(2021) 01 OHC CK 0022

In the Orissa High Court

Case No : Writ Petition (Civil) No. 17962 Of 2009

Thomas Kerketta APPELLANT

Vs

State Of Orissa And Others RESPONDENT

Date of Decision : 28-01-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 21, 30, 30(1), 30(2), 39(d), 226, 227
National Commission For Minorities Act, 1992 — Section 2(c)
Orissa Aided Educational Institution Employees Retirement Benefits Rules, 1981 — Rule 3, 29(1)
Orissa Education (Recruitment And Conditions Of Service Of Teachers And Members Of The Staff Of Aided Educational Institutions) Rules, 1974 — Rule 9
Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration And Control Of Schools Under Private Managements) Rules, 1993 — Rule 2(1)(f)

Citation : (2021) 01 OHC CK 0022

Hon'ble Judges : Dr. B. R. Sarangi, J

Bench : Single Bench

Advocate : A.K. Mishra-2, M.K. Mallick, B. Satpathy

Final Decision : Allowed

Judgement

Dr. B.R. Sarangi, J.

1. The petitioner, who was appointed as an Assistant Teacher in the Mission Minority Primary School and on attaining the age of superannuation

retired from service w.e.f. 28.02.1995, has filed this writ petition seeking to quash Annexure-2 dated 12.12.2005 rejecting his claim for getting pension

and other retirement benefits as deemed and admissible to the post w.e.f. 01.03.1995 along with interest.

2. The factual matrix of the case, in hand, is that in order to improve and create a literacy atmosphere within the children of backward class of

Sundargarh district, more than 200 educational institutions were established by the Christian Community which were managed by Catholic Board of

Education, a registered society, having its Head Office at â??Bishopâ??s House, Hamirpur, Rourkela. Mission Minority Primary Schools established

by the Christian Community are protected under Article 30 of the Constitution of India and the primary schools, which were established and

recognized at different points of time having been eligible, were brought under the grant-in-aid fold and became fully aided educational institutions. The

petitioner, having got requisite qualification and being selected, was appointed as Assistant Teacher in Mission Minority Primary School.

Consequentially, he joined in such post on 01.10.1962. On attaining the age of superannuation, he was issued with notice of superannuation and

consequentially he was relived from his duty on 28.02.1995, while serving at Kutunia Primary School, Kutunia, Sundargarh.

2.1 The petitioner, being an employee of aided educational institution, having not been extended with the retiral benefit, had approached this Court by

filing W.P.(C) No. 10915 of 2003. This Court, vide order dated 12.03.2004, disposed of the writ petition with an observation that Inspector of Schools,

Sundargarh Circle, Sundargarh shall scrutinize the pension papers of the petitioner in consonance with the ratio decided in the case of â??Patras and

Benedictâ? and on scrutiny if it is found that the petitioner is entitled to pension, pass necessary orders for disbursement of the same within six months

from the date of communication of the order. On submission of such pension papers, along with copy of the order passed by this Court, opposite party

no.3-Inspector of Schools, Sundargarh Circle, Sundargarh, vide order dated 12.12.2005, rejected the claim of the petitioner for grant of pension on the

ground that his case is neither coming under the Orissa Aided Educational Institution Employees Retirement Benefits Rules, 1981 (for short â??Rules,

1981) nor O.E. (Minority Managed Aided Educational Institution Employees â?? Method of Recruitment and Conditions of Serviceâ?) Order, 2003

(for short â??O.E. Order, 2003â?) and, as such, the petitioner having retired from service with effect from 28.02.1995 is not entitled to get pensionary

benefits as prayed for. Hence, this writ petition.

3. Mr. A.K. Mishra-2, learned counsel for the petitioner contended that admittedly the petitioner was serving in Mission Minority Primary School,

which is a fully aided educational institution, and as per the resolution dated

11.07.1984 passed by the Government of Odisha in Education & Youth

Services Department, the provisions of the Rules, 1981 are applicable to the institutions established and administered by minorities for extension of

retirement benefits and that O.E. Order, 2003 is a beneficial one for payment of pension to the retirees. It is further contended that eligibility to grant

retirement benefits to the employees of minority institutions no more remains res integra in view of the decisions of this Court in Patras Soreng v.

State of Orissa, 1993 (II) OLR 272, as well as in Benedict Xalxo v. State of Orissa & others, OJC No. 5556 of 1993 disposed of on 17.01.1997. The

petitioners in both the above noted writ petitions were retired prior to 01.04.1997 and were allowed to receive pension. Thereby, contended that the

rejection order passed by the Inspector of Schools is an outcome of non-application of mind and as such hits by Articles 14, 21, 30(2) and 39(d) of the

Constitution of India.

4. Mr. B. Satpathy, learned Standing Counsel for School and Mass Education Department contended that since the institution itself is a minority

institution, Orissa Education Act is not applicable and more so referring to the impugned order contended that the Order, 2003, which was given effect

to from 01.04.2003 wherein Rule 29(1) provides retirement benefits under the said Order, 2003 to the employees of aided educational institution under

minority managed institution retiring on or after 01.04.1997 and accordingly employees retiring on or after 01.04.1997 shall be eligible to get the

pensionary benefits. Since the petitioner retired from service prior to 01.04.1997, i.e. to say on 28.02.1995, even under the revised rules the pensionary

benefits are not admissible to him. Thereby, opposite party no.3 is well justified in passing the order impugned dated 12.12.2005 in compliance of order

dated 12.03.2004 passed by this Court in W.P.(C) No. 10915 of 2003 and accordingly the writ petition is liable to be dismissed.

5. This Court heard Mr. A.K. Mishra-2, learned counsel for the petitioner and Mr. B. Satpathy, learned Standing Counsel for School and Mass

Education Department by virtual mode, and perused the record. Pleadings having been exchanged between the parties and with the consent of the

learned counsel for the parties, this writ petition is being disposed of finally at the stage of admission.

6. The facts, as delineated above, are not in dispute. The institution having been established by the Christian Minority is a fully aided educational

institution, as has been pleaded in the writ petition, which fact has not been disputed by way of filing counter affidavit. Therefore, employees of aided

educational institution are entitled to retirement benefits, as provided in the Rules, 1981. Rule-3 of the Rules, 1981, however, states that the same shall

apply, inter alia to the teaching staff, as was the petitioner, of such schools which come under the direct payment system. The proviso to that rule

permits the Government to apply the Rules to any other educational institution or category of institutions as may be specified by general or special

order. It is the requirement of the school to be under the â??direct payment systemâ? which has stood in the way of the petitioner in getting the

benefit under the Rules, inasmuch as no pleadings have been made to that extent by opposite party no.4 in its counter affidavit that the school in

question is not coming under the direct payment system.

7. The school in question admittedly is a fully aided minority educational institution. Before proceeding further, this Court is to examine the nature and

character of the institution from which the petitioner has retired from service. There is no dispute that the petitioner is continuing in an institution

belonging to a minority community. The word â??minorityâ?? has not been defined in the Constitution.

8. In 1928, the Motilal Nehru Report showed a prominent desire to afford protection to minorities, but did not define the expression.

9. In 1945, the Sapru Report also proposed, inter alia, a Minorities Commission but did not define minority.

But the Union Sub-Commission on Prevention of Discrimination and Protection of Minorities has defined â??minorityâ?? by an inclusive definition

which reads as follows:-

â??(i) The term â??minorityâ?? includes only those non-document groups in a population which possess and wish to preserve stable ethnic, religious

or linguistic traditions or characteristics markedly differentÂ from those of the rest of the population.

(ii) Such minorities should properly include a number of persons sufficient by themselves to preserve such traditions or characteristics; and

(iii) Such minorities must be loyal to the State of which they are nationals.â??

10. Section 2(c) of the National Commission for Minorities Act, 1992 defines the word â??minorityâ?? which reads as under:-

â??Minority, for the purpose of the Act, means a community notified as such by the Central Government.â??

The Government notified Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis) as minority communities on October 23, 1993. However, explanation

(ii) to Art.25(2)(b) of the Constitution still provides that in sub-clause (b) of Cl. (2) the reference to Hindus shall be construed as including a reference to persons

professing the Sikh, Jaina or Buddhist religion and the reference to Hindu religious institutions shall be construed accordingly.â??

11. In T.M.A. Pai Foundation v. State of Karnatak, (2002) 8 SCC 481, considering Article 30 of the Constitution of India, the apex Court held as

follows:-

â??The word â??minorityâ?? occurring in Article 30 is not defined in the Constitution, but literally it means â??a non-dominantâ?? group. It is a relative term

and is referred to represent the smaller two numbers, sections or group called â??majorityâ??. In that sense, there may be political minority, religious minority,

linguistic minority, etc.â??

12. In P.A. Inamdar v. State of Maharashtra, AIR 2005 SC 3226, the apex Court observed that the word â??minorityâ?? literally means â??a non-

dominantâ?? group.

13. Now, taking into consideration the above aspect, the â??minority educational institutionâ? has been defined under Rule-2(1)(f) of A.P.

Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Managements) Rules, 1993, which has been

taken into consideration in Government of A.P. v. K. Brahmanandam, (2008) 5 SCC 241, to mean any educational agency of which at least 2/3rd

members belong to a religious/linguistic minority.

14. In P.A. Inamdar v. State of Maharashtra, AIR 2005 SC 3226 : AIR 2005 SC 3226, the apex Court held as follows:-

â??So long as an institution retains its minority character by achieving and continuing to achieve its twin objectives, i.e., (i) to enable such minority to conserve

its religion and language and (ii) to give a thorough, good, general education to children belonging to such community, the institution would remain a

â??minority institutionâ?? under Article 30(1) of the Constitution.â??

15. The Mission Minority Primary School having satisfied the requirement, as mentioned above, is considered to be a minority educational institution,

which was running with full aid received from the Government. Therefore, Rule 9(1) of the Orissa Education (Recruitment and Conditions of Service

of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 (in short â??Rules, 1974â?) has stated, after its amendment in

1976, that every employee of an aided educational institution shall ordinarily be paid in the month following the month to which the claim relates

directly by the Government or by any Officer or by any agency authorized by Government. The position, therefore, is that after the aforesaid 1974

Rules were amended in 1976, a member of the staff of an aided educational institution receives his salary directly from the Government, and, as such,

such a school has to be regarded as under the direct payment system of which Rule 3 of the Rules speaks of.

16. It may be that before the aforesaid 1974 Rules were amended in 1976, there used to be a distinction between schools receiving aid under the

direct payment system and otherwise, which would appear to be so, inter alia, from what has been stated in Government Resolution No. 250011/EYS

dated 13.07.1978 which has said something about the direct payment system being not applicable to educational institutions run by the Christian

minority community. The 1976 amendment, to which reference has been made, however, leaves no manner of doubt that a school which is fully aided,

as is the one at hand, has to be regarded as one under the direct payment system, of which mention has been made in Rule-3 of the Rules.

17. As to the aforesaid Government resolution, a distinction can be made between minority institutions and non-minority institutions as regards the

direct payment system, the same cannot override the statutory rules of 1974 as amended in 1976, because of which that resolution and for that matter

such other resolutions could not and did not hold the field.

18. In view of such position, Rule-3 of the Rules, 1981 and Rule-9 of Rules, 1974, as amended in 1976, the members of the staff of an aided

educational institution receiving salary directly from the Government are to be regarded as one under the direct payment system. Thereby, the resolution dated 13.07.1978 stating that Christian minority schools are not coming under the direct payment system cannot override the Rules, 1974, as amended in 1976.

19. The contention raised that since the petitioner retired from service on 28.02.1995, in view of the provisions contained in the Order, 2003, he is not entitled to get retiral benefit as the cutoff date has been fixed as 01.04.1997 entitling the employees of the minority institution to get their retirement benefit. The said Rule shall be applicable to the persons those who retired after 01.04.1997 and, as such, the Order, 2003 has come to force in 2003 after the retirement of the petitioner, i.e., on 28.02.1995 and, therefore, by the time the petitioner retired from service on 28.02.1995, the Rules which were governing the field are applicable to him. This question has no more remained res integra, in view of the judgment passed by this Court in Patras Soreng (supra) and the said judgment was challenged before the apex Court by the State by preferring SLP No. 14506 of 1994 (State of Orissa v. Patras Soreng), which was dismissed by the apex Court. Thereby, the judgment passed by this Court in Patras Soreng (supra) has reached its finality. Similarly, in the case of Benedict Xalxo v. State of Orissa & others (OJC No. 5556 of 1993 disposed of on 17.01.1997), this Court has taken similar view that of Patras Soreng (supra) and in both the cases the petitioners were employees of minority institution. Thereby, the ratios decided in those cases are squarely applicable to the present case and the petitioner cannot be discriminated on any count.

20. In that view of the matter, the order dated 12.12.2005 passed by the Inspector of Schools, Sundargarh Circle, Sundargarh in Annexure-2 rejecting the claim of the petitioner to grant retirement benefits cannot sustain in the eye of law and the same is liable to be quashed and is hereby quashed. The opposite party no.3 is directed to pay pension and other retirement benefits as due and admissible to the petitioner w.e.f. 01.03.1995, as he retired from service on attaining the age of superannuation w.e.f. 28.02.1995, by making proper calculation. The entire exercise shall be completed within a period of four months from the date of communication of this judgment.

21. In the result, the writ petition is allowed. No order as to costs.