

(1998) 08 OHC CK 0041
In the Orissa High Court
Case No : O.J.C. No. 5158 of 1996

Trilochan Jena and Another	Vs	APPELLANT
State of Orissa and Others		RESPONDENT

Date of Decision : 03-08-1998

Acts Referred:

Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 — Rule 9
Orissa Education Act, 1969 — Section 3, 7(C)

Citation : (1998) 08 OHC CK 0041

Hon'ble Judges : Susanta Chatterji, J; D.M. Patnaik, J

Bench : Division Bench

Advocate : K.K. Swain, P.N. Mohanty, M.R. Naik and M.K. Sahoo, for the Appellant;

Judgement

Susanta Chatterji, J.—The present writ petition has been filed by one Trilochan Jena and another Sudarsan Sahoo praying the following reliefs:

...A writ of mandamus be issued commanding the opp. parties, particularly to opposite party No. 4 to release the salary components of the Petitioner i. e. from 1-3-1993 to 28-2-1995 and from 1-7-1995 to 28-2-1996 in terms of Rule 9 of the Orissa Education (Recruitment etc.) Rules, 1974 within the time to be stipulated by this Hon'ble Court; and any other order/orders, writ/writs, direction/directions be issued so as to give complete relief to the Petitioner....

2. It is stated that the Petitioners, who are the teaching staff of an aided M.E. School. have challenged the action of the opposite parties in not releasing their monthly salary from 1-3-1993 to 28-2-1995 and from 1-7-1995 to 28-2-1996 in violation of the provisions of Rule 9 of the Orissa Education (Recruitment Etc.) Rules, 1974.

3. It is further stated that Khatisahi M.E. School under Puri Education District was established in the year 1990 and got recognition by the prescribed authority in 1991. The said school became eligible to receive minimum grant-in-aid from the

State Government w.e.f. 1-6-1992 and full salary cost w.e.f. 1-5-1995. The said school, therefore, is an aided Educational Institution within the meaning of Section 3(b) of the Orissa Education Act, 1969 and as such the said school and its employees are governed by the various provisions of the said Act of 1969 and the Rules framed thereunder.

4. It is placed on record that Petitioner No. 1 was appointed as Headmaster of the M.E. School in question w.e.f. 28-6-1990 and he has been discharging his duties in the said capacity from the date of his joining. Petitioner No. 2 was appointed as an Assistant Teacher of the school w.e.f. 16-3-1992 and he has been discharging his duties peacefully. It is further placed on record that when the school in question became eligible to receive the minimum grant-in-aid from the State Government w.e.f. 1-6-1992, the Headmaster of the School was called upon to submit the staff position and connected records for approval of the services of the staff. The D. L of Schools on receipt of the staff position and after verification of necessary records vide Office Order dated 13-7-1992 approved the services of the staff of the school. It is also stated that after approval of the services of the staff, the Headmaster of the School submitted pay bills for release of the salary components w. e. f. 1-6-1992. But unfortunately the arrear salary for the period from 1-3-1993 to 28-2-1995 and from 1-7-1995 to 28-2-1996 have not been released in favour of the Petitioners, although they are entitled to the same. Stating all these facts in details prayer has been made seeking the relief which has already been indicated above.

5. The writ petition is opposed by opposite party No. 4 by filing an counter affidavit. It is disclosed, inter alia, that u/s 7-C of the Orissa Education Act, 1969 which came into the Statute Book w. e. f. 1-6-1994. a set of orders were framed called "The Orissa (Payments of Grant-in-Aid to the High Schools and Upper Primary Schools) Order, 1994. Under the new provisions the recognised schools, which were not admitted to the grant-in-aid fold were to be governed under the new provisions of law only w. e. f. 1-6-1994. Khati Sahi U.P. (M.E.) School although recognised w. e. f. 1991-92 vide Order dated 27-11 -1991 passed by the Director of Elementary Education, Orissa, was not admitted to the grant-in-aid fold at any time before 1-6-1994 in terms of Section 7-C of the Orissa Education Act, 1969 and Grant-in-aid Orders of 1994. However, wrongly payments for few months were released in favour of three schools including Khati Sani U.P. (M.E.). School of Puri Education district by the then D.I. of Schools. These three schools were only entitled to get grant-in-aid w. e. f. 1-6-1994 on the ground of over-riding provisions of Section 7-C of the Orissa Education Act, 1969 and the Grant-in-aid Orders of 1994. In the above premises the payments which were wrongly made to three schools were asked to be taken refund and already there has been recovery of wrong payments from two schools but there has been no recovery from Khati Sahi U.P.(M.E.) School. The Petitioners have approached this Court resisting the recovery of wrong payments. All other allegations of the Petitioners have been controverted.

6. It is also clarified that the Petitioners have claimed grant-in-aid w. e. f. 1-6-1992 as the School has been recognised in 1991. But the Government have sanctioned grant-in-aid for the said school w. e. f. 1-6-1994 as the Government is not bound to pay grant-in-aid as per the demand of the Managing Committee in accordance with present Grand-in-aid Order, 1994. The grant-in-aid paid to the Petitioners school has not been adjusted as the Headmaster of the School has not submitted the bills for the period from 1-6-1994 to 28-2-1995 showing adjustment.

7. Regard being had to the averments made in the writ petition as well as counter affidavit, we are of the view that no grant-in-aid can be claimed as a matter of right. The Full Bench decision of this Court reported in Laxmidhar Pati and Others Vs. State of Orissa and Others, is clear that no grant-in-aid can be asked as a matter of course but if under similar circumstance other schools have been received grant-in-aid and if there is discrimination, the Petitioners can ventilate their grievances in accordance with law. In the counter affidavit it is disclosed that from the Petitioners school was entitled to receive grant-in-aid. If inadvertently any amount has been released earlier, the same cannot be taken into consideration as one wrong cannot ratify another wrong. We dispose of this writ petition holding, inter alia, that if the amount has been received by the Petitioners bona fide, there is no scope for refund of the same and the opposite parties should not take any step to realise the same and should certainly consider the claim of the Petitioners if any other school in the similar circumstances has received grant-in-aid earlier to 1-6-1994. If there is no discrimination the claim made by the Petitioner in the present writ petition cannot be sustained. This exercise should be completed within a period of three months from the date of communication of the order. There would be no order as to costs.

D.M. Patnaik. J.

8. I agree.

9. Writ petition disposed of.