
(2011) 03 OHC CK 0072

In the Orissa High Court

Case No : Writ Petition (C) No. 12318 of 2010

State of Orissa and another

APPELLANT

Vs

Dr. Prasanna Kumar Pati

RESPONDENT

Date of Decision : 09-03-2011

Acts Referred:

Citation : (2011) 131 FLR 253

Hon'ble Judges : B.P. Das, J;B.K. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.P. Das, J.—The State Government, through its Secretary, Higher Education Department and the Director Higher Education Department have come up before this Court challenging the order dated 29.2.2008 passed by the Orissa Administrative Tribunal, Bhubaneswar Bench, Bhubaneswar in O.A. No. 1007 of 2005 in Annexure-5.

2. The sole point for consideration before this Court is whether the period of service rendered by the opposite party as a Lecturer in an aided Non-Government educational institution is to be counted for the purpose of sanction of career advancement and other consequential service benefits.

3. Bereft of unnecessary details, the facts of the case are that an advertisement was issued by the Director of Public Instruction (DPI) on 20.5.1977 for preparation of a merit list of Lecturers, in different disciplines in order to fill up the vacancies in different Government and Non Government Colleges on temporary basis. Pursuant to such advertisement, a common merit list was prepared wherein the opposite party secured 6th position. In terms of the said merit list, the opposite party was appointed as a Lecturer in Commerce and joined as an ad hoc Lecturer in a Non-Government Aided College, i.e. Salipur College, on 3.8.1977.

4. Thereafter pursuant to the advertisement issued by the Orissa Public Service

Commission for appointment as Lecturer in Commerce in Class-II of O.E.S., the opposite party faced the selection and secured 15th position and was appointed as a Lecturer in Commerce in a Government College, i.e. Angul College, and joined the post on 7.10.1980 and one Shri Rabindranath Das who secured 19th position in the merit list, was posted in a Government College, i.e. Bhadrak College.

5. When the period of service rendered by the opposite party in the aided Non-Government institution was not counted for the purpose of sanction of career advancement and other consequential service benefits, the opposite party made a representation to the State Government. The Deputy Director, Higher Education by letter dated 7.1.2004 (Annexure-9 to the Original Application) rejected the claim of the opposite party. Being aggrieved by the aforesaid rejection order, the opposite party preferred an Original Application being O.A. No. 1007 of 2005 before the Orissa Administrative Tribunal. The Tribunal taking all the aspects into consideration, disposed of the Original Application by its judgment dated 29.2.2008 with the finding that the opposite party has served for a considerable period on ad hoc basis in Non-Government Aided colleges and his counterparts in the Government colleges have been extended such benefits, directed the present petitioners to count the period of service rendered by the opposite party in the aided Non-Government institution for the purpose of career advancement and make available the consequential benefits to the opposite party including seniority, promotion, if due and the arrears be paid within a period of six months from the date of receipt of the copy of the order. Against the aforesaid order of the Tribunal, the State and its functionary have filed this writ application.

6. The ground which was raised before the Tribunal is that the Lecturers, who rendered services in Non-Government Aided colleges before joining in Government Colleges, were protected by a notification of the State Government dated 8.12.1995 wherein it has been indicated that "the period of continuous ad hoc service of a Lecturer, who had been appointed on the recommendation of the Director against any regular vacancy on the basis of the prescribed minimum qualification and selection, if followed, by his regular appointment or by an order of regularization, shall be taken into account".

7. The opposite party has filed a counter-affidavit refuting the stand taken by the petitioners and indicating therein that his case has been discriminated by the petitioners. It has been indicated that in the common merit list prepared to fill up the vacancies of Lecturers in different Government and Non-Government Colleges on ad hoc basis, the opposite party and one Shri Rabindranath Das were selected as Lecturers. Shri Das secured 30th position in the common merit list, whereas the opposite party secured 6th position. Securing 6th position while the opposite party was allotted a Non-Government College, Shri Das securing 30th position was allotted a Government College. Subsequently in the selection held by Orissa Public Selection Commission, both of them faced the selection and in the merit list drawn up by the OPSC, Shri Das secured 19th position and

continued in the said Government College, i.e. Bhadrak College, whereas the opposite party secured 15th position and was appointed as a Lecturer in a Government College, i.e. Angul College. It is also contended by the opposite party that by reckoning the entire period of service rendered by Shri Das as ad hoc lecturer in Government College, he was given all service benefits, whereas the service rendered by the opposite party in Non-Government colleges as ad hoc lecturer was not counted towards service benefits.

8. According to the opposite party, after the selection was made the opposite party was directed to work in a Non-Government College, whereas Shri Das was directed to work in a Government College. There was no role on the part of the opposite party to choose the place of posting.

9. According to learned State Counsel, the case of Shri Das was considered applying the amended provisions of the Rules, which has been notified on 8.12.1995. Interpreting that provision, learned State Counsel submits that the said provision is applicable to the Lecturers who were appointed in aided Government Colleges.

10. The Tribunal in the 4th paragraph of its Judgment relied on a letter dated 27.11.1990 issued by the UGC to the State Government. The relevant portion of such letter is quoted hereinbelow:-

The Commission in consultation with Ministry of Human Resource Development (Department of Education) reconsidered the matter at its meeting held on 11th October, 1990 and resolved revised guidelines as follows for counting of previous service for purpose of senior scale/selection grade under the career advancement scheme for lecturers.

1. Previous service without any break as a Lecturer or equivalent in a University/college national laboratory or other Scientific organizations (CSDK, 1CAK, DKDO, UGC etc.) and as a UGC Research Scientist should be counted for placement of Lecturers in Senior Scale/Selection Grade provided that.-

(a) the post was in an equivalent grade/scale of pay as the post of a Lecturer;

(b) the qualification for the post were not lower than the qualifications prescribed by UGC for the post of Lecturer;

(c) the Lecturers concerned possessed the minimum qualification prescribed by UGC for appointment as Lecturers;

(d) the post was filled in accordance with the prescribed selection procedure as laid down by the University/State Government;

(e) the appointment was not ad hoc or in a leave vacancy or less than one year duration.

2. No distinction should be made with reference to the nature of management of the institution where, previous service was rendered.

11. In our considered opinion the Tribunal has rightly held that the aforesaid guideline of the UGC dated 27.11.1990 are applicable to the case of the opposite party and rightly directed the present petitioners to count the period of service rendered by the opposite party in the Aided Non-Government Institution for the purpose of career advancement and make available the other consequential service benefits to the opposite party including seniority, promotion, if due, and the arrears be paid to him.

12. The order passed by the Tribunal is a well-reasoned order and finds support from the guidelines of the UGC. We do not find any infirmity to interfere in the order passed by the Tribunal in Annexure-5.

13. The writ application is accordingly dismissed and the order of the Tribunal is affirmed.