
(2007) 12 OHC CK 0013
In the Orissa High Court

State of Orissa

APPELLANT

Vs

Dr. Gopal Ch. Hota and Another

RESPONDENT

Date of Decision : 19-12-2007

Acts Referred:

Constitution of India, 1950 — Article 141, 16

Citation : (2008) 105 CLT 771 : (2008) 1 OLR 411 Supp

Hon'ble Judges : N. Prusty, J; I.M. Quddusi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

I.M. Quddusi, J.—These are four Writ Petitions filed by the State of Orissa against the impugned Judgment/Order Dated 6.4.1999 passed by the Orissa Administrative Tribunal, Bhubaneswar in O.A. Nos. 556, 557, 590 and 591 of 1990.

2. The Opposite Parties in the instant Writ Petitions (applicants before the Tribunal) had challenged the Orissa Education Service Class-I (Recruitment of College Branch (Amendment) Rules, 1989 and had sought for declaration that the said rules were void and ultra vires the Constitution of India and further for a declaration that the entire period of past services rendered by them under the private management before the takeover of the College be taken into consideration for all purposes.

3. The brief facts of the case are that the Opposite Parties joined Khallikote College, Berhampur as Lecturers in different disciplines at different dates sometimes in the years 1960 to 1964. At that time, the institution was a private institution but on 9.3.1971, the same was taken over by the Government of Orissa. While taking over the institution, the Government in Education and Youth Services Department stipulated a set of terms and conditions for regulating the service conditions of the Opposite Parties and other similarly situated persons according to which all the teachers posted as Lecturers or Readers were to be

treated as new entrants and should be offered ,ad hoc appointments and their past services should not be taken into consideration for determination of their seniority. Being aggrieved by the terms and conditions, some of the members of the teaching staff of the institution filed O.J.C. No. 410 of 1997 (N.N. Swamy v. State) which was decided vide Order Dated 4.2.1974 and the decision has been reported in N.N. Swamy and Others Vs. State of Orissa and Others, wherein this Court found that when the take over was decided at the level of the Management and the Government, most of the teachers had no other way but to opt to accept service under the new employer and the conditions imposed were not reasonable and arbitrary. -It was further held therein that there could be justification in requiring a longer experience in a private college as Lecturer in order to entitle the Lecturer for consideration as Reader, but there did not seem to be slightest justification in completely obliterating such experience and requiring the teachers from the taken-over college to gather the requisite years of experience after taken-over of the college to become eligible for consideration for promotion as Readers.

4. It is necessary to mention here that for the appointment on the post of Reader, it was necessary to have at least eight years of teaching experience as Lecturer and post of Reader was to be filled up by promotion subject to satisfactory performance and conduct of the officer as a Lecturer.

5. Being aggrieved by the aforesaid decision, the State of Orissa filed SLP in the Hon"ble Supreme Court which was converted to Civil Appeal Nos. 1357 and 1358 of 1975 (State of Orissa 1N.N. Swamy and Ors.). By Judgment dated 27.1.1977 which has been reported in State of Orissa and Another Vs. N.N. Swamy and Others, the Supreme Court upheld the Judgment and order of this Court. The Hon"ble Supreme Court in paragraph Nos. 16 and 17 has held as under:

16. Our attention was drawn to a decision of this Court in AIR 1976 2534 (SC) on behalf of the Appellants, wherefrom it was pointed out that Government could validly impose comparatively stringent qualifications for posts in schools take over from private management, since persons there may be appointed without the requisite experience as needed in Government schools. That case is entirely different from the present case. There may be no difficulty in accepting the position that Government can screen the teachers at the time of fresh appointment in Government service after taking over any institution from private management. The educational qualifications and teaching experience which may be insisted upon may be appropriately stringent having regard to the quality of education which Government intends to impart in the college after taking over the same from the private management. If the quondam private employees in the college did not fulfill the qualifications, experience and other requisite conditions, they may not be eligible for appointment since Government may not under take to take over all the employees by maintaining the billabong of a status quo ante. Such a position, if taken by the Government, is consistent with implementation of a correct educational policy and will not incur the frown of

Article 16 of the Constitution. The question is entirely different when, as in the present case, the Respondents answering the test of educational qualifications, as well as, experience of teaching in a amongst the very category of Readers on an irrational and illusory consideration. Denial of an opportunity to these Respondents even for being considered for the post of Reader is clearly violative of Article 16 of the Constitution.

17. When a fairly well-recognized institution, as in this case, run for more than a century, is completely taken over by the Government for management, it is not merely taking over the land and buildings, tables and chairs. It has to tackle, at the same time, a human problem, that is to say, the fate of the teachers and the staff serving that institution. The institution, with which we are concerned, was taken over, by consent, as a going educational concern and it goes without saying that it must be administered on sound lines having regard to quality, efficiency and progress in all respects. It is understandable that the employees had to join the new service under the Government, for the first time, and so could be, in that sense, fresh entrants. But to say that the teaching experience of the Readers in the private institution is completely effaced to the extent that they will not be even eligible, on the plea of absence of teaching experience in Government service, for consideration for appointment as Readers is seriously grim issue.

6. We feel assured that such an argument had not been canvassed By the State in the High Court on the basis of Rules of July 19, 1971, since these Rules came into force after the take over for which a separate circular had already been issued to take care of the special exigency. Action under the Government circular of March 23, 1971, alone, was in controversy in the High Court. The said circular took recognition of the service in the private college in the case of two Readers (Nos.9 and 10 in Annexure-I). The only differentia was, therefore, the salary drawn by the Readers on the date of take over. That action based on the salary aspect under the said circular had to stand the test of Article 16 in the High Court, as well as, before us. The argument in favour of complete erasure of the past teaching experience in the private college, first time presented before us, fails to take note of the distinction between eligibility and suitability. Eight years" teaching in a college and the fulfillment of other requisite qualifications make a person eligible for appointment as a Reader, but whether he is suitable for selection for the post is an entirely different matter."

7. In view of the above, the Hon"ble Supreme Court further observed that all the Respondents were eligible to be referred to the Public Service Commission for the post of Reader and directed that their names should be referred to the Commission accordingly and whether they would be suitable for appointment as Readers would be a matter entirely for due and proper consideration of the Public Service Commission whose recommendation will be considered by the Government in the matter for final absorption.

8. After taking over of the institution by the Government, all the Respondents

completed eight years of service as Lecturer in their respective disciplines and became eligible for consideration for appointment/promotion to the post of Reader. But instead of considering their cases for promotion, Government framed new Rules in the year 1982 named as Orissa Education Service, Class-1 (Recruitment to College Branch) Rules, 1982. Sub-rule 1 of Rule 4 of the same is quoted hereunder:

4.(1) (a) Recruitment to Grade of Readers shall be made by promotion in accordance with Rules 5 and 6 from among eligible Lecturers on the basis of their inter se seniority:

Provided that the number of persons appointed to the Grade from any particular discipline shall not fall short of the total number of posts of Readers available for that discipline at the time.

(b) A lecturer shall be eligible for consideration for promotion to the Grade of Readers if-

(i) on first day of January of the year in which the selection is made he has completed fifteen years of service; and

(ii) has a satisfactory record of performance and conduct. Provided that the requirements in item (i) will be reduced to eight years in case he possesses a Doctorate Degree in the concerned discipline;

Provided further that in case of lecturers absorbed in Government service in consultation with the Commission on account of taken over of College, 50% of their service rendered in such taken over College prior to taken over shall be reckoned for the purpose of item (i) and for the first proviso.

9. But Rule 4 was amended in the year 1989 vide notification) dated 7.6.1989 and the same was published in extra-ordinary issue of Orissa Gazette or 21.6.1989 amending 1982 Rules with retrospective effect changing the eligibility criteria for consideration for promotion appointment to the rank of Readers for those who were absorbed as Lecturer in Government service and the length of service was changed from eight years to fifteen years and further 50% of their service rendered prior to take over of the college was only to be reckoned for the purpose of eligibility. The amendment made is as under:

(i) In Sub-rule (1) after the existing proviso to Clause (b) the following proviso shall be inserted namely:

"Provided further that in case of Lecturers absorbed" in Government service in consultation with the Commission on account of take over of College, 50% of the service rendered in such taken over College prior to take over shall be reckoned for the purpose of item (i) and for the first proviso.

10. Being aggrieved, the Opposite Parties approached the Tribunal as already mentioned above. The Tribunal allowed the OAS and while allowing the OAS, in paragraph Nos. 11,12 and 13, the Tribunal has given reasons as under:

11. In spite of the above dicta laid down by the High Court and the Supreme Court, Respondent-1 did not take steps for consideration of the cases of the applicants for their promotion to the grade of Readers, taking the period of service under the private management before the take-over of the College and some portion of their service after the take over, into account towards their eligibility according to the criteria fixed in the Circular of 1970 (dtd. 30.7.70) adverted to above. When in-spite of different approaches made by the applicants, they did not get any result, applicant Ramakanta Sabat filed O.J.C. No.407 of 1980 and 2 others viz. Manmohan Das and M.V. Ram Das filed two other O.J.C. No. 641 of 1980 and 651 of 1980 respectively. All these OJCs were transferred to this Tribunal on its constitution and re-numbered as T.A.-8/87, 301 and 302 of 1987. These were disposed of by a common order on 18.8.87. The Tribunal based its order on the perceptive observations of the Apex Court in paragraph-17 extracted (supra) and held, "In the light of our discussions in the foregoing paragraphs, we held that the Petitioners are entitled to count the entire service rendered in the private college prior to 9.3.71 for eligibility for promotion to the post of Reader. We accordingly direct O.Ps to take into consideration the entire service of the Petitioners rendered in the private colleges prior to take over (9.3.71) for the purpose of promotion to the post of Reader." Despite such a clear direction of the Tribunal, the applicants were only provisionally promoted to the rank of Readers w.e.f. 22.1.1988, which they accepted without prejudice to their claim/right in T.A.8 of 1987 decided by this Tribunal, without fixing their seniority. When a Misc. Application (M.A) No. 276 of 1989 was moved for full implementation of the order of the Tribunal in T.A.8 of 1987, the same was disposed of by order No. 27 dt.3.10.1990.

12. The State Government, Respondent-1, gave a clear undertaking that 100% of the teaching experience of the teachers of private colleges for the purpose of computing their eligibility will be taken into consideration and on that assistance, the Tribunal ordered "In view of the stand taken by the State Government, we feel that there remains nothing else to implement in our order. We direct that a decision of the Government be implemented immediately". The Respondent-1 made much of this order in canvassing that they have nothing more to do in giving appropriate service benefits to the applicants after the take-over of the college, especially regarding their promotion and seniority.

13. Some developments took place, in the meantime, Statutory rules entitled the Orissa Education Service Class-1 (Recruitment to College Branch) "Rules, 1971 were framed but in all the cases before the High Court and the Supreme Court, the State Government canvassed the eligibility criteria for promotion from the rank of Lecturers to the rank of Readers as regards the length of service to be 8 years service experience. At a later stage in Civil Appeals 1357 and 1358 of 1975 the contention concerning 8 years service experience in Govt. Colleges for eligibility for consideration for promotion of Lecturers to the grade of Readers on the basis of statutory rules of 1971 was turned down by the Apex Court because the same was not pleaded in the High Court and hence the argument would have

to be supported on the intrinsic strength of letter March, 1971.

11. One of the requirements of eligibility for promotion according to the Circular of 30.7.70 is 8 years of teaching experience and on that basis the Supreme Court disposed of the Civil Appeals with the observations extracted herein above. What action the State Government took in regard to the Respondents of the Civil Appeals which were preferred by the State Government has not been placed before us. They, however, appear to have taken no steps in regard to consideration of cases of the applicants for promotion to the grade of Readers, following the ratio of the decision of the Apex Court. What is more, they framed a new set of statutory rules captioned the Orissa Education Service Class-I (Recruitment to College Branch), Rules 1982 (in short the Rules, 1982) replacing the Rules, 1971. According to the new Rules, 1982 as amended in 1989, length of service required for promotion from the rank of Lecturers to the grade of Readers was raised to 15 years as on the 1st day of January of the year in which selection would be made in the case of Lecturers having no Doctorate Degree in the concerned discipline. Even after that, no steps seem to have been taken by them for consideration of the case of the applicants for their promotion to the next higher rank till the order of the Tribunal dtd. 18.8.87 in T.A 8 of 1987 and 2 other T.As (Annexure-1), whereafter they were given only provision/ ad-hoc promotion without fixing their seniority. The impugned amendment of the Rules, 1982 made by notification dtd. 7.6.89, which was published in the extra ordinary issue of the Orissa Gazette dated 21.6.1989 (Annexure-2) further stipulated that in the case of the Lecturers of take over colleges only 50% of their service before the take over would be reckoned for the purpose of counting the length of their service towards their eligibility for consideration for promotion. The said Proviso to Rule-4 (i)(b) reads as follows: "Provided further that in the case of Lecturers absorbed in Government service in consultation with the commission on account of take over of college, 50% of their service rendered in such taken - over college prior to take over shall be reckoned for the purpose of item (i) and for the first proviso". Item (i) and first Proviso relate to length of service in the case of Lecturers without Doctorate Degree (15 years) and with Doctorate Degree (8 years) respectively.

12. Article 141 of the Constitution of India provides that the law declared by the Supreme Court shall be binding on all Courts. It is also well settled that the law declared by the Supreme Court is binding on all irrespective of the fact whether he was a party before it or not.

13. Once the Hon"ble Supreme Court in the case of State of Orissa V. N.N. Swamy (supra) has laid down that eight years teaching experience in a college and the fulfillment of other requisite qualification make a person eligible for appointment as a Reader, denial of an opportunity to the Respondents even for being considered for the post of Reader was clearly violative of the Article 16 of the Constitution. Nevertheless the law laid down by Hon"ble Supreme Court is equally applicable to the similarly circumstanced persons and the Government

could not have made amendment to the Rules with retrospective effect in the facts and circumstances.

14. In view of the above facts and circumstances, we have not found any illegality or impropriety or manifest error of law in the impugned order of the Tribunal. Therefore, the Writ Petitions are misconceived and are dismissed accordingly.

N. Prusty, J.

15. I agree.