

(2005) 09 OHC CK 0043

In the Orissa High Court

Case No : OJC No. 11297 of 2000 and W.P. (C) No"s. 2356, 2359, 2515, 2520, 2534, 2540, 2541, 2542, 2543, 2544, 2611, 2613, 2659, 2674 and 2679 of 2002

State of Orissa and Others

APPELLANT

Vs

Bichintrananda Das and Others

RESPONDENT

Date of Decision : 08-09-2005

Acts Referred:

Orissa Ministerial Service Rules, 1985 — Rule 14

Citation : (2006) 101 CLT 380 : (2005) OLR 932 Supp

Hon'ble Judges : Pradip Mohanty, J;I.M. Quddusi, J

Bench : Division Bench

Advocate : Addl. Government Advocate, for the Appellant; K.K. Swain, S.B. Jena, S.K. Mishra, P.N. Mohanty, S. Behera, S.S. Mohapatra, J.K. Swain, S.K. Chhotray and T.K. Mahanta, for the Respondent

Final Decision : Dismissed

Judgement

I.M. Quddusi, J.—All these sixteen Writ Petitions have been filed against the common judgment and order dated 6.2.1999 passed by the Orissa Administrative Tribunal, Bhubaneswar Bench, in O.A. Nos. 1822/93, 598/95, 2376/93, 1821/93, 2379/93, 2375/93, 1877/94, 894/94, 893/94, 1820/93, 81/94, 2214/93, 83/94, 82/94, 2213/93 & 2212/93.

2. The brief facts, which are relevant for the purpose of the instant Writ Applications, are that under the sponsorship of the Government of India, the Government of Orissa had framed a Scheme for establishing Government Vocational Educational Institutions. Seventy-five percent of the expenses for establishing such institutions including payment of salary to the staff was to be borne by the Central Government and remaining twenty-five percent by the State Government. The institutions were established in phase from 1988 to 1990. The State Government had also authorized managements of private educational institutions to open separate sections as Vocational Education

Schools. In respect of the institutions where the Opp. Parties were given appointment by the management, the Joint Director (Vocational Education), Orissa vide his letter dated 11.4.1989 addressed to all the Inspectors of Schools in the context of appointment of non-teaching staff in vocational schools directed that Junior Clerks and Accountants in the aided schools may be appointed by the concerned Secretaries of the Management of the institutions, but the appointment will be subject to approval of the Director, Secondary Education, Orissa. It was also directed that the posts of Laboratory Assistant-cum-Demonstrator and Peon should not be filled up till further orders. In respect of other higher ministerial posts it was directed that those posts would be filled up by promotion and by calling for names from the collectorates, as the case may be, as per rules. The Managements made appointment of the opposite parties and some promotions were also given in the year 1990. The Director, Secondary Education vide his letter dated 10.08.1990 further clarified the system of management of Vocational Educational Institutions established by the private managements under the instructions of the Government. The relevant paragraphs of that letter are quoted hereunder:

(iv) The management shall maintain a separate account for the vocational stream and this should be open to inspection and audit by Govt. The accounts shall be operated by the principal/vice-principal of the vocational stream posted by Government under the over-all supervision of Governing body/managing committee of the institution. Until posting of such principal/vice-principal, the accounts may be operated by the existing principal of the institution.

(v) The management should undertake to meet the course-fee and subject-fee as prescribed by the Council of Higher Secondary Education. No security deposit in respect of the vocational stream will have to be separately made and pledged to the CESE in respect of vocational streams.

(vi) The vocational streams of the institution will be guided as per the principles determined by Government in this behalf from time to time.

The Director, Secondary Education, Orissa or any other officer authorised by Govt. will have the administrative and academic control on the vocational wings of the institution wherever they are introduced and the management shall abide by the instructions of the Govt./Director, Secondary Education on administrative and academic matters issued from time to time.

3. When the appointments of the Opp. Parties were not considered for approval/regularisation, they approached the Orissa Administrative Tribunal and ultimately vide the impugned order dated 6.2.1999 the O.As. were disposed of by the Tribunal with the direction that the performance of these Opp. Parties be reviewed by a committee consisting of the Director and the Inspector concerned and a representative of the Welfare Department and if they have not come to any adverse notice and their performance in the posts which they held has been satisfactory, then they may be given regular appointment against vacancies

which are earmarked for the category to which they belong and if no such vacancy is readily available to adjust any of them, then he may be regularly appointed in the next regular vacancy which is earmarked for his category and till then he may continue in the post in which he is now working, in spells not exceeding 45 days. For those applicants who have been initially appointed as Junior Clerks and whose appointment should have been in accordance with the OMS Rules, Government orders shall be obtained through the G. A. Department for relaxation of the Rules by invoking the enabling provision in Rule 14 of the OMS Rules, 1985. While giving the above directions, the Tribunal has observed that it is guided by the procedure indicated by the Apex Court in *Dr A.K. Jain and Others Vs. Union of India (UOI) and Others*, and *Ashok Kumar Uppal and Ors. v. State of Jammu & Kashmir and Ors.* (1998) 1 ATT (SC) 405 which clarified that the Government can exercise the power to relax the Rules in case any hardship is caused in the implementation of those Rules to meet a particular situation or where injustice has been caused to either an individual employee or a class of employees. It was further directed by the Tribunal that if in the meantime any of the applicants whose performance is found to be satisfactory on evaluation by the committee is no longer holding his former post, having been removed after pronouncement of the earlier judgment on 10.10.1996 passed by the Tribunal and after the long review the impugned judgment and order was passed, he shall be reappointed in a vacancy which is earmarked for his category whenever it becomes available or in any other available vacancy in spells not exceeding 45 days.

4. After the above order was passed, the State filed O.J.C. No. 11297 of 2000, which was dismissed vide order dated 19.2.2001. As against the said order, the State approached the Hon"ble Apex Court in SLP (C) No. 22222 of 2001. After leave was granted, the SLP was numbered as Civil Appeal No. 5894 of 2002. The Hon"ble Apex Court vide judgment dated 16th September, 2002 set aside the orders of this Court and remitted the case for being heard and disposed of afresh in accordance with law. The order of Hon"ble Apex Court is reproduced hereunder:

Against an order of the Central Administrative Tribunal, the matter was carried to the High Court in a Writ Petition, wherein the dispute was whether there would, at all, be termination of the employees on the ground that it was a centrally sponsored scheme, and scheme does not exist. The High Court, unfortunately without applying its mind to the relevant factors, has dismissed in limine. We are of the opinion that the matter ought to have been considered by the High Court and the order of the Court should indicate reasons. In view of the aforesaid circumstances, we set aside the impugned order and remit the OJC No. 11297/2000 for being heard and disposed of in accordance with law.

The appeal is disposed of accordingly.

5. Thereafter, the above Writ Applications had come up for hearing. According to the orders of the Hon"ble Apex Court, the dispute is whether there would at all

be termination of services of the employees on the ground that the scheme under which they were appointed was a centrally sponsored one, which did not exist any longer. Earlier, this Court, without applying its mind to the relevant factors had dismissed the petition in limine. Therefore, the Supreme Court observed that the matter ought to have been considered by this Court and the order of this Court should indicate reasons.

6. We have also to consider as to whether the Scheme is in existence or not. Learned Additional Government Advocate as well as the Learned Counsel for the Opp. Parties does not dispute that the Scheme is still in existence. Rather, the State Government has restructured the staffing pattern of Government Higher Secondary Vocational Schools by creating a separate Directorate and three Regional Offices of Vocational Education. Now, there are 231 Government Higher Secondary Vocational Schools, restructuring of staffing pattern of which was taken up with the Finance Department. In this regard, the Government Order dated 17th May, 2002 was issued by the S.L.O.-cum-Deputy Secretary to the Government. In the last paragraph of the order it has been mentioned that for filling up of the vacant posts in Government Higher Secondary Vocational Schools by way of transfer and deployment of the existing staff, the Director, Vocational Education may take appropriate action as and when necessity arises on public interest. However, 231 Class-II posts out of 724 were retained and all of the 724 posts of Demonstrator were abolished. As per the advice of the Finance Department, 1479 teaching and non-teaching posts were also abolished at the first instance. The Government were of the view that all the schools would be functional in phased manner and managed with the staff shown as one Principal, full time resource person " 2 per Section on contract basis with the consolidated remuneration of Rs. 50007-per month for the present and part time resource person " 2 per Section on contract basis with consolidated remuneration of Rs. 507-per class. In respect of non-teaching staff, it has been mentioned "either one Senior Clerk-cum-Accountant or one Junior Clerk-cum-Typist and one Peon-cum-Choukidar (50 more posts to be created)".

7. In view of the above-mentioned facts and circumstances, we see no reason to interfere with the impugned judgment and order passed by the Tribunal. However, we may clarify here that the order of the Tribunal shall not be applicable to those who have already left their posts voluntarily and are no more in service; but the cases of those who have been ousted by order of the petitioners or their officers shall be considered in terms of the direction of the Tribunal.

8. With the above observation, all the Writ Petitions are dismissed. No order as to costs.

Pradip Mohanty, J.

9. I agree.