
(2002) 10 OHC CK 0053
In the Orissa High Court
Case No : O.J.C. No. 14948 of 1999

State of Orissa and Another	Vs	APPELLANT
Balabhadra Pujapanda and Others		RESPONDENT

Date of Decision : 08-10-2002

Acts Referred:

Citation : (2003) 95 CLT 256 : (2003) 1 OLR 255

Hon'ble Judges : R.K. Patra, J; Pradip Mohanty, J

Bench : Division Bench

Advocate : G.A.R. Dora and S.P. Mishra, for the Appellant; R.K. Rath and N.R. Rout, for O.Ps. 1 to 5, 14, 18 and 19, S. Mishra (1), S.N. Misra, R.C. Praharaj, B. Dash and R.K. Satpathy for O.Ps. 8, 10 to 13, P. Patnaik, R.C. Patnaik (2), B.N. Das and K. Tripathy for O.P. 7, R.K. Pradhan and A.K. Mohapatra for O.Ps. 16 and 20 and S.S. Mohanty, C.R. Nandi and S.P. Mohanty for O.P. 17, for the Respondent

Final Decision : Allowed

Judgement

R. K. Patra, J.—By this petition under Articles 226 and 227 of the Constitution of India the State of Orissa seeks to assail the validity of the common order dated 18.7.1998 (Annexure-5) passed by the Division Bench of the Orissa Administrative Tribunal, Bhubaneswar allowing the original applications filed by opposite parties 1 to 20 and declaring that they should be allowed to continue in the posts of Teacher Educator in which they had joined pursuant to the direction given to them in their appointment orders dated 31.5.1997.

2. Facts leading to filing of original applications by opposite parties 1 to 20 before the Orissa Administrative Tribunal are indicated hereunder :

The Director, Teacher Education and S.C.E.R.T., Orissa published an advertisement in the daily "Sambad" dated 27.2.1997 inviting applications for filling up 32 posts of Teacher Educator in different District Institutes of Education and Training (D.I.E.Ts.) of the State. Master's Degree in Education was the essential qualification for the post as indicated in the advertisement. In response

to the advertisement, applications were received. The opposite parties 1 to 20 were some of the applicants who were asked to report in the office of the Director, Teacher Education and S.C.E.R.T., Bhubaneswar on 14.5.1997 with all original documents, certificates, mark-sheets, etc. in support of their candidature. Selection by way of scrutiny of the documents was held on 14.5.1997 and thereafter office order No. 471(D) dated 31.5.1997 (Annexure-G) was issued appointing 39 candidates (including opposite parties 1 to 20) as Teacher Educators indicating their respective places of posting. They were also directed to join at their places of posting by 25.6.1997 positively, failing which, the appointment orders would be treated as cancelled. As per the order of appointment, they joined their respective posts by the specified date. Within a week of their joining, the Government in the Department of School and Mass Education letter No. 19526/ SME dated 27.6.1997 (Annexure-2) cancelled the selection of the candidates made by the Director. It was mentioned in the Government order that fresh selection of candidates would be conducted by the Selection Committee constituted by the Government. Pursuant to the said Government decision, the Director in his office order No. 4992 dated 30.6.1997 (Annexure-3) has cancelled their appointment orders. Being felt aggrieved by the cancellation of appointment, the opposite parties 1 to 20 filed separate applications challenging the aforesaid Government decision communicated in letter dated 27.6.1997 (Annexure-2) and the consequential order of the Director dated 30.6.1997 (Annexure-3). The Tribunal heard all the applications together and allowed them by the impugned order dated 18.7.1998 (Annexure-5).

The stand of the State Government before the Tribunal was that as per the policy decision published in the Orissa Gazette dated 8.3.1991 appointment of Teacher Educators would be partly by direct recruitment and partly by selection from among the in-service teachers of the School wing who are otherwise eligible and possessed the prescribed qualifications. The criteria for direct recruitment are : (a) Career marking as per division/class; (b) Weightage for additional teaching experience; (c) Publication; (d) Research qualification like M.Phil., Ph.D., etc. (e) Personality appraisal through interview. According to the State Government, selection for the post was being conducted by the erstwhile State Selection Board which has been substituted by Staff Selection Commission by Government resolution dated 23.12.1995. However, since the posts of Teacher Educator did not find place in the Schedule consisting the list of posts for which the Staff Selection Commission is to conduct the recruitment, the same could not be entrusted to the Commission. The Department, accordingly, entrusted the recruitment to the Director. The Secretary of the Department ordered that the selection should be based only on career marking and without any interview because the interview would consume time and without the interview the selection would be bias free and complaint free. Pursuant to the said order, selection was held on 14.5.1997 by way of scrutiny of documents and 39 candidates were selected. The Government in the School and Mass Education Department, however, did not approve the selection process made on career

marking and ordered as per letter dated 27.6.1997 (Annexure-2) the interview to be included as a criterion for selection. On the basis of this decision, the Director issued orders cancelling the appointment.

3. The main findings recorded by the Tribunal are as follows :

(i) The Orissa Subordinate Staff Selection Commission is to make recruitment in respect of posts listed in Schedule-I of the Orissa Subordinate Staff Selection Commission Rules, 1993, but the post of Teacher Educator does not find mention in the said Schedule. There is no Government order/notification indicating inclusion of the post of Teacher Educator in the list of Schedule-I as per the proviso to Rule 4 of the aforesaid Rules. Assuming the post of Teacher Educator has been brought within the purview of recruitment by the Staff Selection Commission then to conduct the recruitment through a Department Committee would require an order of relaxation under Rule 17 of the Rules and there is no such order;

(ii) In the recruitment procedure which was in vogue at the relevant time there was no reference to personality appraisal or interview. Therefore, the selection cannot be said to be not in accordance with the recruitment procedure;

(iii) All the candidates are holders of Master's Degree, in Education and in the process of passing B.Ed. and M.Ed., their ability to teach and power of oral expression would have been tested in the practical examinations. As such, dispensing with the interview cannot be said to have come in the way of making a proper selection;

(iv) It is not the case of the Government that the process of selection was defective on account of any improper or incorrect evaluation in career marking.

4. On perusal of the impugned order of the Tribunal, it appears that it has clearly fallen into error in holding that personality appraisal through interview was not spelt out in the mode of direct recruitment in the Government resolution dated 30.11.1990. It has committed an error on the face of records. In the Education and Youth Services Department's resolution No. 52454/EYS dated 30.11.1990 (Annexure-1) it has been mentioned (vide para 4(i) that the Teacher Educators shall be appointed both by direct recruitment and by selection from among the in-service teachers of the school wing who are otherwise eligible for such posts and possess the requisite qualifications. The proportion of direct recruitment and selection will be 50 : 50. Para 4(ii) deals with mode of direct recruitment. It states that selection for recruitment to the posts of Teacher Educators may be made through open advertisement by the State Selection Board. Para 7 of the said resolution provides the criteria for selection of Teacher Educators. It is quoted hereunder :

"(a) Career marking as per Division / Class beginning with H.S.C. Examination up to the last qualifying examination.

(b) Weightage for additional teaching experience, over and above the minimum

qualifying experience as provided under paragraphs 4(v) and 5(ii) above.

(c) Publications.

(d) Research qualification like M.Phil., Ph.D., D.Phil., D.SC., D.Litt. etc.

(e) Personality appraisal through interview."

It may be seen that personality appraisal through interview is one of the criteria for selection of Teacher Educators. The Secretary of the Department could not have dispensed with the requirement of holding interview for personality appraisal in the face of the aforesaid government resolution. His order therefore in this regard is clearly without jurisdiction being contrary to the government resolution. The Secretary's view that holding of interview is a time-consuming process and without interview the selection would be bias free and complaint free is also wholly untenable. In the circumstances, the Minister has rightly reviewed the matter and passed orders on 22.6.1997 cancelling the selection.

5. The question that arises for consideration is whether for the wrong committed by the Secretary of the Department, the opposite parties 1 to 20 should suffer, because they were not at fault. Had any interview been held for personality appraisal, they could have appeared. At this stage, we may note that the government resolution dated 30.11.1990 (Annexure-1) envisaged that selection for recruitment to the posts of Teacher Educator should be made by the State Selection Board. Admittedly, the State Selection Board has now become defunct and in its place the Orissa Subordinate Staff Selection Commission has been substituted by Government resolution No. 40750 dated 23.12.1995. The Tribunal is correct in its finding in coming to hold that in Schedule-I of the Orissa Subordinate Staff Selection Commission Rules, 1993 the post of Teacher Educator has not been listed. Therefore, the Staff Selection Commission cannot undertake the job of recruitment to the posts of Teacher Educator. The Government may consider inclusion of the posts of Teacher Educator in Schedule-I of the Orissa Subordinate Staff Selection Commission Rules, 1993 which may take some time. Since it is not immediately possible to include the posts of Teacher Educator in Schedule-I, it is open to the Government to take recourse to Rule 17 in public interest and go ahead with the recruitment by constituting a Selection Committee for the purpose. At this stage, we may note that the Government in its letter No. 19526/SME dated 27.6.1997 (Annexure-2) constituted a Selection Committee. Since constitution of the said Selection Committee was the subject matter of challenge, we are of the opinion that the Government should constitute a fresh Selection Committee for the purpose. We also make it clear that this recruitment/selection should be confined to the opposite parties 1 to 20, who are the applicants before the Tribunal.

6. In the result, the impugned order of the Tribunal dated 18.7.1998 (Annexure-5) is hereby quashed.

The writ petition is accordingly allowed. No costs.

Pradip Mohanty, J.

7. I agree.