

(2002) 01 OHC CK 0031
In the Orissa High Court
Case No : O.J.C. No. 17082 of 2001

Sunil Kumar Pattanaik

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 18-01-2002

Acts Referred:

Education Act, 1969 — Section 3(2), 7C, 7C(1)

Citation : (2002) 93 CLT 427 : (2002) OLR 803 Supp

Hon'ble Judges : P.K. Mohanty, J;P.C. Naik, J

Bench : Division Bench

Advocate : L. Samantray, for the Appellant; R.N. Acharya, Additional Government Advocate, for the Respondent

Judgement

P.C. Naik, J.—The prayer in this writ application is for issuance of an appropriate writ, direction or order to the opposite parties commanding them to release the Grant-in-Aid in favour of the petitioner whose services have been validated in terms of the provisions contained in the Orissa Aided Educational Institutions (Appointment of Lecturers Validation) Act, 1998 (in short, "Act, 1998"), Placing reliance on a decision of this Court in Sanjib Kumar Pattnaik v. State of Orissa and others (Batch), 2002 (I) OLR 58, it is contended by the learned counsel for the petitioner that once the appointment of the petitioners was validated under the statute, they were automatically entitled to receive Grant-in-Aid under the Orissa Grant-in-Aid Order, 1994 (in short, "Grant-in-Aid Order, 1994"). This, according to the learned counsel, flows from the provisions contained in Sub-section (2) of Section 3 of the Act, 1998 which lays down that lecturers whose appointments are validated under the Act shall be governed under the Orissa Aided Educational Institutions (Appointment of Lecturers Validation) Act, 1998.

2. A single Bench of this Court in Sanjib Kumar Pattnaik's case (supra), taking into consideration the provisions of Sub-section (2) of Section 3 of the Act, 1998 and overruling the contentions of the State that in view of the provisions of Section 7-C of the Orissa Education Act, the lecturers, whose appointments have

been validated, do not, on being validated, automatically become entitled to Grant-in-Aid, held that they would be so entitled and observed thus :

"6. As stated above, this Court adopts the said ratio and the decision and accordingly directs the State Government and the Director, Higher Education, Orissa, to complete the entire exercise within a period of six months from the date of receipt of a copy of this order and to make payment of the arrears and the current salaries to the petitioners in accordance with the above quoted judgment.

7. Before parting with the case, this Court wants to put on record that according to the established procedure with the State Government before a law is enacted, it passes through several preliminaries and that includes concurrence of the Government in Finance Department when there is financial implication involved in a proposed law. Therefore, there is no reason for the Government not to make budgetary provision in the subsequent years when the Act, 1998 came into force in 1998 itself. Therefore, the plea advanced by the Government regarding paucity of funds and no provision of funds made in the Budget appears to be unreasonable.

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In arriving at this conclusion, the learned Judge had in turn placed reliance on an earlier single Bench judgment of this Court in Mrs. Laxmipriya Das and Ors. v. State of Orissa and Ors., O.J.C. Nos. 8997 and 9624 of 2001 (and not "2000") disposed of on 16.8.2001.

3. Before proceeding further, it will be appropriate to refer to Sub-section (2) of Section 3 of the Act, 1998 and Section 7-C(1) of the Orissa Education Act which read thus :

Sub-section (2) of Section 3 of the Act. 1998

"(2) The Lecturers whose appointments are so validated shall be governed by the Orissa (Non-Government Colleges, Junior Colleges and Higher Secondary Schools) Grant-in-Aid Order, 1994 for the purpose of their entitlements, but they shall be entitled to receive Grant-in-Aid towards their salary cost only as per the scale of pay admissible to a non-Government College Lecturer from time to time, with effect from the date of commencement of this Act."

Section 7-C(1) of the Orissa Education Act

"7-C. (1) Grant-in-Aid -- The State Government shall within the limits of its economic capacity, set apart a sum of money annually for being given as Grant-in-Aid to private Educational Institution in the State."

4. These two provisions cannot be read in isolation. What Sub-section (2) of Section 3 contemplates is that the lecturers whose appointments have been validated, will become eligible to be considered for Grant-in-Aid in accordance with the Grant-in-Aid order, 1994. In other words, if Grant-in-Aid is extended,

they will be entitled to Grant-in-Aid under the principles laid down in the Order. But, the provisions contained in the Grant-in-Aid Order, 1994 cannot override the provisions contained in Section 7-C of the Orissa Education Act, which provides that the Government to set apart a sum of money annually for being given as Grant-in-Aid to private Educational Institutions and this setting apart would be within the limits of its economic capacity. Thus, it is for the Government to consider as to what is the sum which it can set apart each year for being given as Grant-in-Aid to private Educational Institutions. To direct the Government to pay all lecturers/teachers Grant-in-Aid, on their services being validated, would, in substance, amount to making the provision contained in Section 7-C(1) of the Orissa Education Act otiose, for whether or not it is within the economic capacity, the Government will be bound to pay Grant-in-Aid all such lecturers/teachers. Subsection (2) of Section 3 of the Act, 1998, in our opinion, cannot override the provisions contained in Section 7-C(1) of the Orissa Education Act. For obvious reasons, the provisions contained in the Grant-in-Aid Order, 1994 which is issued in exercise of powers conferred under Sub-section (4) of Section 7-C of the Orissa Education Act, have naturally to be read subject to the provisions of Section 7-C. In other words, the provisions contained in the Grant-in-Aid Order, 1994 cannot override the statutory provisions contained in the Act, 1998 under which the Grant-in-Aid Order is issued and in case there is any conflict, the provisions contained in the Order, 1994 issued under the Orissa Education Act will have to give way to the provisions contained in the parent statute.

5. We may refer to a recent decision of the Apex Court in State of Orissa and another v. Pratap Kumar Nayak and Anr. 93 2002 CLT 79 , wherein it has been reiterated that an employee, whose services are validated under the Validation Order, is not, ipso facto, entitled to Grant-in-Aid unless and until his case is duly considered under the provisions of the Grant-in-Aid Order read with Section 7-C of the Education Act.

6. In the above view of the matter, it follows that the petitioner, merely because his appointment has been validated, cannot, ipso facto, claim the benefit of Grant-in-Aid on the basis of the decision of this Court in Sanjib Kumar Pattnaik's case and Laxmipriya Das's case (supra), as the said decisions stand impliedly overruled by the decision of the Apex Court in State of Orissa and Anr. v. Pratap Kumar Nayak and Anr. (supra). Thus, notwithstanding the validation of his appointment, the petitioner's case is necessarily to be considered by the opposite parties in the light of the provisions contained in Section 7-C of the Orissa Education Act and the Grant-in-Aid Order, 1994 and in accordance with the procedure prescribed therein and this should be done within a reasonable time.

The writ application, accordingly, stands disposed of.

P.K. Mohanty, J.

7. I agree.