

(2010) 09 OHC CK 0013
In the Orissa High Court
Case No : F.A.O. No. 132 of 2009

State of Orissa and Another

APPELLANT

Vs

Sarada Prasanna Mohapatra and Another

RESPONDENT

Date of Decision : 06-09-2010

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)
Orissa Education Act, 1969 — Section 24C, 3

Citation : (2011) 111 CLT 601 : (2011) 1 OLR 775 Supp

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.M. Das, J.—In this appeal u/s 24C of the Orissa Education Act, 1969 (hereinafter referred to as "the Act"), the State has challenged the judgment dated 27.06.2008 and order No. 9 dated 27.06.2008 passed by the State Education Tribunal, Orissa, Bhubaneswar in G.I.A. Case No. 187 of 2007.

2. The G.I.A. Case was filed by the Respondent No. 1 for validation of his appointment as Lecturer in Economics in the concerned college, before the Tribunal. The Respondent No. 1 claimed to be appointed in the 2nd post of Lecturer in Economics since 22.11.1986 in Kandarpur College (an aided educational institution since 18.10.1985). His case was that the 2nd post is admissible to the college since 1987-88. Proposal was submitted, as at Anneuxre-3 to the G.I.A. Case, and the Director of Higher Education (Appellant No. 2 herein) also recommended after verification of record for release of grant-in-aid in favour of the Respondent No. 1 vide Anneuxre-6 to the G.I.A. case. As the State Government till the date of filing of the G.I.A. case did not validate the appointment of the Respondent No. 1 and rejected his claim for grant-in-aid, the Respondent No. 1 filed the said application before the Tribunal alleging discrimination against him and seeking a direction for validation and approval of

his appointment against the 2nd post and to release the grant-in-aid.

The State - Appellant No. 1 filed a counter affidavit before the Tribunal admitting the factual aspect like establishment, appointment and recommendation made by the Appellant No. 2, but resisted the claim of the Respondent No. 1 mainly on the ground that proper selection process has not been adopted while appointing him and that the Governing Body then was not competent to appoint the Respondent No. 1 after the college became aided and, as such, the initial appointment is abinitio void, the same is bad and not effective. Further, the 2nd post of lecturer in Economics was not justified to the college on the basis of work load of +2 wing, as the +2 wing was only notified by 31.12.1992. The work load of +3 wing cannot be taken into consideration to justify the 2nd post. Denying the alleged discrimination, the Appellants urged for dismissal of the GIA application. The Governing Body of the College, who was opposite party No. 3 before the Tribunal in its counter affidavit did not refute the claim of the Applicant-Respondent No. 1.

3. Learned Education Tribunal taking into consideration the undisputed facts that the case of the Respondent No. 1 has been verified by the Director and due recommendation for validation and release of grant-in-aid have been made by him, came to the conclusion that the contentions raised on behalf of the State regarding non-observance of transparency in the selection process and non-submission of Governing Body resolution hardly deserve any attention. The Tribunal also took note of the fact that the Director-Appellant No. 2 has not noticed any infirmity in the appointment of the Applicant (Respondent No. 1 herein) which has lately been covered under the Validation Act, 1998. Relying upon the verification made by the Director, who found the admissibility of the 2nd post of Lecturer in Economics in the college and duly recommended for it and finding that the college is an aided degree college since 18.10.1985 came to the conclusion that the 2nd post is found to be admissible from 1987- 88. The learned Tribunal recorded that though the appointment of Respondent No. 1 is invalid one, initially being appointed on 22.11.1986, but lawfully deserves to be validated after the Orissa Aided Educational Institutions (Validation of Lecturers Appointment) Act, 1998 (herein after referred to as "the Validation Act") came into force on 17.10.1998. According to section-3 of the said Act, the case of the Respondent No. 1 was found to be covered and, hence, the Tribunal ordered that the Respondent No. 1 is found entitled to the benefit of the Validation Act and also entitled for grant-in-aid as the lecturer in Economics holding the 2nd post in the concerned College. He, therefore, directed the opposite party No. 1 (Appellant No. 1 herein) to take required steps in that regard within three months of communication of the said order to validate the appointment and release G.I.A in favour of the Respondent No. 1 (Applicant) by an order passed on the same day. On a memo immediately filed after pronouncement of judgment by the Tribunal, by the learned Counsel for the Respondent No. 1 (Applicant before the Tribunal) bringing it to the notice of the Tribunal that no specific order has been passed quashing Annexures-7 and 16 to the application in the G.I.A. case, noting such omission, the Tribunal accepted the said memo

and in addition to the judgment passed, quashed the Anneuxres-7 and 16 to the G.I.A. case, directing that the same may be read as a part of the judgment.

4. Learned Counsel for the State on behalf of the Appellant reiterated the stand taken by it before the Tribunal that the appointment of the Respondent No. 1 has not been done following proper procedure. Though it was contended that the Respondent No. 1 misled the learned Tribunal by suppressing complete documents while filing the G.I.A. Case, but nothing substantial has been brought before this Court to support such contention. It was contended that under Rule 8(2)(a) of the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 provides that once a privately managed educational institution became aided, the Governing Body of the said institution can at best make an ad hoc appointment against a teaching post for a period of three months hence, there being no power of the Governing Body to give appointment of any teaching staff permanently after receiving aid, the question of sanction and giving aid to the incumbent holding the post without sanction of law does not arise and, therefore, the case of the Respondent No. 1 that his case was recommended under Anneuxre-6 for release of grant-in-aid and he was entitled for the same is fallacious and misleading. It was also contended that the +2 wing and the +3 wing of the college received grant-in-aid on two different dates, i.e., with effect from 01.06.1986 and 01.06.1994. Since Validation Act, 1998 can only be extended to a lecturer of an aided college, who was appointed in the college against an approved and admissible post by the Governing Body in between the period from 1st January, 1984 to 31st December, 1992 question of extending the benefit of the said Act to the present Respondent No. 1 does not arise as the student strength of +2 wing including +2 Arts and Commerce did not justify the 2nd post of Economics.

5. It is pertinent to mention here that, this matter was earlier before this Court in O.J.C. No. 1198 of 2001, which was filed by the Respondent No. 1 with a prayer to direct the Government to pass appropriate order taking into consideration the recommendation of the Directorate. This Court, while disposing of the said writ application on 14.3.2001, directed the State to pass necessary orders after taking into consideration the recommendation made by the Director, Higher Education with regard to approval of the appointment of the Respondent No. 1 to 2nd post of Lecturer in Economics within a period of 6 weeks from the date of receipt of the said order.

6. Mr. Swain, learned Counsel appearing for the Respondent No. 1 countering the contentions raised by the Appellants submitted that the verification report of the Director, which has been annexed as Anneuxre-14 to the rejoinder affidavit filed before the Education Tribunal clearly reveals that the 2nd post of Lecturer in Economics was admissible in the said college from 1986-87 session as the work load justified admissibility of the 2nd post in view of the fact that classes in Economics was more than 29 from the academic session 1986-87. He, therefore,

contended that on the face of such verification report of the Director, the stand taken by the State Government that the post was not justified is not correct as per para-9(2)(C) of the Grant-in-aid order of 1994 which provides that the decision of the Director relating to admissibility of a post shall be final. So far as the pre-condition of the Validation Act is concerned, Mr. Swain, contended that the Respondent No. 1 has fulfilled all the conditions as he was appointed between 1st January, 1985 and 31st of December, 1992, i.e., on 28.11.1986 against an admissible post and he has got the requisite qualification as his percentage of marks in M.A. Examination is 60% and he is in the pay roll of the college. Therefore, according to him the Validation Act having been enacted to regularize the service of Lecturers who have been appointed after the College became aided, the Respondent No. 1 is squarely covered under the Validation Act. Learned Tribunal, therefore rightly held that the Respondent No. 1 is entitled to get the benefit of the Validation Act.

7. Mr. Swain, learned Counsel further urged that the questions, which are raised in the present appeal with regard to the question that due selection process were not followed while appointing the Respondent No. 1 against the 2nd post of Lecturer in Economics and there was no resolution in support of his appointment, were never raised before the Tribunal. However, he submitted that the resolution dated 31.05.1987 of the Governing Body also approved the appointment of Respondent No. 1. In the case of *Akshya Kumar Mohnaty v. State of Orissa and Ors.* 1997 (2) OLR 136, this Court considering various notifications of the Government with regard to justifiability of a 2nd post in a subject came to the conclusion that where the number of classes per week in a subject is 29 or more, the 2nd post is justified. In the instant case, the College is a composite college having +2 and +3 wings. In the case of *Bilkesh Parveen v. State of Orissa and Anr.* 2007 (1) OLR 133, this Court considering a similar situation in the facts of the case held as follows:

In this connection, we have looked into the provisions of Grant-in-Aid Order, 1994. Rule 4 of the Grant-in-Aid Order prescribes three categories of institutions in existence when 1994 Grant-in-Aid Order came into force. This order, inter alia, prescribes that Non-Government Educational Institutions and approved posts in such institutions which have received Grant-in-Aid from the Government or in respect of which Grant-in-Aid has been sanctioned by the Government prior to commencement of Amendment Act are to be treated as Category-I institution. It further stipulates that other posts in Non-Government Educational Institutions covered under Category-I (1) which were admissible on the basis of workload and prevalent yardstick had been filled up prior to commencement of the Amendment Act, but in respect of which no Grant-in-aid had been sanctioned are also covered under Category-I institutions. It is pertinent to note here that the Amendment Act came in the year 1994. Rule 9 (c) of the Grant-in-Aid Order, 1994 categorically states that the workload to be determined for admissibility of a post by computing the total workload on account of Degree Course and Higher Secondary Course in all the streams conducted in that institution. In view of this

provision of the Grant-in-Aid Order as amended above, as the Petitioner's college, i.e., Tangi Mahavidyalaya was having +2 and +3 stream with the approval of the State Government and the institution being an aided institution before the Amended Act came into force and further since the Petitioner was appointed before the coming into force the Amended Act and also the existence of the Grant-in-Aid Order, 1994 there can be no dispute, in our view, that Tangi Mahavidyalaya would come within the ambit of Category-I institution and therefore, the admissibility of the post in any discipline are to be adjudged computing the workload of both +2 and +3 stream. It was submitted by learned Counsel for the Petitioner and it is also revealed from Anneuxre-17 that the 2nd post of Lecturer in English is admissible and the same was justified to the college. This stand has been taken in the writ petition and the same has nowhere been denied by O.P. No. 2 in the counter affidavit nor in the additional affidavit filed in reply to the rejoinder affidavit of the Petitioner. From a reading of the affidavit filed by O.P. No. 2 it is apparent that O.P. No. 2 has not taken into account the workload of +3 stream and has rejected the claim of the Petitioner only on the basis of the workload of +2 wing. This, in our view, and in the facts and circumstances is not sustainable in the eye of law. Rather, the 2nd post of Lecturer in English was admissible and it was justified in the college in question when the Petitioner was appointed and for that the order of the Government under challenge, vide Anneuxre-16 appears to be incorrect and the same has been passed without taking into consideration the aforementioned facts and without application of mind.

8. The situation, as described in the said case, exists in the present case also. Therefore, it is incumbent to hold that taking the workload of both the streams, i.e., +2 and +3 wings together, the same justified a 2nd post of Lecturer in Economics in the concerned college to which post the Respondent No. 1 was appointed. The contentions raised for the first time in this appeal cannot be taken into consideration in view of the ratio of the judgment in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , wherein the Supreme Court held that the statutory functionary marks an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise an order bad in the beginning, by the time it comes to court on account of a challenge, gets validated by additional grounds sub sequentially brought out.

9. Since it is found that a 2nd post of Lecturer in Economics was justified to which the Respondent No. 1 was appointed by the Governing Body and his appointment was within the period as stipulated in the Validation Act, his services were to be approved by way of validation on application of the provisions of the said Act and he would be entitled to grant-in-aid.

10. This Court, therefore, finds no reason to interfere with the judgment as well as the order passed by the learned State Education Tribunal on 27.06.2008 in the

G.I.A Case 187 of 2007. Hence, while dismissing this appeal being devoid of merit, this Court directs the Commissioner-cum-Secretary, Higher Education Department, Government of Orissa, to implement the said order within a period of 30 days from the date of communication of this judgment.

11. The appeal is accordingly dismissed, but in the circumstances without cost.