

FROM



No. 14811(4)
W.P.(C) No. 10488/2005

THE SUPERINTENDENT OF THE HIGH COURT OF ORISSA, CUTTACK

To

1. The Secretary, Higher Education Department,
At/PO/PS/Munsif: Bhubaneswar, Dist: Khurda.
2. The Director, Higher Education, Orissa,
At/PO/PS/Munsif: Bhubaneswar, Dist: Khurda.
3. The Director, College Development Council,
Utkal University, Vani Vihar, Bhubaneswar, Dist: Khurda.
4. The Chairman, University Grants Commission,
Bahaduraha Zafar Marg, New Delhi..

Dated, Cuttack the 16.05 2018

Sir,

I am directed to forward herewith a copy of Court's Judgment dated 26.04.18 passed in W.P.(C) No. 10488/2005 (Sri S.C. Senapati -Vrs- State & Ors) along with a copy of writ application for your information and necessary action.

Yours faithfully,


16/5/18
SUPERINTENDENT

Sp


24/6/2018



HIGH COURT OF ORISSA: CUTTACK

W.P.(C) NO. 10488 OF 2005

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

Shri Sarat Chandra Senapati Petitioner

-Versus-

State of Odisha & others Opp. Parties

For Petitioner : Mr. Manoj Ku. Mishra (Sr. Advocate),
M/s T.Mishra, S.Senapati

For Opp. Parties : Mr. M.S.Sahu,
Additional Government Advocate
(For O.Ps. 1 and 2)

M/s Sarat Ch. Satapathy, S.K.Nayak
& K.B.Kar (For O.P. No.3)

Mr.A.K.Bose,
Asst. Solicitor General of India
for Odisha
(For O.P. No.4)

Heard & Disposed of on 26.04.2018

P R E S E N T:

**THE HONOURABLE KUMARI JUSTICE S. PANDA
A N D
THE HONOURABLE SHRI JUSTICE K.R. MOHAPATRA**

ORDER

K.R. MOHAPATRA, J. Heard Mr. Manoj Mishra, learned Senior Counsel being assisted by Sri Sangram Senapati, learned counsel for the petitioner, Mr. M.S. Sahu, learned Additional Government Advocate for the State-opposite party Nos. 1 and 2 and Mr. S.C. Sathpathy, learned counsel for opposite party No.3-Utkal University.

2. Petitioner, in this writ petition, seeks to assail the order dated 23.06.2005 (Annexure-14) passed by Odisha Administrative Tribunal, Bhubaneswar, (for short, 'learned Tribunal') in O.A. No. 2133 of 2000, dismissing the original application.

3. Briefly stated, the case of the petitioner is that, while continuing as Lecturer in Statistics in Dhenkanal College, the petitioner was granted teacher fellowship for a period of one year from 28.07.1988 to 27.07.1989 to prosecute M.Phil. course. Likewise, while continuing at BJB College, the petitioner applied for study leave for pursuing Ph.D. course under Delhi University and was granted study leave for a period of two years from the date he actually proceeded on leave, vide letter No.56866 dated 17.08.1996 (Annexure-1) of the Higher Education Department of Government of Odisha. The petitioner was relieved from the post on 24.08.1996 (Annexure-2). As he could not complete the Ph.D. course within that period, he applied for extension of his leave and the same was

extended for a period of six months. ^{as per rule} The petitioner also applied for teacher fellowship as per the guideline of University Grant Commission (UGC) (opposite party No.4) under 9th plan and the same was sanctioned vide letter dated 11.06.1999 (Annexure-4). Accordingly, he was granted leave for a period of two years with effect from 24.08.1998 for completion of the Ph.D. course. Vide letter dated 21.05.1999 (Annexure-8) of the Higher Education Department of Government of Odisha. After ~~successful~~ completion of the Ph.D. course, the petitioner joined at Ravenshaw College on 19.06.2000. But his salary for the period from 25.08.1998 to 18.06.2000 was not paid. Accordingly, the petitioner made a representation to the authorities. Receiving no positive response from the authorities he filed O.A. No. 2133 of 2000 for a direction to the State to disburse the dues of teacher fellowship for the period from 25.08.1998 to 18.06.2000 under the guidelines of the UGC as well as vide letter under Annexure-4.

4. In their counter affidavit, the State-opposite parties, without disputing the facts narrated above, contended that as per office order dated 15.02.1991(Annexure-15), the total tenure of study leave and teacher fellowship should not exceed three years during the entire service carrier of College teacher for pursuing M.Phil./Ph.D./Post-Doctoral studies. Since the petitioner was granted the teacher fellowship for a period of 28.07.1988 to

27.07.1989, i.e., one year for pursuing M. Phil. course, study leave for a period from 25.08.1996 to 24.08.1998 (two years) and teacher fellowship from 24.08.1998 to 24.08.2000 (two years) for pursuing Ph.D. course, the same exceeded total period of three years and as such he was not entitled to the salary for the period from 24.08.1998 to 19.06.2000 as claimed. As such, he was not entitled to any relief.

5. Learned Tribunal, accepting the contentions of the State-opposite party dismissed the Original Application vide order dated 23.06.2005 holding that the petitioner (applicant before the learned Tribunal) was granted teacher fellowship for one year for pursuing M.Phil. course and study leave for two years for pursuing Ph.D. course. The total tenure of study leave and teacher fellowship being three years, the petitioner was not entitled to teacher fellowship for two years as sanctioned by UGC to complete Ph.D. work. The petitioner had given example of Smt. Deepa Padhi, whose case was similar to that of the petitioner, but the same was distinguished by learned Tribunal holding that the concession given to Smt. Padhi to complete Ph.D. course was by relaxation of the relevant Rules. Thus, the same would not entitle the petitioner for sanction of teacher fellowship. Hence, the writ petition has been filed.

6. Mr. Mishra, learned Senior Counsel, reiterating the stand taken in the Original Application as well as in the writ petition,

vehemently argued that the limitation of three years is not applicable to the case of the petitioner, as the letter relied upon by the opposite parties, was issued by the Government of Odisha in the Education Department as per the provisions of 8th plan of UGC. But the case of the petitioner is covered under 9th plan of UGC, which provides that 'the tenure of completing Ph.D. may vary, however it should not exceed 24 months depending upon the recommendations of the Selection Committee taking into consideration views of the Principal and the needs of the study'. The said guidelines further provides that 'the teacher pursuing the Ph.D. course would continue to receive full salary from the parent Institution/College during the period of award of teacher fellowship'. Thus, the petitioner is entitled to the teacher fellowship for the entire period. Giving illustration of the case of Mrs. Deepa Padhi, he made a submission that, while Mrs. Padhi was working as Lecturer in Logic and Philosophy in R.D. Women's College, Bhubaneswar, she was granted study leave from 16.07.1985 to 15.07.1987 and thereafter teacher fellowship for a period from 16.07.1987 to 15.07.1990, i.e., for total period of five years for pursuing Ph.D. degree. Although during the relevant period, the candidate was entitled to a total tenure of study leave and teacher fellowship taken together for a period of four years, her case was considered and she was granted teacher fellowship for the entire period. Learned Tribunal failed to appreciate the same and

distinguished the case of Smt. Padhi on the ground that she was sanctioned teacher fellowship by relaxing the Rules, which is not the case of either of the parties. Hence, he prays for setting aside the impugned order under Annexure-14 and for granting the teacher fellowship from 25.08.1998 to 18.06.2000.

7. Mr. Sahu, learned Additional Government Advocate, per contra, supporting the impugned order submitted that as per letter under Annexure-15, the total tenure of study leave and teacher fellowship taken together shall not exceed three years during entire service career of a College teacher for pursuing M. Phil./Ph.D./Post-Doctoral studies. Although vide Annexure-4, the UGC has sanctioned teacher fellowship for a period of two years for which the petitioner was granted leave for a period of two years with effect from 24.08.1998 (A.N.) (Annexure-8), the same would not entitle him for the salary as it contravenes the guidelines as per Annexure-15. The case of Smt. Padhi cannot be compared with that of the petitioner as the Rules and guidelines of the State Government as well as UGC were completely different at the relevant point of time. As such, he prayed for dismissal of the writ petition.

8. We have heard learned counsel for the parties and perused the records placed before us. The factual aspect involved in this case is not disputed. Admittedly, the petitioner was granted

teacher fellowship for the period from 28.07.1988 to 27.07.1989 (one year) for pursuing M.Phil. course. Subsequently, he was granted study leave for two years, i.e., from 25.08.1996 to 24.08.1998 for pursuing Ph.D. course. As he could not complete the same he applied for extension of six months, which was granted vide letter dated 04.12.1998 of Government of Odisha. However, the petitioner had also applied for teacher fellowship under 9th plan of UGC, which was duly recommended by the Selection Committee, taking into consideration the view of Principal of BJB College, Bhubaneswar under whom he was continuing as a Lecturer in Statistics (Annexure-B/3 series). Accordingly, the recommendation of the Selection Committee was forwarded by the Principal, BJB College, Bhubaneswar, vide his letter No.11 dated 11.06.1999 (Annexure-4) to the Director of College Development Council, Utkal University-opposite party No.3. The matter was duly processed and vide letter dated 11.06.1999 (Annexure-4), the UGC sanctioned a sum of Rs.22,000/- to the Principal BJB College, Bhubaneswar in respect of the petitioner who had joined Ph.D. course with effect from 25.08.1989 (FN). The Government, in the Higher Education Department, also sanctioned leave for a period of two years with effect from 24.08.1998, to enable the petitioner to complete the Ph.D. course.

It is apposite to mention here that the petitioner has already been granted his salary for the period of two years with effect from 25.08.1996 (period of study leave) for pursuing the Ph.D. course. Thus, the issue that arises for consideration is whether the petitioner is entitled to the salary for the period of teacher fellowship, i.e., from 25.08.1998 to 18.06.2000.

9. Clause-E of UGC Guidelines for Teacher Fellowship Scheme College Faculty Development Program IXth Plan Period reads as follows:

"E. OTHER CONDITIONS :

- | | | | |
|-----|----|----|----|
| (a) | xx | xx | xx |
| (b) | xx | xx | xx |

(c) The tenure for completing the Ph.D. may vary but it should not exceed 24 months depending on the recommendations of the Selection Committee, taking into consideration the views of the Principal and the needs of the study.

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|-----|----|----|----|
| (d) | xx | xx | xx |
|-----|----|----|----|

(e) The tenure of teacher fellowship for doing M.Phil or completing the Ph.D should fall within the Plan period and, under no circumstances, can be extended beyond the Plan period, i.e., beyond 31st March, 2002....."

Further, the terms and conditions provided in Sub-clause (iii) of Clause-A reads as follows:

"A. TERMS AND CONDITIONS:

(i) xx xx xx

(ii) xx xx xx

(iii) *The teacher will continue to receive full salary from the parent institution/college during the period of award of Teacher Fellowship."*

10. Needless to mention here that the petitioner was eligible under the said Scheme and his case was duly recommended by the Selection Committee. Considering the recommendation of the Selection Committee, the UGC allowed teacher fellowship to the petitioner and the State Government allowed leave for the aforesaid period. At no point of time, either the State Government or UGC has raised any objection to the grant of teacher fellowship or leave granted in favour of the petitioner basing upon such sanction of teacher fellowship. We, therefore, find no reason as to why the petitioner should not be allowed to draw salary for the period of teacher fellowship, i.e., 25.08.1998 to 20.06.2000. Further, Smt. Padhi pursued her Ph.D. course under the 7th plan period of the UGC. Although the maximum period of four years was provided, the Ph.D. course at the relevant period, she took five years for completion of the course and was sanctioned salary for the entire period of teacher fellowship.

11. In that view of the matter, we are constrained to hold that learned Tribunal has misdirected himself in not considering the

case of the petitioner. Accordingly, we set aside the impugned order under Annexure-14 and direct the opposite parties, more particularly opposite parties 1 and 2 to sanction and release the salary and other financial benefit to the petitioner for the period from 25.08.1998 to 24.06.2000, as expeditiously as possible, preferably within a period of three months from today.

LCR be sent back forthwith.

Sd/- (K.R. Mohapatra)

Sd/- (S. Panda)

Orissa High Court, Cuttack.
Dated the 26th April, 2018/ss/bct

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Sd/-
PA.

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