

HIGH COURT OF ORISSA: CUTTACK

WP(C) No.9524 of 2018

A.F.R.

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

Lata Naik Petitioner

Versus

State of Odisha & others Opp. Parties

For Petitioner ... Mr. Sameer Kumar Das, Adv.

For Opp. Parties ... Mr. Bikram Senapati, AGA

PRESENT:

THE HONOURABLE DR. JUSTICE A.K.RATH

Date of hearing: 21.08.2018 : Date of judgment: 21.08.2018

Dr. A.K.Rath, J Justice R.C. Patnaik (as he then was) in Narayan Sahoo and others v. State of Orissa and others, 1989 (II) OLR 394 while classifying the litigants proclaimed:

“By and large, common man is not litigation-minded nor he is averse to litigation. Litigation is not his pursuit, his hobby. Sometimes, however, he inherits litigation and willy-nilly pursues it. Often, however, a litigation is thrust on him...”

2. The petitioner belongs to the last category. The petitioner is functioning as Lecturer in Botany in Dalmia Degree College, Rajgangpur in the district of Sundargarh.

3. The brief facts of the case are that the Government of Odisha, in its Department of Higher Education, in exercise of the

power conferred by sub-section (4) of Section 7-C of the Odisha Education Act, 1969, has issued the order dated 22nd October, 2017 to regulate payment of Grant-in-Aid to Non-Government Educational Institutions (Non-Government Colleges, Junior Colleges and Higher Secondary Schools), namely, the Odisha (Aided Colleges, Aided Junior Colleges and Aided Higher Secondary Schools) Grant-in-Aid Order, 2017 ('Grant-in-Aid Order, 2017'). Clause-3 thereof deals with entitlement of the employees. On the same day i.e. on 22.10.2017 another order was issued by the Government, vide Annexure-4, prescribing the following terms and conditions;

"The employees of Non-Government Aided Colleges who are governed under the provisions of Grant-in-Aid Order 2008, Grant-in-Aid Order 2009 or Grant-in-Aid Order, 2009 (for Upashastri & Shastri Colleges) as on 31st December, 2017 and who are willing for the negotiated settlement may follow the modalities in the Annexure-A."

Annexure-A of the Modalities provides that the employee has to submit an affidavit in non-judicial stamp paper of value Rs.10/- with due notarization to the effect that he has no court case pending in any legal forum/have withdrawn the said case (as in Annexure-B). The format for affidavit, Annexure-B, stipulates that the employee has to swear an affidavit stating that he is desirous of availing the benefit of negotiated settlement offered by the Government as per the Grant-in-Aid Order, 2017; he has no court case pending before any legal forum to avail Grant-in-Aid as per Grant-in-Aid Order, 1994 or under any special provisions of any Act and Rules made for the purpose; that he has withdrawn the case bearing no.GIA/WPC/SLP or any other (specify) before the learned Tribunal/High Court/Supreme Court. Added to it, if at any

subsequent stage anything is found incorrect/false in connection with the incumbent concerned, the benefit of Grant-in-Aid as per the Grant-in-Aid Order, 2017 shall be withdrawn. He/She shall also be liable to refund the amount received by him/her within a stipulated time and in case of failure to refund, the same shall be recovered as per the provisions of Odisha Public Demands Recovery Act, 1962.

4. The grievance of the petitioner is that the terms and conditions embodied in the order dated 22.10.2017 more particularly clause-2 of Modalities, format for affidavit requiring the employee that he has no Court case pending before any legal forum to avail Grant-in-Aid as per Grant-in-Aid Order, 1994 or under any special provisions of any Act and Rules made for the purpose or that he has withdrawn the case bearing no. GIA/W.P.C./SLP or any other (specify) before the learned Tribunal/High Court/Apex Court and the declaration that if at any subsequent stage anything is found incorrect/false in connection with the incumbent concerned, the benefit of Grant-in-Aid as per the Grant-in-Aid Order, 2017 shall be withdrawn. He/She shall also be liable to refund the amount received by him/her within a stipulated time and in case of failure to refund, the same shall be recovered as per the provisions of Odisha Public Demands Recovery Act, 1962, are anathema to the ethos and philosophy embodied in the Constitution. The same are violative of Articles 14 and 21 of the Constitution.

5. A counter affidavit has been filed by the opposite parties stating therein that the State Government, in exercise of powers conferred by sub-section (4) of Sec. 7-C of the Orissa Education Act, 1969 (Odisha Act of 15 of 1969) introduced Grant-in-aid