the impugned order dated 31.12.1998 of the inspector of Schools in so far as it holds that the petitioner is not admissible for grant-in-aid as per instructions contained in the letter dated 21.3.1996 of the Directorate of Secondary Education, Orissa and we direct that the petitioner will be paid this current as well as arrear salary within a period of four months from the date of receipt of the certified copy of this judgment by the Director of Secondary Education, Orissa and the Secretary, Education and Youth Services Department, Government of Orissa from the petitioner.

The writ petition is accordingly allowed.

In case the petitioner files requisite copies of the judgment and copies of the writ petition will be sent to the aforesaid two authorities.

M. Papanna, J.

7. I agree.