

(2002) 01 OHC CK 0018

In the Orissa High Court

Case No : O.J.C. No"s. 9083, 9084, 9284 and 9285 of 1992 and 1466 of 1993

Tapan Kumar Majhi and Others, Umesh Chandra Pradhan and Others, Laxmidhar Dehury and Others, Pradeep Kumar Panda and Others and Bhagirathi Pradhan and Others APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 09-01-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2002) 93 CLT 503

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

Bench : Division Bench

Advocate : B.P. Routray, on behalf of M.K. Mohanty, for the Appellant; R.N. Acharya, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Naik, J.—The question involved in these five writ applications being similar, they were heard analogously and are being disposed of by this common judgment.

2. The petitioners, who were working as Non-Formal Education Facilitators, had prayed for a direction to the opposite parties to pay them the regular pay scale as is being paid to the Primary School Teachers in the State and extend to them other consequential benefits from the date of their initial appointment. The further prayer is for a direction to the opposite parties for disbursing the differential arrear salary accrued to them from the date of their appointment. In substance, the claim of the petitioners is that since they are discharging the same duties as of the primary school teachers, they are entitled to same scale of pay and other service benefits which are being paid/extended to the primary school teachers.

3. A counter-affidavit has been filed on behalf of the State Council of Educational Research and Training opposing the writ applications. According to the opposite

parties, the Non-formal Education Facilitators are not regular primary school teachers and accordingly, they are not entitled to the salary and the other benefits which are paid by the Government to the in service regular primary school teachers. It is case of the opposite parties that the Non-Formal Education Facilitators do not do the same work in the Non-Formal Education Centres as the regular primary school teachers do in the regular schools. -Instead, the N.F.E. Facilitators are part-time workers and as such cannot be placed at the same footing as of the primary school teachers for the purpose of stipend and scale of pay. It is the further case of the opposite parties that a Facilitator in the Non-Formal Education Centre is essentially a volunteer who takes up the work for about one and half an hour each day in addition to his other occupation and as such, it cannot be said that the Non-Formal Education Facilitators stand on the same footing or they discharge the same duty as are being discharged by the regular primary school teachers.

4. In support of the contentions of the opposite parties, the learned Additional Government Advocate invited our attention to Annexure-B/2-a resolution of the Government of Orissa in the Education & Youth Services Department with respect to the Non-formal Facilitators which guidelines were framed in pursuance of the Government of India letter. The extracts from the said guidelines (which are relevant for our purpose) read thus :

33241/EYS "No. _____ Xiii/NFE-78/89

GOVERNMENT OF ORISSA, EDUCATION & YOUTH SERVICES DEPARTMENT.
RESOLUTION

Bhubaneswar, Dated the 29th July, 1989.

*** ** The Instructor in NFE Centre is essentially a volunteer who takes up this work in addition to his/her other occupation. The daily work of running the Centre is likely to take about 11/2 hours....

*** ** Qualification of Instructor:

1. *** ** 2. Laying down of qualification like Matriculation or Teacher Training Certificate can exclude some very promising and suitable persons. By and large, therefore, persons who have studied up to Class - X may be considered as minimum qualification and this may be relaxed up to Class-VIII in exceptional circumstances.

3. *** ** 4. *** ** Selection of Instructors and Supervisors.

The selection procedures laid down for Government servants, should not be applicable for selection of Instructors and Supervisors The nature of work of Instructors and Supervisors is purely honorary and voluntary subject to qualifications and background referred to at above.

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5. The guidelines under which the petitioners were appointed as N.F.E. Facilitators indicate that the instructor/facilitator is essentially a volunteer who takes up the work of a facilitator in addition to his own occupation and runs the Centre for one and half an hour in a day. The prescribed qualification for appointment of Facilitators is "Class-X" which can be relaxed and in an exceptional circumstance, a person who has studied upto Class-VIII can be considered for such appointment. As regards the selection of N.F.E. Facilitator, it is also not in accordance with the procedure adopted for a Government servant. Further, under the Scheme an honorarium is fixed for the facilitators and it is not disputed that the same was being paid to the petitioners. Moreover, no material whatsoever has been brought on record by the petitioners to indicate that these, were not the guidelines prescribed for them and that the nature of their job was similar to that of the regular primary school teachers.

6. Admittedly, the qualification for being appointed as a primary school teacher is "Matriculation with C.T. Training" and that they are also required to discharge regular duties and cannot take up other jobs along with it. Thus, it is apparent that while a N.F.E. Facilitator is basically a volunteer doing a part-time job for one and half an hour in a day in addition to his other private/personal avocation, a primary school teacher is a whole-time employee having a higher qualification and strict mode of selection for appointment. Thus, it cannot be said that both N.F.E. Facilitator and Primary School teacher-discharge similar duties and hence entitled to similar scale of pay. Obviously, therefore, the principle of "equal pay for equal work", in the facts and circumstances of the case, cannot come into operation. That apart, the Scheme which was sponsored by the Central Government has now been withdrawn.

7. In view of the above, we see no merit in these writ applications which are accordingly dismissed. There shall, however, be no order as to costs.

P.K. Mohanty, J.

8. I agree.