

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

State of Orissa and others

Versus

Petitioner

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.

Prasad, S. Satish, U. C. Behura, Bijoy Kr. Beura and Binaya 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 employed in High School as a Physical Education Teacher in 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