
(2008) 02 OHC CK 0009
In the Orissa High Court
Case No : O.J.C. No. 6476 of 2001

Sudarsan Mishra	Vs	APPELLANT
State of Orissa and Others		RESPONDENT

Date of Decision : 12-02-2008

Acts Referred:

Orissa Aided Educational Institutions (Appointment of Teachers Validation) Act, 1981
— Section 3

Citation : (2008) 1 OLR 585 Supp

Hon'ble Judges : I. Mahanty, J;B.P. Das, J

Bench : Division Bench

Advocate : B. Routray, A.K. Baral, D.K. Mohapatra, R.K. Das, B.N. Satpathy and B.B. Routray, for the Appellant; S. Das and Additional Government Advocate, for the Respondent

Judgement

1. The case of the Petitioner as delineated in this writ application tends to reveal as follows:

The Petitioner on being selected was appointed as a Lecturer in Oriya in Class-II of the Orissa Educational Service on ad hoc basis and was posted in the Government Evening College, Sambalpur (Annexure-1). While continuing there, he was extended the benefit of UGC scale of pay, as stated. While the Petitioner was continuing in the said College, the State Government decided that the Lecturers, who were continuing in the Government Colleges and whose services had not been concurred by the Public Service Commission, would be given appointment in the aided colleges. Accordingly, the Petitioner joined as Lecturer in Oriya in the Nayagarh College, Nayagarh on ad hoc basis and the said appointment was extended from time to time with the approval of the Director of Hrgher Education, O.P.2.

During such continuance of the Petitioner, the Orissa Aided Educational Institutions (Appointment of Teachers Validation) Act, 1981 (hereinafter referred to as "Validation Act") was enacted. Section 3 of the said Validation Act

stipulated that the Lecturers of aided colleges, who being appointed by the Governing Body of such colleges on ad hoc basis on or after 1st December, 1976 were continuing and had validly and lawfully served as such Lecturers for a period of at least one year without any break or with a break or breaks, in one aided college or in more than one aided colleges by 1st March, 1981 would, for all intents and purposes, be deemed to have been validly appointed and no such appointment would be liable to be challenged in any Court of law merely on the ground that the appointment was made otherwise than in accordance with the procedure prescribed by the Orissa Education Act and the Rules and Regulations framed thereunder. The service of the Petitioner was accordingly validated vide order dated 24.5.1983 (Annexure-3) and the appointments of the Petitioner and three other Lecturers, who were working in Nayagarh College and had one year service to their credit by 1.3.1981, were declared to have been regularized from the date of their joining in the concerned college (s).

In the Government Evening College, Sambalpur, the Petitioner was getting UGC scale of pay, but he was not allowed the said scale of pay after his adjustment in Nayagarh College on the ground that he had secured 53.5% mark, i.e. less than 54% marks in the M.A.Examination on the date of his appointment. Against that the Petitioner made several representations to the authorities. When no action was taken on his representations, the Petitioner filed a writ application being OJC No. 4444/1995 in this Court. While disposing of the same, this Court by its order dated 24.7.1995 allowed the Petitioner to make fresh representation to the Director of Higher Education and three months' time was granted to the Director to dispose of the representation of the Petitioner after giving him a chance of hearing. The Petitioner accordingly made a representation. The Director by his order dated 19.12.2000 rejected the representation of the Petitioner on the ground that the Finance Department did not agree to allow the revised UGC scale of pay to the under qualified teachers appointed in non-Government Colleges and communicated the said order to the Principal of Nayagarh College, vide Annexure-5. In other words, the Petitioner having secured 53.5% marks in the Post Graduate Examination, the benefit of UGC scale of pay was not allowed to him.

Aggrieved by that decision, the Petitioner has again filed this writ application on the ground, inter alia, that when the State Government had extended the benefit of UGC scale of pay to one Alekh Chandra Samal, whose case was similar to that of the Petitioner, the decision of the Director not to extend such benefit to the Petitioner is arbitrary and discriminatory in nature, and has therefore, prayed to quash the order in Annexure-5 and to issue a Writ of Mandamus to O.Ps. 1 & 2 to pay his salary in UGC scale of pay within a reasonable time.

2. The O.Ps. have filed a counter affidavit, wherein the following stand has been taken:

As per the instruction stipulated in para No. 2 (2)(vii) of the said Resolution dated 6.11.90 (Annexure-C/2) revised UGC scale of pay shall not be applicable to

the teachers whose qualification/norms are below the qualification/norms prescribed by the UGC even if such lack of prescribed qualification has been condoned by the Government/University.

The Petitioner, who was appointed as a lecturer in Oriya by concerned G.B. with less than 54% of marks in his P.G. Examination, has been allowed grant-in-aid by the State Government due to condonation of his deficiency in qualification. As such the Petitioner is not eligible to get revised U.G.C. scale of pay as per instruction laid down in para No. 2(2)VII of said Government Resolution dated 6.11.90 (Annexure-C/2) despite of his appointment/getting of Grant-in-aid prior to 1.4.1989.

3. So the ground, on which the Petitioner's claim was rejected, was that he was under-qualified. As it appears from the above quoted paragraphs of the counter affidavit, the O.Ps. heavily relied upon the Resolution dated 6.11.1990 Annexure-C/2) adopted by the Government of Orissa in Education & Youth Services Department. Let us have a look at the Resolution (Annexure-C/2).

Clause 2 of the Resolution, Annexure-C/2 dealt with category of teachers to whom the Resolution would apply. The same being relevant for the purpose of deciding this case is quoted hereinbelow:

2. Category of teachers to whom these instructions shall apply.

(1) Save as otherwise provided by or under these instructions, these instructions shall apply to all categories of full time teachers working in all aided non-Government Colleges either covered or eligible to be covered under Direct payment scheme till the 1st day of April, 1989.

Note - "Colleges" under these instructions shall mean aided colleges which have been given Govt. concurrence and University affiliation for opening of +3 Degree courses by 1.4.89 and not thereafter.

(2) These instructions shall not apply to-

(i) Persons engaged on contract except when the contract provides otherwise;

(ii) persons re-employed after retirement;

(iii) Instructors/Lecturers appointed for Vocational subjects under Arts stream of +2;

(iv) teachers appointed against unrecognized subjects/streams even in recognized and aided colleges;

(v) teachers who are appointed primarily in +2 institutions existing as on 1.4.89 including Intermediate Colleges converted +2 institutions;

(vi) teachers appointed after 1.4.89 to teach in +2 courses in existing Degree colleges or +2 institutions;

(vii) teachers whose qualifications/norms are below the qualifications/norms prescribed by the U.G.C. even if such lack of prescribed qualification has been condoned by Government/University;....

This Resolution dated 6.11.1990 (Annexure-C/2) was purported to have been issued in pursuance of the Resolution of the State Government dated 6.10.1989 for implementation of the scheme of revised scale of pay for the college teachers with terms and conditions prescribed by the Government of Orissa therein.

4. Let us examine the question which falls for determination in this case, i.e. as to whether the stand taken by the O.Ps. in the counter affidavit can in any manner withstand judicial scrutiny in view of the judgment passed by this Court on 24.7.1996 in O.J.C. No. 6101/1995 (Bharat Chandra Behera and Anr. v. State of Orissa and Ors.). The State Government had filed an application being Civil Review No. 65/1997 for review of the aforesaid judgment but the same was dismissed by order dated 9th August, 2001. In Bharat Chandra Behera's case (supra), this Court dealing with the claim for sanction of UGC scale of pay held in paragraph-3 as follows:

3. Let us first take up the claim for sanction of U.G.C. scale of pay. The Government of Orissa in the Education and Youth Services Department decided, as communicated in their letter No. 51349/EYS dated 8.12.1981, sanction of U.G.C. scale of pay to teachers acquiring Ph.D. and M. Phil Degrees. The relevant portion for the Government order states that Government after careful consideration have been pleased to decide that the lecturers in Government and non-Government colleges who are in the scale of Rs. 626-1300/- will come over to the scale of Rs. 700-1600/- with effect from the date they obtain the diploma of M. Phil or Ph.D. Degree. As we have already noted, Utkal University in its letter dated 21.9.1987 at Annexure-4 has condoned the deficiency in qualification of the Petitioners. Petitioner No. 1 acquired Ph.D. degree from Berhampur University on 31.8.1993 vide Annexure-6. Petitioner No. 2 acquired M. Phil degree on 7.4.1988 vide Annexure-7. In view of their acquisition of Ph.D. and M. Phil degrees, the Petitioners are entitled to the benefit flowing from the Government decision, referred to above. In this connection, Anr. resolution of the State Government in the Education and Youth Services Department dated 6th October, 1989 is also relevant. Para 3.0 of the said resolution states that the revised scales and other measures for improvement of standard in Higher Education shall be applicable to all categories of full time teachers working in all affiliated Government Colleges and aided Non-Government Colleges either covered or eligible to be covered under direct payment schemes till 1.4.1989. Para 3.1 of the said resolution deals with the date of effect by stating that the revised scales of pay shall be effective from 1.1.1986. Petitioner's case comes within the time frame mentioned in paragraph 3.1 of the resolution. For the reasons mentioned above, the Petitioner are entitled to U.G.C. scale of pay. Opposite parties 1 and 2 are directed to sanction the same to the Petitioners, as admissible under the aforesaid Government resolution, within six months from

the date of receipt of the writ.

In paragraphs - 4 and 5 of the Order passed in Civil Review No. 65/1997, a collateral Bench of this Court referring to the Resolution dated 6.11.1990 came to the following conclusion:

4. This Court while considering the claim of the opposite parties for grant of U.G.C. scale of pay, observed that Government of Orissa in Education & Youth Services Department decided (as communicated in their letter No. 51349-EYS dated 8.12.81) to sanction U.G.C. scale of pay to teachers acquiring M. Phil or Ph.D. degree. Relevant portion of the Government order states that the State Government after careful consideration have decided that the Lecturers in Government and non-government colleges who are in the scale of Rs. 525-1300/- will come over to the scale of Rs. 700-1600/- with effect from the date they obtain the diploma of M. Phil, or Ph.D. degree. So far as the opposite parties are concerned in Utkal University had condoned the deficiency in the qualifications of the opposite parties who had secured less than 54 per cent marks at the Post-Graduate level. Subsequently both the opposite parties obtained Ph.D. and M. Phil Degree respectively. In the said Resolution dated 6th October, 1989 it was stipulated that the revised scale of pay and other measures for improvement of standards in higher education shall be applicable to all categories of full time teachers working in all affiliated Government Colleges and aided non-Government Colleges either covered or eligible to be covered under direct payment schemes till 1.4.89. The said Resolution further stipulated that the revised scales of pay shall be effective from 1.1.1986. Considering the said Resolution and the facts of the case the Court observed that the case of the opposite parties comes within the time-frame mentioned in paragraph 3.1 of the Resolution dated 6th October, 1989 and accordingly are entitled to U.G.C. scale of pay. Clause 3.6.6 of the Resolution dated 6th October, 1989 prescribed that in order to encourage research, in continuation of Post Graduate studies, candidates who at the time of their recruitment as Lecturers possess Ph.D. or M. Phil. Degree will be sanctioned three and one advance increments respectively in the revised scale of Rs. 2200-4000/-. From the aforesaid clause it is clear that those Lecturers who had possessed Ph.D. or M. Phil at the time of recruitment are only entitled to benefit of three or one advance increment respectively in the revised scale of pay of Rs. 2200-4000/-. Clause 3.1 of the said Resolution further prescribed that the revised scale and other Measures for improvement of standards in higher education shall be applicable to all categories of full time teachers working in all affiliated government colleges and aided non-Government Colleges either covered or eligible to be covered under direct payment schemes till 1.4.89. Admittedly the deficiency in qualifications for appointment as teachers has been condoned by the University and accordingly, appointments of the opposite parties as Lecturers cannot be questioned and therefore, they are covered under Clause 3.1 of the Resolution dated 6th October, 1989.

5. So far as the argument advanced by the learned Additional Government

Advocate with regard to the Resolution of the State Government dated 6th November, 1990 is concerned, it appears that no argument was advanced on the basis of the said Resolution at the time of hearing of the writ application. However, the Anr. batch of writ applications namely, OJC Nos. 15062 and 15063 of 1996 and 243 and 254 of 1997, disposed of on December 21, 2000, the said Resolution was taken into consideration and this Court held that the effect of the Resolution dated 6th October, 1989, on the basis of which the judgment under challenge has been delivered, cannot be taken away by the Resolution dated 6th November, 1990. In its Resolution dated 6th October, 1989 the State Government having taken a decision to give a limited facility to Lecturers holding Ph.D. or M. Phil. Degrees, cannot take a different stand in the Resolution dated 6th November, 1990 stating that condonation of deficiency in qualification is not enough for grant of U.G.C. scale of pay, but one has to obtain Ph.D. or M. Phil.

Against this, it is not disputed that the State Government approached the apex Court in Special Leave to Appeal (Civil) No. CC 9673/2003 and after condoning the delay the apex Court dismissed the said petition on 23.1.2004.

The case of Bharat Chandra Behera was referred to and relied upon by a learned Single Judge of this Court in a batch of writ petitions, i.e. O.J.C. No. 15062 and 15063 of 1996 and 243 and 254 of 1997 (Katidas Mohapatra and Ors. v. State of Orissa and Ors.), which were disposed of on 21.12.2000. The same question was raised before the learned Single Judge, who after referring to the judgment of Bharat Chandra Behera came to the conclusion that the Petitioners, who admittedly did not secure 54% marks at P.G. level examination had been appointed as Lecturers and their under-qualifications having been condoned by the University and their appointments being approved prior to 1.4.1989, they were entitled to get UGC scale of pay. It is argued by the learned Counsel for the State that in the said Resolution it was stated that a decision was taken to regulate the revision of scales of pay of different categories of teachers serving in aided non-Government colleges of the State and the said instructions were not made applicable to teachers whose qualifications were below the qualification prescribed by U.G.C, even if such lack in prescribed qualification stood condoned by the University. Today it is also argued by Mr. Sisir Das, learned Counsel for the State that even if the under-qualification of the Petitioners has been condoned, they shall not be entitled to the benefits of revised UGC scale of pay as per the Resolution of the Government dated 6th November, 1990. In Kalidas Mohapatra, the learned Single Judge relied upon various decisions, mainly, Sk. Harun v. State of Orissa and Ors. 72 (1991) CLT 4, wherein it was held:

5. In this connection, our attention has been invited to the dictionary meaning of the word "condone", as given in Chambers Twentieth Century Dictionary, which has defined this word to mean "to forgive" to pass over without blame, overlook, to excuse.... We have also noted the meaning of this word as given in the Oxford English dictionary with is "to give up, remit, forgive, pardon". In Websters Third New International Dictionary, the meaning of "condone" given is "to pardon,

forgive (an offence or fault)".

6. From the meaning of the word "condone" as given in these dictionaries, it appears that once deficiency is condoned, the same is forgiven and the deficiency attached gets washed away. This apart, in the present case the resolution of the Syndicate has stated that the deficiency has been condoned permanently. Because of all these, we are of the view that Shri Kanungo's appointment as Lecturer was valid with effect from 8.8.1967.

This Court came to the conclusion that the instructions of the State Government dated 6th October, 1989 prescribing that the Resolution of the State Government dated 6.10.1989 would not be applicable to teachers whose qualifications have been condoned, could not be acted upon.

The said judgment was challenged before the apex Court in Special Leave to Appeal (Civil) Nos. 14206-14209/2001 and the apex Court dismissed the said petitions with the following orders:

Heard.

The so-called contention of deficiency in the qualification being much earlier to the circular of the Government dated 6.11.1990, we see no infirmity with the impugned judgment requiring our interference. The Special Leave Petitions are dismissed accordingly.

The State also filed Review Petition (Civil) No. D 11170 of 2002 seeking review of the aforesaid order and the same came to be dismissed by the Supreme Court by its order dated 28.8.2002 which is as follows:

Delay condoned. Objections waived.

We have perused the review petitions and the connected papers filed by the review-Petitioners. We do not find that a case for review has been made out. The review petition stand dismissed accordingly.

5. Now in the present case the Petitioner was appointed much prior to 13.6.1983, i.e. on 17.12.1973. His services were validated on 24.5.1983, vide Annexure-3 and his under qualification was condoned, as it appears from the counter affidavit. After condonation of his deficiency in qualification, the Petitioner was allowed grant-in-aid.

Now at this stage, Mr. Sisir Das, learned Counsel for the State, submits that subsequently the State approached the apex Court in SLP (C) No. 2132/2005 against the judgment passed by this Court in Jitendra Kumar Pati's case and the apex Court was pleased to stay the contempt proceeding arising out of the aforesaid decision of this Court.

Our attention is drawn to the judgment dated 24.7.2002 of this Court in Jitendra Kumar Pati v. State of Orissa and Ors. O.J.C. No. 3426/1994. Mr. B. Routray, learned Counsel for the Petitioner, submits that in the case of Jitendra Kumar

Pati, the dispute was egarding revision of scale of pay under 1989 Rules.

6. Be that as it may, we make clear that we are not relying upon the decision in Jitendra Kumar Pati (supra). When the decision rendered by this Court in case of Kaiidas Mohapatra has got the seal of approval by the Apex Court, we have no occasion to differ from the position of law settled in cases of Kaiidas Mohapatra and Bharat Chandra Behera since the said judgments remain valid till date. For the reasons stated above, the writ application is allowed in terms of the decision in Bharat Chandra Behera and Kaiidas Mohapatra (supra) and we direct that the Petitioner be given the benefit of U.G.C. scale of pay. The entire exercise shall be completed within a period of four months from the date of communication of this judgment.

I. Mahanty, J.

7. I agree.