

**(2004) 03 OHC CK 0037**

**In the Orissa High Court**

**Case No :** Writ Petition (Civil) No. 11514 of 2003

Umakanta Sahoo

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

**Date of Decision :** 01-03-2004

**Acts Referred:**

**Citation :** (2004) 97 CLT 709

**Hon'ble Judges :** Pradip Mohanty, J; P.K. Mohanty, J

**Bench :** Division Bench

**Advocate :** A.C. Mohanty, G.N. Rout and D. Pattnaik, for the Appellant;  
Additional Government Advocate for Opp. Party No. 1, S.K. Misra, D.P. Nanda,  
P.K. Mohapatra and M.K. Pati for Opp. Parties 2 to 4, J.K. Rath, S.N. Rath, P.K.  
Rout, C.K. Rajguru and D.N. Rath for Opp. Party No. 5, for the Respondent

## Judgement

P.K. Mohanty, J.—The petitioner has approached this Court with the following prayer :

"Therefore, it is prayed that this Hon''ble Court would graciously be pleased to issue Rule Nisi calling upon the opposite parties to show cause as to why the order at Annexure- 6 shall not be quashed and if the opposite parties failed to show cause or show insufficient or false cause make the Rule Nisi absolute and allow this writ petition with cost and any other relief or reliefs this Hon''ble Court deems fit and proper and for which act of your kindness the petitioner shall as in duty bound ever pray."

2. The petitioner claims to have been working as a part time Lecturer in I.T.T. Choudwar from 3.1.7.1998 and lastly by order dated 2.7.2003 in Memo No. 2058, the petitioner was appointed for a period of one year on contractual basis. On the apprehension that the Principal of the College may terminate the services of the petitioner pursuant to the order of the State Administrative Tribunal in Original Application No. 1483 (C) of 2002 dated 17.7.2003, filed by Opposite Party No. 5, the petitioner has approached this Court. -

3. The undisputed fact of the case is that the petitioner was appointed as a part time teaching associate for a term of one year with effect from 1.9.1999 on contract basis. On the last spell he was engaged as a teaching associate (Chemistry) with a consolidated remuneration of Rs. 5,000/- per month for a period of one year or till the vacant post of Lecturer is filled up on regular basis, whichever ever is earlier and subject to terms and conditions as laid in Annexure C/2 to the counter affidavit. The petitioner was appointed in the leave vacancy of opposite Party No. 5, who was granted leave to prosecute his studies and undergoing training under BOYSCAST Fellowship Scheme in U.S.A. The engagement of the petitioner initially was on part time basis to conduct classes of Degree and Diploma Stream and the last spell of engagement was made, as a teaching associate on the basis of an agreement executed between the petitioner and the Management. The appointment was on a consolidated remuneration of Rs. 5,000/- per month subject to the terms and conditions as laid in Annexure-C/4 and it was for one year or till the vacant post of Lecturer is filled up on regular basis. Under Clause 2 of the agreement, the appointment can be terminated by giving one month's notice-without assigning any reason. Opposite Party No. 5 on return submitted his joining report on 1.2.2002, but that was not accepted by the Principal, for which he approached the Director, who in turn directed the Principal to accept the joining report of the petitioner on 16.7.2000. That having not been complied with, Opposite Party No.-5 approached the Orissa Administrative Tribunal in the aforesaid Original Application No. 1483 (C) of 2002. The learned Tribunal, by order dated 17.7.2003, disposed of the application with a direction to the respondents therein to accept the joining report within 15 days from the date of receipt of the order and to permit him to discharge his duties. The Direction was given on the basis of the observation that even though a departmental proceeding has been started against him for unauthorised absence beyond the period of leave granted in his favour, till the service is not terminated there was no reason ,to refuse acceptance of the joining report. The present petitioner was not a party to the proceeding before the Tribunal. According to the petitioner, a proceeding having been started against Opposite Party No. 5 by Memorandum dated 29th July, 2002, copy of which is Annexure-4, there was no occasion nor the Tribunal was justified in directing acceptance of his joining report.

4. Be that as it may, the petitioner was appointed on a consolidated remuneration of Rs. 5,000/- per month as a teaching associate in Chemistry and he executed an agreement prescribed by the Institution on the terms and conditions contained therein. The engagement was for one year or till the vacant post of Lecturer was filled up on regular basis and the appointment was terminable by giving one month notice without assigning any reason. Under Clause 7, the teaching associate would have no right or claim for regular appointment to a regular post. However, the agreement and the engagement of the petitioner has been disputed in the counter affidavit filed by the Opposite Party No. 4, the present Principal in charge of the Institute on the ground that

the Principal had no right to engage the petitioner. If the petitioner was engaged for a term of one year or till the post is filled up, when the regular incumbent of the post Opposite Party No. 5 joins the post, he is to make room and vacate the post. The right is governed by the contract and the petitioner cannot claim anything more than what has been agreed to by him.

5. In such view of the matter, we do not find any reason either to interfere in the impugned order of the Orissa Administrative Tribunal or to accept the claim of the petitioner for continuance in the post. However, the petitioner had been continuing since 1999 and discharging his duties either as a part-time Lecturer or as a Teaching Associate on certain terms and conditions. According to the Opposite Parties, by virtue of the order of the learned Tribunal, the Opposite Party No. 5 is also continuing in the same post and in view of the order of status quo dated 21.11.2003, the petitioner is also continuing in the said post and in the peculiar circumstances, some classes have been allotted and distributed between the two. Under the agreement, the term of the petitioner expires on 30th June, 2004 and otherwise also a month's notice in Mew thereof is required to be given as per the terms contemplated in the agreement. The petitioner thus does not have a right to continue beyond the period stipulated in the office order in Annexure - C/4.

6. In such view of the matter, and in the peculiar fact situation of the case, we dispose of the writ petition with the observation that the petitioner, who has been appointed and discharging his duties as a Teaching Associate, be allowed to complete his term in accordance with the terms and conditions laid in Annexure-C/2 to the counter affidavit till 30th June, 2004, on which date, his services shall stand terminated in terms of the said agreement and he shall be relieved of his duties. It goes without saying that he shall be paid the consolidated remuneration for the period he serves. We clarify further that the Departmental proceeding as against the Opposite Party No. 5, is to proceed in accordance with law on which we express no opinion.

Pradip Mohanty, J.

7. I agree.