1998 (I) OLR — 567 SUSANTA CHATTERJI AND R. K. DASH, JJ.

Original Jurisdiction Case No. 5235 of 1994

In the matter of an application under Articles 226 of the Constitution of India.

Jogeswar Naik

Petitioner

Versus

State of Orissa and others

Opp. Parties

For Petitioner

Mr. J. K. Rath

For Opp. parties

Addl. Govt. Advocate

I and 2

For Opp. party 3

Mr. S. C. Misra

ORISSA EDUCATION (AMENDMENT) ACT, 1994 — Sec. 7-c(4) — Effective from 4.7.1994 — It supersedes all previous Grant-in-aid principles — Grant-in-aid cannot be claimed as a matter of right which has been decided by a Full Bench of Orissa High Court — The only exception has been made that there should not be discrimination and relief should not be granted arbitrarily to the prejudice of a person concerned — The Grant-in-aid principles may be changed from time to time — The Rules and procedures are obviously meant for substantive justice — Under Section 7-c(4) of the amendment Act the cut-off date is 4.7.1994 — In the facts and circumstances of the case the petitioner is to get relief under Sec. 7-c(4) of the Act — He can ask for relief from the date of adjustment against direct payment post — The previous period cannot be reckoned.

(Paras - 8 10 9)

Decided on 13th May, 1998.

Nacional or effective

AND SOUTH IN THOSE OF A STATE OF

JUDGMENT

service of New York and Health and the control of New York and American that a service of New York and American that a service of the College of the American that a service of the College of the Colleg

prays that the Hon'ble Court be graciously pleased to issue a writ in the nature of mandamus or any other appropriate writ direction or order directing the opposite parties to pay the petitioner his salary for the period he has worked as Lecturer in Jawaharlal College, Patnagarh taking into account the salary received by the petitioner at Nayagarh College and accordingly fix the pay of the petitioner in the scale of pay of Rs. 700-1600/- and thereafter in the revised scales of pay of Rs. 2200-4000/- and suitably fix the pay of the petitioner in opposite party No. 3 college and to pay the petitioner his arrear dues taking into consideration such fixation within a stipulated period as deemed fit and proper in the facts and circumstances of the case.

Further the Hon'ble Court be pleased to direct the opposite parties to pay the petitioner immediately in the scale of pay of Rs. 2200-4000/- without any further delay since the counterparts of the petitioner as well as persons equally circumstanced like that of the petitioner are in receipt of such scale of pay;"

2. The grievance of the petitioner is that though he was appointed as a Lecturer on 14.9.1982 and his appointment was validated and regularised, yet he is not getting the benefit of the scale of pay prescribed by the U.G.C. as also other financial benefits although Lecturers appointed like the petitioner and equally circumstanced including those identically placed in Government establishments are all enjoying such benefits.

as a Lecturer in Logic and Philosophy in Nayagarh College in the scale of pay of Rs 525-1300.00 in the fourth post of the college and the appointment was against a direct payment post. His appointment was duly approved by the Director of Higher Education. Orissa, opposite party No. 2, vide his Office Order No. 48341 dated 31 10 1983. The petitioner was paid and he continued in the post with annual increments of pay till 8 6 1087.

Se del adi

15

unt Sta dud pet aga

due that U.C

pos

rate alon yet i

the c man were servi

the p by hi be fi

was s
as a
joine
oppos
or till
a dire
conse
of the
Subse
Bodye
ad hoe
post o

Schen

and the transfer of the production of the Recommendation of the indeed and transfer of the state of the production of the Recommendation of the indeed and state and instructions were permitted to commend on a such a position of the state Government brought a Validation Act so as to validate such appointments the forest was so continuing and/or non-sponsoring of candidates. While the petitioner was so continuing as a Lecturer, he was transferred and adjusted against a direct payment post in Banpur College where he is presently posted and his pay was fixed at Rs. 2000.00 in the scale of Rs. 2000.3500/- on 12.11.1992. He has got his increment on 1.11.1993 and was due to get his next increment with effect from 1.11.1994. It was averted that the Lecturers in aided colleges appointed prior to 1989 were allowed UGC scale of pay of Rs. 700-1600/- and then the revised scale at the rate of Rs. 2200-4000/- with effect from 1.1.1986. The Lecturers appointed along with the petitioner though were paid in State Government scale, yet they have been given U.G.C. revised scale of pay.

5. It is also submitted that this Court has held in a number of cases that once the services of an employee is validated with effect from the date of his initial appointment, even if intermittently he was put to a management post, the continuity of his service as also pay protection were to be granted to him and his pay is to be fixed accordingly. The services of the petitioner having been validated with effect from 14.9.1982, the petitioner is entitled to get salary for the period of service rendered by him at Jawaharlal College at Patnagarh and accordingly his pay was to be fixed at the Ranpur College.

6. It is the specific case of the opposite parties that the petitioner was selected by the Governing Body of Nayagarh College for appointment as a Lecturer in Logic and Philosophy on ad hoc basis. The petitioner joined his duty on 14.9.1982. His ad hoc appointment was approved by opposite party No. 2 for a period of six months with effect from 14.9.1982 at till the joining of the original incumbent on his return from leave against adjrect payment post (leave vacancy) as per Annexure-1 to the writ petition. Consequent upon joining of the incumbent who was on leave the service of the petitioner was terminated with effect from 31.5.1987 afternoon. Subjectionally the petitioner's case was recommended to the Governing and hoc basis for a period of six months as fresh entrant against the second Scheine. As the petitioner was facing retrenchment in his previous station

processes a second of the seco

7. It is submitted that further considering the due seniority in the panel the petitioner was adjusted against a full direct payment post in Ranpur College. He joined on 12.11.1992 and he has been allowed to draw his salary under direct payment scheme at the initial scale of pay with other allowances from the date of his joining in Ranpur College. The petitioner is not entitled to any increment and protection of pay as he was appointed against management post prior to joining in Ranpur College and his service was regularised as per Grant-in-Aid Rules.

Acharya (O J.C. No. 6654/91) was disposed of by this Court on 21.4.1992 but the Government introduced the Orissa Education (Amendment) Act. 1994 with effect from 4.7.1994 superseding all previous Grant-in-Aid Principles. Section 7-c(4) of the Amendment Act has been relied upon by the opposite parties. It is submitted that as per the Amended Act, the petitioner is not entitled to the relief as prayed for

Grant-in aid cannot be claimed as a matter of right. The only exception has been made that there should not be any discrimination and the relief should not be granted arbitrarily to the prejudice of a person concerned. The Grant-in-aid principles may be changed from time to time. The Rules and the procedures are obviously meant for substantive justice. If the principle as envisaged under Section 7-c(4) has superseded the previous instructions and/or principles having a cut off date with effect from 4.7 1994 the petitioner cannot make any grievance. The petitioner is entitled to get the tellef strictly in terms of Section 7-c(4) and his claim for grant-in set prior to 12.11.1992 is not appreciated. He can at heat ack for the relief from the date of adjustment against the direct payment post in Rangat

14

Bh:

Sta

Sec. Proc

meel vires

Noti

the .

College The previous period cannot be reckoned under any stretch of magination. With such observations and directions the writ petition is disposed of.

There would be no order as to costs.

R K. DASH, J.

I agree.

Petition disposed of.