

(1994) 03 SC CK 0091

In the Supreme Court Of India

Case No : Civil Appeals Nos. 1666-75 Of 1994

State of Orissa and Others

APPELLANT

Vs

Dipitimala Patra and Others

RESPONDENT

Date of Decision : 04-03-1994

Acts Referred:

Citation : (1995) 4 SCC 49 Supp

Hon'ble Judges : M. M. Punchhi, J; B.P. Jeevan Reddy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. LEAVE granted.

2. HEARD learned counsel.

3. The respondents herein were appointed as teachers on a durated basis for 89 days at a stretch awaiting regular candidates from the State Public Service Commission. The delay in bringing forth the public service commission recommendees, let the respondents continue getting lease of 89 days each at a time, totalling approximately one and a half years. Claiming that they were entitled to regularisation of their services they approached the State Service Tribunal and obtained interim stay for continuance. By the time the matter was finally taken up by the State Services tribunal, the respondents had, with insignificant intervals, stayed put for almost 3 years in their respective jobs. The Tribunal it seems by importing the application of a decision of this court in Karnataka State Private College Stopgap Lecturers' Assn. v. State of Karnataka ordered regularisation of the services of the respondents, whereas patently that precedent applied to its own facts based on the resources of the State of Karnataka to absorb stopgap lecturers. As has now, by process of time, become evident, no case of regularisation is at par with another. Conditions may be different in each State when a demand of the kind is raised of being accommodated. Now, the respondents were filling gaps of those seats which

awaited their rightful claimants coming from the public service commission. They had thus to make way when the regular appointees came. But here not only did the tribunal grant relief to the respondents to continue in service, it went that far to order as follows :

"1. Services of such contract lecturers who have worked as such for three years including the break till today shall not be terminated and they shall be absorbed as and when regular vacancies arises.

2. If regular selections have been made. government shall create additional posts to accommodate such selected candidates.

3. The contract lecturers who have undergone the process of selection be regularly appointed by creating additional posts.

4. From the date of our judgment every contract lecturer shall be paid salary as admissible to lecturers appointed against permanent posts.

5. Such contract lecturers shall be continued in services even during vacations.

WE further direct that the petitioners who are now continuing in service on the strength of the stay order granted by this tribunal and such other petitioners whose services have been terminated shall get the benefit as per our direction.

WE further direct to quash the appointment orders of the petitioners insofar as the contractual stipulations therein are concerned until regularly selected candidates, through the public service commission, are posted against the posts held by them and they shall be entitled to all benefits like payment of regular pay during vacations, medical leave, maternity leave and increments due to them from the date they joined as contract lecturers.

WE further direct that this judgment should be treated as a judgment in rem and not judgment in personam and therefore, it shall be applicable to all contract lecturers appointed by the State government.

The applications are allowed. No costs."

4. NOW, these far-reaching directions were obviously beyond the pale of the Tribunal. They squarely run across to the dictum of this court in *State of Haryana v. Piara Singh*. The respondents and their class were obviously inferior in position to the regular appointees. The regular appointees alone have the right to be accommodated in the regular posts. There was no warrant to obligate the State to create additional posts and the responsibility to fill them in the manner suggested. Therefore, without further elaborating the point we unhesitatingly allow the appeals of the State of orissa, setting aside the impugned order of the tribunal relegating the respondents to the position as they were before approaching the Service tribunal. As a result thereof the respondents, unless wanted by the State to continue, would have to vacate their posts unless already vacated. We make it clear that this order would not stand in the way of the State otherwise in some manner accommodating the respondents, or such of them as

can be accommodated on compassionate grounds. No costs.