

(1988) 04 OHC CK 0004

In the Orissa High Court

Case No : Original Jurisdiction Case No. 650 of 1981

Swarnalata Das

APPELLANT

Vs

The State of Orissa and Others

RESPONDENT

Date of Decision : 26-04-1988

Acts Referred:

Citation : (1988) 66 CLT 222

Hon'ble Judges : P.C. Misra, J; L. Rath, J

Bench : Division Bench

Advocate : S.C. Dash, for the Appellant; M.R. Mohanty, A.S.C, R. Mohanty, K.N. Jena and B. Misra, for the Respondent

Final Decision : Allowed

Judgement

L. Rath, J.—The Petitioner, a teacher of Shakuntala Girls' High School, an aided school, seeks quashing of an order of the State, opposite party No. 1, in Annexure-7 according approval to promotion of opposite party No. 5 as a Trained Graduate Teacher in the school. Dr. S.C. Dash, the learned Counsel appearing for, the Petitioner has urged the sole contention that the recommendation for absorption in the higher post of trained Graduate Teacher by the managing committee having been in favour of the Petitioner, it was not within the competence of the State to accord approval to the promotion of opposite party No. 5. Reliance for the purpose is placed upon a decision of this Court in *Bhupendra Nath Patra v. State of Orissa and Ors.* O.J.C. No. 505/80-0/1-12-1987. decided on 1st December, 1987.

2. The short facts are that the opposite party No. 5, a Science Graduate with Chemistry, Botany and Zoology as her subjects was appointed to a Trained Matric Teacher's post on 23-7-1970 and three years thereafter the Petitioner, also a Science Graduate with Chemistry, Physics and Mathematics as her subjects was appointed as Science Teacher in Trained Intermediate teacher's scale. The school was introduced to direct payment system on 1-3-1974. There is some dispute as to whether the Petitioner continued in the Trained Intermediate scale since it is

the case of opposite party No. 5, as also that of the State, that her appointment was approved in the Trained Matric post only, but with such question of fact we are not concerned in this writ petition and we do not intend to express any opinion on the issue. The Petitioner and opposite party No. 5 both obtained B. Ed. qualification on 9-8-1977 and while the Petitioner obtained pass with distinction, opposite party No. 5 was declared as only passed. Recommendation was made by the managing committee in favour of the Petitioner on 24-9-1977 for grant of Trained Graduate scale. Such recommendation was also made to the Additional Director of Public Instruction (schools), Orissa by the Inspector of Schools, Balasore Circle on 4-1-1973 and again on 6-11-1978. It is alleged that later, the successor Inspector of Schools made a recommendation in favour of opposite party No. 5 directly to the Government on 8-12-1980 and the impugned approval to the promotion of opposite party No. 5 was made on 7-1-1981.

3. In the decision relied upon by Dr. Dash referred to above, it has been held, interpreting the provisions of Rule 8 (2) (b) of the Orissa Education (Recruitment and Conditions-of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 that the power of approval of the Government though includes in it the concept of either according approval or refusing the same, yet it does not clothe the Government with an additional power or itself making a choice and according approval- to it.

It was observed But whether it is prior approval or only approval, the conduct of the approving authority is exclusively only with regard to the particular act which comes before it. It is well within the full competence either to grant approval or not but it seems squarely reasonable to hold that the power vested does not extend to substitute the act for which the approval is sought by another act of its own choice and then approving it. In other words while it is undoubtedly true that power of approval includes in itself power of disapproval, it cannot be further said that power takes within its fold the power of false approving something which is not before it. It is simple logic that an authority which has the power to approve cannot combine in itself the dual function of committing the act and approving it itself?.

4. The law having thus been laid down, it does not require any greater preface to hold that the order of the Government impugned is one without authority and is liable to be struck down. Faced with such difficulty, Mr. K. N. Jena, learned Counsel appearing for opposite party No. 5, wanted to urge that in fact no singular recommendation in favour of the Petitioner had ~?been made by the managing committee but only papers relating to both the Petitioner and opposite party No. 5 had been sent and that for such reason-the Government had approved the recommendation in favour of opposite party No. 5. The submissions are factually not correct. Annexure-2 in which the recommendation was sent specifically states of the resolution of ;the managing committee to allow the Petitioner the B. Ed; scale since she had been appointed as a teacher with Physics, Chemistry and Mathematics as her subjects in B. Sc. degree course

and,that for teaching Mathematics in higher classes a Science Teacher with Mathematics was badly necessary for the institution. The matter was again clarified by the Secretary of the Managing Committee on 1-8-1978 in his letter to the Addl. D. P. I. vide Annexure-4 making categorical assertion of the recommendation being made in favour of the Petitioner and stating that the opposite party No. 5 had not put forth any request for higher scale of pay i.e. Trained Graduate scale and that on consideration of both the cases of the Petitioner and opposite party, No. 5, the Managing Committee had decided to grant higher scale to the Petitioner since she was well efficient to teach Mathematics and Science in top classes whereas opposite party No. 5 was found not suitable as also on other grounds. In view of such facts the submission made by Mr. Jena does not have any substance. It has been next contended that at present, in accordance with the yardstick of standard staff under the regulations, two posts of Science Teachers are available in the school and that there would be no difficulty in adjusting both the Petitioner and opposite party No. 5 in those two posts. Such question is not before us within the scope of this writ petition and we are not in a position to give any such direction, but, however, if in fact such posts are available, we hope that the claim of opposite party No. 5 would be suitably considered by the Managing Committee as well as the Government.

5. In the result, the order in Annexure-7 passed by opposite party No. 1 according approval in favour of opposite party No. 5 is set aside. The opposite party No. 1 is directed to consider the question of according approval to the promotion of the Petitioner within a period of two months from the date of service of the writ upon it. A writ of mandamus be issued accordingly. The petition is allowed with costs. Hearing fee is assessed at Rs. 250/.

P.C. Misra, J.

6. I agree.