

with law.

7. In the result, the revision petition is allowed, the order of the learned Executive Magistrate, Jaipur dated 12-11-1991 in Criminal Misc. Case No. 48 of 1991 is set aside and the case is remitted to him for fresh disposal in accordance with law after giving opportunity of hearing to the parties. The learned Magistrate will consider the question of maintainability of the proceeding keeping in view the principles enunciated in this judgment and since long time has elapsed from the date of passing of the preliminary order, he will also consider the question of existence of apprehension of breach of peace and necessity for further continuance of the proceeding.

Revision allowed.

1993 (II) OLR—272

THE CHIEF JUSTICE AND R. K. PATRA, JJ.

O. J. C. No. 4391 of 1990

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

Patras Soreng

Petitioner

State of Orissa and others

Versus

Opp. Parties

For Petitioner S. Shri B. M. Patnaik, R. N. Mishra & P. Mishra

For Opp. parties Govt. Advocate and S. Shri B. K. Beura, A. C. Beura, S. Saiti, U. C. Behura, Bijoy Kr. Beura and Ignace Majhi

ORISSA AIDED EDUCATIONAL INSTITUTIONS EMPLOYEES RETIREMENT BENEFIT RULES 1981—Rule 3 read with Orissa Education (Recruitment and Conditions of Service of Teacher's and Members of the Staff of Aided Educational Institutions) Rules, 1974 (as amended in 1976)—According to the amended Rule, a member of the staff of an aided educational institution receives salary directly from Govt.—Such school has to be regarded as under "the direct payment system"—Govt. Resolution No. 250011/dated 13-7-1978

Decided on 18th June, 1993.

stating about Christian minority community school not coming under direct payment system cannot override the Rule as amended in 1976.

(Para. 2)

JUDGMENT

B. L. HANSARIA, C. J.—The petitioner had been a teacher in High School as a Physical Education Teacher from 1950 by force of an order of appointment dated 22-6-1950 as at Annexure 1. After joining the school, he went for training and on completion of the same he was accepted as a trained Physical Education Teacher with effect from 1-7-1953 to be confirmed in that post with effect from 5-9-1964. He served the school till the date of superannuation, which was 60 years, when date fell on 19-10-1990, and he came to retire with effect from 31-10-1990. He prayed for grant of retirement benefits like pension and gratuity but the same not having been paid, the present application has been filed.

2. Before we proceed to examine the merit of the case of the petitioner relating to his entitlement to the aforesaid retirement benefits, it may be stated that Hamirpur High School is a minority institution having been established by Christian Minority, Catholic Diocese of Sambalpur/Bendargarh. Even so, it is an aided institution and fully aided at that, as stated in paragraph 2 of the petition, which averment has been replied in the counter affidavit filed by the State and the Inspector of Schools (opp. parties 1 and 2) by stating in paragraph 3 that the school is an aided school but not one coming under "direct payment system". As to what is the relevance of this, we shall advert later.

3. Employees of aided educational institutions are entitled to retirement benefits as provided in the Orissa Aided Educational Institutions' Employees' Retirement Benefit Rules, 1981 (hereinafter "the Rules"). Rule 3 of the Rules, however, states that the same shall apply, *inter alia* to the teaching staff, as was the petitioner, of such schools which come under the "direct payment system". The proviso to that rule permits the Government to apply the Rules to any other educational institution or category of institutions as may be specified by general or special order. It is the requirement of the school to be under the "direct payment system" which has stood in the way of the petitioner in getting the benefit under the Rules inasmuch as the case of opp. parties 1 and 2, as already noted, is that the school in question does not come under the direct payment system. It is because of this that the vires of Rule 3 have been assailed in this petition, *inter alia*, on the ground that it is discriminatory. As, however, we are satisfied that despite what has been

to be in rule by the petitioner is entitled to the benefits under the Rules, we are not addressing ourselves on the question of validity of Rule 3 on the ground that it is discriminatory.

4. We have taken the aforesaid view because the school in question is admittedly fully aided and Rule 9 (1) of the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 has stated, after its amendment in 1976, that every employee of an aided educational institution shall ordinarily be paid in the month following the month to which the claim relates "directly by the Government or by any Officer or by any Agency authorised by Government". The position, therefore, is that after the aforesaid 1974 Rules were amended in 1976, a member of the staff of an aided educational institution receives his salary directly from the Government, and, as such, such a school has to be regarded as under 'the direct payment system' of which Rule 3 of the Rules speaks of. It may be that before the aforesaid 1974 Rules were amended in 1976, there used to be a distinction between schools receiving aid under the direct payment system and otherwise, which would appear to be so, *inter alia*, from what has been stated in Government Resolution No. 250011/EYS dated 13-7-1978 which has said something about the direct payment system being not applicable to educational institutions run by the Christian minority community. The 1976 amendment, to which we have referred earlier, however, leaves no manner of doubt in our mind that a school which is fully aided, as is the one at hand, has to be regarded as one under the "direct payment system" of which mention has been made in Rule 3 of the Rules. As to the aforesaid Government Resolution, we would say that though this seeks to make a distinction between minority institutions and non-minority institutions as regards the direct payment system, the same cannot override the statutory rules of 1974 as amended in 1976, because of which that resolution and for that matter such other resolutions could not and did not hold the field.

5. This being the position, the petitioner is entitled to all the benefits available to a member of the teaching staff under the Rules, and we direct the opposite parties to take necessary steps to make available the aforesaid benefits to the petitioner without delay. Let the petitioner file necessary papers before the managing committee of the school as early as possible. On receipt of the same, the managing committee shall duly forward the same within a period of one month to the concerned

authority, who is said to be the Inspector of Schools, Sundargarh. The Inspector of Schools in his turn shall finalise the matter within a period of three months.

6. The petition is allowed accordingly.
A. K. PATRA, J. I agree.

Petition allowed.