
(1997) 05 OHC CK 0008

In the Orissa High Court

Case No : Original Jurisdiction Case No. 6705 of 1992

Sri Surendranath Sahu and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 15-05-1997

Acts Referred:

Citation : (1997) 2 OLR 43

Hon'ble Judges : S. Chatterji, J;P.K. Mohanty, J

Bench : Division Bench

Advocate : J.K. Rath and M.M. Senapati, for the Appellant; A.G.A. for opp. parties 1 and 2 and A.K. Mohanty and S.N. Biswal for Opp. parties 3, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Mohanty, J.—The three petitioners, who are working as Lecturers in Laxmi Barah College, Ayatpur have prayed for a direction to opp. parties 1 and 2 to release the salary components of the petitioners with effect from October, 1991 as sanctioned by the State Government vide Annexure- 2 and for payment of U.G.C. scales of pay, which is being paid to their counter-parts in the Government establishment. It is further prayed that opp. party No.3 be directed to pay the petitioners the balance of the dues paid by the State Government within a stipulated period.

2. The petitioners case in short is that petitioner No. 1 was appointed as a Lecturer against the first post of Political Science and on being so appointed he joined the post on 12.7.1981. The petitioner No.2 was appointed as Lecturer in the first post of Lecturer in Oriya and he joined the post in 10.7.1981 The petitioner No.3 joined as a Lecturer in the first post of Economics on 1.9.1982 in Laxmi Barah College, Ayatpur. The College where the petitioners are serving got recognition in June. 1983 as Intermediate College and as per the grant-in-aid principles of the State Government, it became eligible to receive grant-in-aid, at 1/3rd after 5 years, 2/3rd after 7 years and full salary cost 9 years after the

recognition and as such, the college was eligible to receive 1/3rd from 1.6.88, 2/3rd from 1.6.90 and full salary cost from 1.6.1992. The petitioners appointments were duly approved by opp. party No.2 vide order No. 24066 dated 9.4.1991, a copy whereof is Annexure-2 to the writ application. Pursuant to the order in Annexure-2, the payment was released but the petitioners claim that they being employees of the aided institution, under Rule 9 of the Recruitment Rules, they are entitled to receive the salary components at the same rates as paid to the counterparts in Government Colleges and as such, the balance of the salary components i.e. 2/3rd salary cost was to be paid by the opp. party No.3. It is the petitioners' case that they are paid salary by opp. party No.2 till January, 1989 and thereafter no payment was made to the petitioners either by opp. parties 1 and 2 or by opp. party No.3. The petitioners are entitled to get salary components from opp. party No.3 at the rate of 2/3rd from 1.6.1988 to 31.5.1990, 1/3rd from 1.6.1990 to 31.5.1992 since they are entitled to receive 2/3rd salary component from the State Government and 1/3rd salary components from opp. party No.3 and full salary from 1.6.1992. Opp. parties are not paying any heed to the request for payment of such legitimate dues.

3. The petitioners claim that the State Government on principle have decided that the College teachers who have received their grant-in-aid and their appointments have been duly approved till 1989 are entitled to get their salary components as per the U.G.C. scales of pay. The petitioners appointment having been duly approved with effect from 1.6.1988 and being in receipt of their salary components with effect from that date, they are entitled to receive the U.G.C. scales of pay at par with the college teachers equally circumstances in other aided institutions. Non-payment of U.G.C. scales of pay to the petitioner, it is alleged, is a gross discrimination and therefore is hit by Articles 14 and 16 of the Constitution of India.

4. Opp. party No.2, the Director, Higher Education and opp. party No. 3 the Principal-cum-Secretary of the College have filed separate counter affidavits denying the claims of the petitioners. The Director, Higher Education, opp. party No.2, in his counter has submitted that the salary bills of the petitioners have not yet been furnished by the College inasmuch as the petitioners are not eligible to receive U.G.C. scales of pay since the petitioners College is not a Degree College in terms of the Govt. Circular. It is further stated that the Orissa Revised Scales of Pay Rules for Non Government Aided institution was issued by the Education Department vide Resolution No.48287/EYS. dated 6.11.1990. The aforesaid Rule contemplates that only the teachers of different aided non-Government Colleges having requisite qualification prescribed by the University Grants Commission and modified by the State Government from time to time are eligible to get the revised scales of pay. The further stipulation as per the Resolution is that the College in question must have obtained Government concurrence and University affiliation for opening of +3 Degree course by 1.4.1989 in order to qualify its lecturers for getting the revised scales of pay. In other words, the lecturers serving in an aided college having full facilities up to the +3 Degree classes by

1.4.1989 are eligible for the U.G.C. scales of pay. It is stated that since the petitioners college has provision for teaching up to +2 stage and there is no Degree classes, the petitioners are not eligible to get the U.G.C. scales of pay and therefore, there is no discrimination shown to the petitioners, a copy of the Government Resolution dated 6.11.1990 has been annexed as Annexure-A/ 2. It is therefore, the stand of opp. party No. 2 that the petitioners being lecturers of a College having teaching facilities up to +2 stage and not +3 Degree stage are not entitled to the U.G.C. scale of pay. Opp. party No.3, the Principal-cum-Secretary of the Governing Body in his counter has denied the allegation regarding non-payment of 2/3rd salary cost from 1.6.1988 to 3.5.1990 and the full salary cost. It is stated that the petitioners are allowed to draw a consolidated pay of Rs. 400/- per month as per the Resolution of the Governing Body dated 30.7.90 and the petitioners received their salary amounting to Rs.18,180/- each, whereas they are entitled to receive only Rs. 9,600/- each at the consolidated pay of Rs. 400/- per month. It is further stated that the teachers were also paid Rs. 7,200/- each at the consolidated rate of Rs. 300/- per month-as per the Resolution of the Governing Body dated 20.2.1991 and the petitioners 1 and 2 have received Rs. 1,500/- and petitioner No.3 received Rs. 750/- on a rough Acquittance Roll due to non-availability of the original Acquittance Roll. But after the original Acquittance Roll was available, when the petitioners were requested to sign on the said, they refused to do so on the ground that they have already signed on the rough Acquittance Roll.

5. The Governing Body of the College, at Para-7 of the counter affidavit has already taken the stand that Laxmi Barah College, Ayatpur is imparting education of +2 Arts Level only and is a Junior College, as such, the U.G.C. scales of pay are not applicable to its teacher. The allegations as against the Principal-in-charge etc. have been refuted. In the additional affidavit filed by opp. party No.3, it has been stated that the Deputy Director vide his letter No. 59799 dated 25.11.1993 and 65052 dated 27.12.1993 has delegated the financial power to the Principal, Pattamundai College, Pattamundai to draw and disburse the salary of the staff of the College coming under the Direct Payment Scheme till the posting of a regular Principal. It is stated that the monthly salary bills of the staff of the college have already been submitted to the Director, Higher Education for necessary payment.

6. The petitioners have filed a common rejoinder to the counter affidavits filed by opp. parties 2 and 3. It is stated that all the Intermediate Colleges like that of the petitioners College are receiving their salary components in U.G.C. scale of pay and therefore, the stand of the opp. parties that the petitioner's college being not a degree college, are not entitled to the U.G.C. scale of pay, are not tenable. It is further stated that U.G.C. scale of pay is applicable to all the college teachers, who are appointed and approved in accordance with the Government Circular irrespective of the fact whether a teacher is appointed in +2 stream or the +3 stream prior to 1.4.1989. Under Rule 9 of the Recruitment Rules, the employee of an aided educational institution shall draw the same scale of pay

and allowances as admissible to the counterparts in the Government Institution and therefore, the petitioners are entitled to draw such U.G.C. scales. The petitioners alleged that the Lecturers in Commerce of S.N. College, Rajkanika and Lecturers in Logic and Mathematics are given U.G.C. scales of pay though there is no +3 Degree Commerce Course in the College, similarly the lecturer in Commerce in Kharashrota Mahavidyalaya, Singhpur. Even though the college got concurrence from the State Government for opening of +3 Commerce, +3 Science and Sanskrit and Education at +3 Arts from the sessions 1991-1992. The copies of pay fixation particulars have been annexed as Annexures 5, 6 and 7 respectively. So far as the payment of arrear differential amount, it is stated in the rejoinder affidavit that the college had no funds and therefore, they were paying at times, an advance of Rs. 250/- even though the petitioners were entitled to much more, but in order to show the record straight for verification of the educational authorities, the petitioners were asked to put their signatures in an Acquittance Roll though in fact no payment was made. It is stated that the Principal has issued a certificate, a copy whereof is Annexure 8 to that effect.

7. Heard learned counsel for the parties. Sri S. K. Dash, the learned counsel appearing on behalf of the petitioner, contends that the State Government on principle have decided to extend the U.G.C. scales of pay and pay revision, vide its Resolution No. 44032 dated 6th October, 1989. to all full time teachers working in all affiliated non-Government colleges, either covered or eligible to be covered under direct payment scheme till 1.4.1989. Since opp. party No. 3 College received direct payment with effect from 1.6.1988, the petitioners are entitled to U.G.C. pay and its subsequent revision, i.e. to the scale of Rs. 2,200/-/- 4,000/- and as such, the pay of the petitioners is to be revised and they should be paid their salary including arrear salary in such scale of pay.

It is submitted that the matter has been settled and the petitioners case is covered by the judgment of this Court rendered on 4.11.1994 in O.J.C. Nos. 4085 to 4090 of 1993. Sri Dash contends that in the aforesaid decision, this Court having held that the note appended in the Government Resolution in Annexure A/2 having been held invalid and quashed by this Court, the petitioners are entitled to the relief claimed in this petition. Sri Akhil Mohapatra, learned Addl. Government Advocate on the other hand contends that the Govt. in its Resolution having extended the U.G.C. scale of pay to the teachers of Aided Colleges having Govt. concurrence and University affiliation for opening of Degree Courses by 1.4.1989. and admittedly the College, opp. party No.3, where the petitioners are working being a Junior College having Govt. concurrence and affiliation of the Council of Higher Secondary Education for imparting education at the +2 level only, petitioners are not entitled to claim U.G.C. scale of pay as claimed. It is further contended that the Hon"ble Supreme Court in SLP (c) 3988/95 having stayed the operation of the judgment in O.J.C. Nos.4085 to 4090 of 1993 as well as by order in Special Leave Petitions against the judgments rendered in other such similar matters, the contention of the learned counsel that the petitioners case is covered by the said judgment is not tenable in law.

The learned counsel for opp. party No. 3, while supporting the stand taken by the learned Addl. Government Advocate, contends that the petitioners have been paid their due salary and they having received the same, are not entitled to claim the same inasmuch as the claim is false and fictitious.

8. Having heard the learned counsel for the parties and after going through the respective pleadings, the main question that arises for consideration, is whether the petitioners are entitled to the benefits of U.G.C. scales of pay as adopted by the State Government for the teachers of the non-Government aided colleges of the State vide its resolution No.44032/EYS, dated 6.10.1989 and the subsequent resolution of the State Government in the Education and Youth Services Department No. 48287/EYS dated 6.11.1990, a copy whereof is Annexure-A/2.

The State Government in its Resolution dated 6.10.1989 decided that revised scales and other measures for improvement of students and teachers in higher education shall be applicable to all categories of full time teachers working in all affiliated Government Colleges and aided non-Government Colleges either covered or eligible to be covered under direct payment scheme till 1.4.1989. By subsequent resolution dated 6.11.1989, the Government reiterating the earlier resolution, stipulated certain terms and conditions. A note was inserted in the second resolution that "College" under these instructions shall mean aided colleges which have been given Government concurrence and University affiliation for opening of Degree courses by 1.4.1989.

9. On a careful reading of the aforesaid Government resolutions, it is clear and there cannot be any dispute that it is applicable to all full time teachers working in all affiliated Government and Aided Non-Government Colleges either covered or eligible to be covered under the direct payment scheme. A college has been defined u/s 3 (d) of the Orissa Education Act, 1969 as under :

(d) "College" means an educational Institution imparting instructions in higher general education leading to any degree conferred by any of the Universities established under the Orissa Universities Act, Act 5 of 1989.

10. The aforesaid definition of a College was introduced in Section 3 of the Orissa Education Act, 1969 for the first time by Act 15 of 1989 (Orissa Education Amendment Act, 1989), which came into force from 14th August, 1989 and earlier to this the College was not defined specifically.

In view of the definition of a "College" under the Act, the "College" indicated in the Government Resolution/decision would only mean an educational institution imparting higher general education leading to a degree granted by a University established under Orissa University Act, 1989 and no other. Therefore, on a proper reading of the aforesaid resolution of the Government conferring revised/higher scale of pay to the whole time teachers of such a college are only entitled to the revised pay etc. The petitioners being teachers of an institution imparting education in +2 courses leading to a H.S.S. Certificate issued by the Council of Higher Secondary Education can by no stretch of imagination be called teachers

of a College (aided, non-Government) as contemplated under the Government Order to be entitled to the benefits extended thereunder. Undisputedly, the petitioners are the teachers of the aided educational institution imparting +2 course (presently defined as a Junior College by Amending Act 13 of 1994). Thus, even without entering into the "Note" appended to the second Resolution in Annexure A/2 dated 6.11.1989, wherein the College has been more elaborately defined and clarified and wherein the teachers of a +2 institution have been specifically denied the benefits thereunder, the benefits under the first Resolution dated 6.10.1989 having been extended only to whole-time teachers of a College, the said decision and the revision of scales of pay or benefit thereunder are not applicable to the petitioner. Thus, the contention of the learned counsel that the petitioners are entitled to revision of their scales of pay in terms of Government Resolution/decision is without any substance and has to be rejected.

11. Now coming to the next point of the submission of the learned counsel for the petitioners that the case is covered under the decision of this Court in O.J.C. Nos. 4085 to 4090 of 1993 dated 4.11.1994, it is to be noted that what has been decided therein is precisely that there is no justification for the Government to exclude the institutions which obtained University affiliation after the cut-off date i.e. 1.4.1989 and as such their Lordships quashed the "Note" in the Resolution dated 6.11.1989 stating the additional condition of University affiliation of aided colleges by 1.4.1989 (Para-6 of the judgment). In the case at hand, the date of Government concurrence or affiliation has no relevance, since it is not the case of the petitioners that they have been denied the benefits because, the institution, where they serve has obtained the affiliation after the cut-off date i.e. 1.4.1989. It may also be placed on record that the judgment referred to by the learned petitioners counsel is the subject matter of SLP before the Hon'ble Apex Court and the operation of the order has been conditionally stayed as contended by the learned Additional Government Advocate placing on-record the xerox copies of orders passed in similar matters.

In any view of the matter, the petition is without any merit and hence dismissed. But however, in the facts and circumstances of the case, there shall be no order as to costs.

S. Chatterji, J.

12. I agree.