

HIGH COURT OF ORISSA : CUTTACK.

ORIGINAL JURISDICTION CASE NO. 12385 OF 1997
(Decided on April 10, 2001)

In the matter of an application under Articles 226 and 227
of the Constitution of India.

Nabughana Baidya

Petitioner

Versus

State of Orissa and others

Opp. Parties.

For Petitioner : M/s. B. Routray, B. Dash,
S. S. Kanungo, and
D. K. Mohapatra.

For Opp. parties : Addl. Govt. Advocate
(for O.P.s. 1 & 2)
M/s. H. Tripathy, B. K. Singh,
H. B. Das, B. Mishra,
S. Mohapatra and
C. Panigrahi

P R E S E N T :

THE HONOURABLE SHRI JUSTICE L. MOHAPATRA

L. Mohapatra, J. The petitioner in this writ petition has prayed for a direction to the opposite parties to approve his appointment as Lecturer in Economics against the first post and for payment of grant-in-aid with effect from the date the college became eligible to receive the same i.e. from 1.6.1994.

2. The case of the petitioner is that Womens' College, Japakuda was established in the year 1987 and in the year 1990 the college got Government concurrence. On 12.3.1989 the petitioner was appointed as Lecturer in Economics against the first post and he joined the post on 3.4.1989. On 8.9.1990 the State Government granted provisional concurrence for opening of subjects like,

Sociology, Education and Economics for appearing in the examination conducted by the Council of Higher Secondary Education during the session 1990-91 with permission to the batch of students admitted into the three subjects during the session 1989-90. On 30.8.1994 proposal was submitted before the Director of Higher Education in the prescribed format by the Governing Body of the college for approval of appointment of the staff as per the grant-in-aid order 1994. The name of the petitioner was also recommended against the first post of Lecturer in Economics for the purpose of approval. On 15.3.1997 notification was issued by the State Government declaring the college as an aided educational institution for +2 wing with effect from 1.6.1994. The Director of Higher Education approved the appointment of other staff of the college by order dated 8.4.1997 in Annexure-4 excluding the petitioner and therefore, this writ application has been filed by the petitioner for the relief as mentioned above.

3. A counter affidavit has been filed on behalf of opposite party no.2. It is submitted in the counter that concurrence for +2 and +3 degree courses in Arts in respect of the College where the petitioner is working was granted with the stipulation that management is not entitled to receive any financial assistance in the shape of recurring and nonrecurring grants from the Government. Pursuant to the grant-in-order 1994 which came into force with effect from 6.12.1994 incorporating the yardstick for the purpose of sanction of grant-in-aid to teaching and

non-teaching staff of the college, the college authorities submitted a proposal for sanction of grant-in-aid with effect from 1.6.1994 in favour of the teaching and non-teaching staff who had completed 5 years or more by 1st June, 1994 from the date of Government concurrence or recognition and affiliation of the Council were obtained. So far as the petitioner is concerned, concurrence having been granted for the academic session 1990-91 in the subject of Economics, he had not completed 5 years as on 1.6.1994 and therefore, his case was not considered.

4. Sri B. Routray, learned counsel appearing for the petitioner submitted that the college where the petitioner is working, is admittedly an Women's College and got concurrence from the State Government from the academic session 1989-90. So far as the subject in Economics is concerned, the batch of students admitted in the subject during the academic session 1989-90 were allowed to appear in the examination conducted by the Council of Higher Secondary Education and therefore, there was no reason for not granting concurrence to Economics for the academic session 1989-90. He further submitted that the college being a Women's College, three years period from the date of concurrence has to be calculated for the purpose of approval as provided in the grant-in-order, 1994. Therefore, by 1.6.1994 the petitioner having completed three years of service as well as concurrence/recognition having been granted for more three years, there was no justification in not approving the appointment of the petitioner.

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5. Learned Additional Government Advocate though does not dispute that for a Women's College, 3 + 5 + 7 principle is to be adopted, according to him, the subject in Economics being an optional subject and students appearing in the said subject being lowest, the petitioner may not be entitled to the relief claimed. Though such argument was advanced by the learned Additional Government Advocate in course of hearing, no such ground has been taken in the counter or in the reply to the rejoinder filed on behalf of the petitioner. The only ground taken in the counter is that concurrence in the subject of Economics having been granted from the academic session 1990-91, the petitioner had not completed 5 years as on 1.6.1994 and therefore was not considered for approval. (In this connection, reference be made to clause 4 of the grant-in-order 1994. The said clause in the grant-in-order, 1994 has divided non-Government educational institutions into different categories. Sri Routray referring to clause 4.B submitted that the Women's College where the petitioner is working comes under the said category. As per the said clause, the colleges imparting instructions in and presenting regular candidates for the B.A., B.Sc. or B.Com examinations with or without Honours of any of the Universities which have been functioning regularly for five years or more by the 1st June, 1994 after obtaining Government concurrence, recognition and affiliation of any University, or for three years or more if such institution is located in an educationally backward district, which has not been

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notified as an aided educational institution and has not received grant-in-aid from Government for any post, shall be entitled to the relief granted by the State Government under the said grant-in-order 1994.] Sri Routray further submitted that in respect of Women's College, the qualifying period of 5 years is not applicable and the qualifying period of three years is to be calculated.

6. The objection taken by the learned Additional Government Advocate that Economics being an optional subject and in comparison to other optional subjects lowest number of students having appeared in the examination in Economics, no approval order can be granted so far as petitioner is concerned. Though this objection has not been taken in the counter and the petitioner has not been given any opportunity to meet the same, I think it proper to direct the Director to make an enquiry in this regard. I, therefore, hold that so far as the petitioner's College is concerned, the same being a Women's College, 3 + 5 + 7 principle is to be adopted and the qualifying period of three years has to be calculated from the date of concurrence. If the students appearing in Economics are not the lowest in comparison to other optional subjects, the case of the petitioner shall be considered for the purpose of approval and the same shall be approved. In the event the appointment of the petitioner is approved, he shall be given all the financial benefits flowing such approval.

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7. The writ application is accordingly disposed of. No cost.

ORISSA HIGH COURT, CUTTACK
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