

**(2023) 09 OHC CK 0180**

**In the Orissa High Court**

**Case No : Writ Petition (C) No.14563 Of 2018**

Subrat Pradhan And Another

APPELLANT

Vs

State Of Odisha And Another

RESPONDENT

**Date of Decision : 26-09-2023**

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

Orissa Education Act, 1969 — Section 3

Odisha Non Government Aided College Lecturers (Placement) Rules, 2014 — Rule 1(3), 3, 4(b)

**Citation : (2023) 09 OHC CK 0180**

**Hon'ble Judges : Sashikanta Mishra, J**

**Bench : Single Bench**

**Advocate : Abhiram Swain, Subhasis Pattnaik**

**Final Decision : Partly Allowed**

## Judgement

Sashikanta Mishra, J

1. Both the Petitioners seek to challenge the legality and correctness of the order dated 26.06.2018 passed by the Director of Higher Education, Odisha in rejecting their claim for grant of higher scale with effect from their dates of joining. The petitioners have specifically claimed the following relief:

"In the above facts, circumstances and contentions, this Hon'ble Court may graciously be pleased to direct the State-opposite parties to promote the petitioner no. as a Senior Lecturer and Reader with effect from 8.9.1997 and 8.9.2005 respectively and for the petitioner no.2 with effect from 1.9.1997 (Senior Lecturer) and 1.9.2002 (Reader) with consequential service benefits including financial benefits like other counterparts Government in the Colleges

And further would be pleased to quash the order dated 26.6.2018 vide Annexure-10 to the writ petition.

And further would be pleased to pass any other order(s) as may deem think and

proper as per the circumstances of the case.”

2. The facts of the case lie in a narrow compass though the parties have put forth extensive pleadings, all of which need not be referred to in detail. It would suffice for the purpose of determining the controversy involved by noting only the relevant facts, most of which are, in any case, not in dispute.

3. The petitioner No.1 joined as Lecturer in Physics in Kishorenagar College, an Aided Educational Institution within the meaning of Section 3 of Odisha Education Act with effect from 08.09.1989 against the first post which became admissible from 01.06.1989. Petitioner No.2 joined as Lecturer in Chemistry also against the first post in the same college. Both of them came under the grant-in-aid fold with effect from 01.06.1995, though according to them, it should have been from 01.06.1994. The College was accorded temporary concurrence by the Government to open +2 Science stream from 01.06.1989. After formulation of the Grant-in-aid Order, 1994, the petitioners received grant-in-aid at the rate of 1/3rd of the admissible salary cost with effect from 01.06.95, at the rate of 2/3rd with effect from 01.06.97 and full salary cost with effect from 01.06.1999 after completion of five, seven, nine years respectively. It is the claim of petitioner No.1 that he should be placed as Senior Lecturer with effect from 08.09.1997 and as Reader with effect from 08.09.2005. The claim of the petitioner No.2 is that he should be placed as Senior Lecturer with effect from 01.09.1997 and as Reader from 01.09.2002. Such claim is on the premise that they should be granted the benefits as claimed after completion of eight years as Lecturer and 10 years as Reader calculated from the dates of joining that is 01.06.1989. Since the claim as above was not considered by the authorities, the Petitioners approached this court by filing a Writ Petitioner being W.P (C) No. 20594 of 2017. By order dated 7.12.2017 a single judge of this court disposed of the writ application granting liberty to the Petitioners to file fresh representation before the Director, Higher Education, Odisha, who was directed to take a decision in accordance with law. Pursuant to such direction, the petitioners filed a detailed representation before the Director and were also heard in person. By order dated 26.6.2018, the Director rejected the claim of the petitioners on the ground that they had been placed as Senior Lecturer with effect from 01.06.2007 taking into account receipt of full GIA with effect from 01.06.1995 as per Rule 4(b) of Odisha Non-Government Aided College Lecturers (Placement) Rules, 2014 (for short “2014 Rules”). It is further stated that the Petitioners had been granted placement taking into consideration their approved dates of joining. The petitioners claim that the 2014 Rules are not applicable to them and that the rules governing the field at the relevant time that is, Odisha Education Service (Recruitment) Rules, 1990 should have been applied. It is further stated that the 2014 Rules cannot have any retrospective effect.

4. The claim of the Petitioners is opposed by the opposite party authorities by referring to Rule 4(b) of the 2014 Rules. The rejection of the representation of the petitioners has been sought to be justified also on such ground. It is stated

that the approved date of joining of the petitioners is 01.06.1990 and therefore calculating five, seven, nine years after coming into the grant-in-aid fold, they would be entitled for placement in higher scale as provided under Rule 4(b) of the 2014 Rules.

5. Heard Mr. Abhiram Swain, learned counsel for the Petitioners and Mr. Subhasis Pattnaik, learned Addl. Government Advocate, for the State.

6. Mr. Swain has forcefully argued that rejection of the representations submitted by the Petitioners by the Director by invoking the provision of 2014 Rules is bad in law mainly for the reason that the said Rules do not have any retrospective operation whereas the entitlement of the Petitioners falls due much prior to coming into force of the said Rules. Mr. Swain has referred to Notification dated 20th March, 1990 of the Government in the erstwhile Education and Youth Services Department to submit that a Lecturer to be eligible for being placed in the Senior Scale is required to complete 8 years of service after regular appointment and similarly, he must have completed 8 years of service in the Senior Scale for being eligible to be placed in the Reader scale. He further submits that admittedly, the Petitioners were appointed in the year 1989 and therefore, they were eligible for being placed to the Senior Scale in 1997 and in Reader scale in the year 2005 (2002 in respect of Petitioner No.2). The 2014 Rules came into force w.e.f. 1st January, 2014 i.e. long after the Petitioners had become eligible for being placed in the higher scales.

7. Per contra, Mr. Subhasis Pattnaik, learned Addl. Government Advocate, submits that by clarification dated 7th October, 2015, the Government in Department of Higher Education has laid down that a non-SSB Lecturer can get the benefit of placement in the higher scales after completion of 17 years and 27 years of continuous service from the approved date of joining. Both the Petitioners were admittedly appointed by the Governing Body of the College though such appointments were subsequently approved by the competent authority. Therefore, the 2014 Rules applies to them in full force.

8. There is no dispute that Petitioner No.1 Joined as Lecturer in Physics against the first post on 8th September, 1989 and Petitioner No.2 joined as Lecturer in Chemistry also against the 1st post on 1st September, 1989. It is not disputed that the College in question namely, Kishorenagar College is an Aided Educational Institution within the meaning of Section 3 of Odisha Education Act. It further appears from the certificate of the Principal-cum-Secretary of the College dated 29th August, 1996 that the College received I.A. affiliation from the year 1983-84, +2 Arts from 1984-85, +2 Science from 1989-90, +3 Arts from 1988-89 and +3 Science from 1993-94. It further appears that the posts in Chemistry and Physics were created on 1st June, 1989. The College became eligible to receive grant-in-aid w.e.f. 1st June, 1988, but the actual date of receipt of grant-in-aid is 21st April, 1990.

9. Keeping the above facts in background, it is now to be seen as to whether

2014 Rules would have any application to the case of the Petitioners. Rule-1 (3) of the said Rule provides that they shall come into force w.e.f. 1st January, 2014. Rule 3 provides that the Rules shall apply to Junior Lecturers/Lecturers in non-

Government Aided Colleges, who are in the pay scale of Rs.9300-34,800/- with grade pay of Rs.4,600/- under ORSP Rule, 2008, before commencement of these Rules. It is evident from the opening words of the Notification that the Rules were made to regulate the method of placement of Lecturers/Jr. Lecturers of non-Government Aided Colleges in different scales of pay. Rule-4 reads as follows;

"4 (1) (a) completed at least 8 (eight) years of service as such from the approved date of joining in case of SSB sponsored Lecturers Junior Lecturers;

(b) completed at least 08 (eight) years of service from the date of receiving of full GIA in the post of Lecturer in case of appointment by the management;

(c) completed at least 08 (eight) years of service from the date of eligibility for full GIA in case of Lecturers whose services have been validated under the Validation Act;

Explanation- For the purpose of clause (b) and clause (c) of this rule, the expression full GIA shall mean completion of 09 (nine) years of continuous service from his/her approved date of joining:

(d) satisfactory performance as a Lecturer Junior Lecturer supported with CCR or ACRs by whatever name called 4(2) A Lecturer placed under Lecturer (Group- A) scale of pay under Rule-9 in order to be eligible for consideration for placement to Reader (State Scale) scale of pay under Rule-9, must have completed at least 10 years of continuing service in the said Lecturer (Goup-A) Scale of pay."

10. A plain reading of Rule 1(3), Rule 3 and Rule 4 of the Rules would make it clear that the same applies to persons acquiring eligibility for placement in different pay scales after commencement of the Rules. Of course, Rule 3 does mention that they shall apply to certain Junior Lecturers and Lecturers in a particular pay scale before commencement of the Rules, but the same would obviously not take within its sweep persons who had already acquired eligibility under the existing Rules/Guidelines/Norms of the Government.

11. As to which Rule was in force at the relevant time, it is seen that the Government in the erstwhile Education and Youth Services Department in its Notification dated 20th March, 1990 had framed the Odisha Education Service (College Branch) Recruitment Rules, 1990, which came into effect from 1st date of January, 1986. The said Rules contains specific provisions for sanction of Senior Scale and appointment in the grade of Reader vide Rules 8 and 9 respectively, both of which are quoted herein below;

"8. Sanction of senior scale to the Lecturers-(I) The Screening Committee constituted under rule 11 shall consider the cases of eligible and suitable lecturers for being placed in the senior scale and shall prepare a list on the basis

of seniority."

(2) The list so prepared shall be referred to the Commission for approval. The Commission shall consider the list and furnish its recommendation to the Government. The list so furnished by the Commission shall be placed before the Government for approval and upon such approval order will be issued by the Government placing such lecturers in the senior scale.

(3) A Lecturer for being eligible for consideration by the Screening Committee for being placed in the senior scale, shall satisfy the following conditions, namely- He must have: (a) completed 8 years of service after regular appointment in the past of lecturer on the 1st day of January of the year in which the vacancy is proposed to be filled up.

Note-In computing the period of 8 years the benefit conferred under sub-rules (3), (4) and

(5) of rule 4 as the case may be shall be taken into consideration.

(b) consistently satisfactory performance appraisal reports,

(c) participated in two refresher courses/Summer Institutes each of approximately four weeks duration or engaged in other appropriate continuing education programmes of comparable quality as may be specified by the Government/Director, Higher Education:

Provided that in respect of cases due for consideration up to the 31st December 1990, Government may relax the applicability of this provision.

9. Appointment in the grade of Reader- (1) The provisions of sub-rules (1) and (2) of rule 8 shall be followed mutatis mutandis, in the matter of selection and appointment of Readers.

(2) A lecturer in order to be eligible for consideration by the Committee constituted under Rule 11 must have-

(a) a Ph. D degree from a recognized University in the concerned discipline;

(b) completed 8 years of service in the senior scale:

Provided that the requirement of 8 years shall be relaxed to the extent of three years in case of lecturers in the senior scale if he has acquired the Ph. D. degree in the concerned discipline while continuing in the grade of lecturer (Senior scale):

Provided further that the requirement of 8 years of service in the grade of Lecturer (Senior Scale) shall not be applicable to a Lecturer who has already completed 13 years of service as such under Orissa education Service after regular appointment if he has acquired a Ph.D. degree from a recognized University.

(c) consistently good performance appraisal reports.

(d) made some mark in the areas of scholarship and research as evidenced by the self-assessment, reports of refers, quality of publications, contribution to educational innovations and design of new courses and

(e) participated in two refreshers courses/summer Institutes each of approximately four weeks duration or engaged in other appropriate continuing education programmes of comparable quality as may be specified by the U.G.C. on being sponsored by Government/ Director, Higher Education after placement in the senior scale:

Provided that in respect of cases due for consideration up to 31-12-1990, Government may relax the applicability of this provision.

12. Coming to the facts of the case, it is seen that the College came to the grant-in-aid fold w.e.f. 1st June, 1990. Accordingly, the Petitioners were brought into the grant-in-aid fold w.e.f. 1st June, 1995 @ 1/3rd of the salary cost, w.e.f. 1st June, 1997 @ 2/3rd and w.e.f. 1st June, 1999 @ full salary cost. Thus, 1st June, 1990 is the date from which necessary calculation has been made for the purpose of extending the benefit under GIA Order, 1994. At the relevant time, obviously the 1990 Rules was in force. The explanation appended to Rule 13 reads as follows;

"Explanation- The deemed date of regular appointment shall mean the date of release of first grant-in-aid against a post by the Government. If such a college was taken over by the Government before release of the first grant-in-aid then the date of such take over by the Government will be deemed as the date of regular appointment."

Thus, even under the 1990 Rules the date of release of first grant-in-aid against a post is deemed the date of regular appointment.

13. Under such circumstances, 1st June, 1995 would be date of regular appointment for both the Petitioners. They would become eligible for grant of Senior Scale as per the Note appended to Rule 8(3)(a). Similarly, they would be eligible for appointment in the grade of Reader as per Rule 9 of the Rules.

14. In view of the foregoing discussion with reference to both the Rules, this Court is of the view that 1990 Rules would be clearly applicable to the case of the Petitioners. To such extent therefore, the impugned orders deserve interference inasmuch as the Director, Higher Education should have considered the case of the Petitioners as per the provisions contained in 1990 Rules and not the 2014 Rules. It would be significant to note however, that 1990 Rules was not specifically repealed by the 2014 Rules, which must therefore, be treated as an additional enactment governing only the field of placement of Lecturers in different scale of pay, that too from 1st January, 2014. As already stated the Petitioners appear to have become eligible for placement in the higher scales long prior to commencement of the 2014 Rules and therefore, would be

governed not by the 2014 Rules but by the 1990 Rules.

15. Thus, from a conspectus of the analysis of the facts and law involved in the lis, this Court is of the considered view that the impugned order passed by the Director, Higher Education, Odisha, on 26th June, 2018 (Annexure-10) cannot be sustained in the eye of law and therefore, warrants interference.

16. The Writ Petition is therefore, allowed in part. The impugned order under Annexure-10 is hereby quashed. The matter is remitted to the Director, Higher Education, Odisha, to consider the claim of the Petitioners strictly in terms of 1990 Rules within a period of two months from the date of production of certified copy of this judgment by the Petitioners.

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