

19 JUL 2013

IN THE HIGH COURT OF ORISSA: CUTTACK

(ORIGINAL JURISDICTION CASE)

W.P. (C) No. 16425 Of 2013

Code No:

In the matter of:

An application under Article 226 and 227 of the Constitution of India;

And

In the matter of:

An application for quashing of the Office order No.25251 dated 3.6.2013 of the Director under Annexure-9 and for a direction to the opp.parties to grant the pension and other retired benefits to the petitioner as he is entitled to the same under the Orissa Aided Educational Institutions' Employees' Retirement Benefit Rules, 1981 w.e.f. 1.5.2010.

And

In the matter of:

Sri Sarat Chandra Parida, aged about 63 years, son of late Kulamani Parida, Village-Manapur, P.O./P.S./Dist.-Jagatsingpur.

.... **Petitioner**

-Versus-

1. State of Odisha, represented through its Secretary to Government, Department of Higher Education, Odisha, Bhubaneswar, District- Khurda.
2. Director, Higher Education, Odisha, Bhubaneswar, Dist.- Khurda.
3. Governing Body of Swami Vivekananda Memorial College, At/PO/Dist.-Jagatsingpur, represented through its Principal

AFR

H.C.

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HIGH COURT OF ORISSA : CUTTACK

W.P.(C) No.16425 of 2013

An application under Articles, 226 and 227 of the Constitution of India.

Sri Sarat Chandra Parida Petitioner.

Versus.

State of Odisha and others opp.parties.

For Petitioner : M/s. Sameer Ku. Das & S.K. Mishra.

For opp.parties : Additional Standing Counsel.


PRESENT




THE HON'BLE SHRI JUSTICE B.K.NAYAK

Date of hearing : 25.03.2014 : Date of judgment: 08.05.2014


B K. NAYAK, J.

In this writ petition the petitioner has prayed for quashing the order dated 03.06.2013 under Annexure-9 passed by the Director, Higher Education, Orissa, Bhubaneswar, with a further prayer to direct the opposite parties to sanction and pay the pensionary benefits to him.

2. The petitioner's case is that vide order dated 15.07.1975 of the Governing Body of Swami Vivekananda Memorial College, Jagatsinghpur, he was appointed as a Peon (Cycle Stand Guard) by the Governing Body following due process of selection. Vide office order dated 25.02.1982 (Annexure-3) the petitioner was appointed against a substantive post of Peon in the scale of pay of Rs.200-2-202-3-250. After such appointment, he was directed to work in the College Library as Library Attendant as per order dated 25.02.1982 under Annexure-4. It is the further case of the petitioner that Swami Vivekananda Memorial



College, Jagatsinghpur was established in 1962 and while receiving grant-in-aid, it came to the direct payment fold of the Government from the year 1974 and as such, it is an aided educational Institution within the meaning of Section 3 (b) of the Orissa Education Act. It is further stated that as per grant-in-aid principles of the State Government for the aided colleges, though the petitioner should have received grant-in-aid after five years of appointment and proposal in that regard was submitted by the College to the Government from time to time, he was not paid regular grant-in-aid. After much persuasion his appointment was approved by the Director, Higher Education, Orissa by order no.48465 dated 06.12.2012 (Annexure-6) against the post of Library Attendant from his initial date of joining dated 16.07.1975. In the said approval order the petitioner was granted block grant with effect from 01.02.2009 as per Grant-In-Aid Order 2009. While so continuing the petitioner was retired from service on attaining the age of superannuation with effect from 30.04.2010 as per order under Annexure-7.

3. It is stated that even though the petitioner is entitled to pensionary benefits in terms of Rule-3 of the Orissa Aided Educational Institutions' Employees Retirement Benefit Rules, 1981 (in short 'the 1981 Rules'), he was not paid any pension for which he made a representation to the Director on 15.10.2010. Since no action was taken on his representation, he was compelled to file W.P.(C) No.8541 of 2013 before this Court, which was disposed of on 22.04.2013 with a direction to the Director, Higher Education, Orissa to consider the representation of the

petitioner was found entitled to the same or any part thereof, within a period of two months. The said representation has been rejected by the Director by the impugned order under Annexure-9 on the ground that since the 1981 Rules was applicable to the staff of non-government aided colleges, which are coming under the direct payment system, and that the petitioner was in receipt of block grant with effect from 01.02.2009 in terms of the Grant-In-Aid Order, 2009, he is not entitled to pensionary benefits under the said Rules.

4. It was urged by the learned counsel for the petitioner that as per Rule-3 of the 1981 Rules the provisions of the said Rules apply to all the teaching and non-teaching staff of non-government colleges, which come under the direct payment system and that the Swami Vivekananda Memorial College, Jagatsinghpur, where the petitioner was working, being an aided college, brought under the direct payment system and there being nothing in the Rules that staff of such colleges, who are in receipt of block grant will not get the benefit of the Rules, the order of the Director (Annexure-9) is bad in law and liable to be set aside. It is also his submission that the Director by his order under Annexure-6 having approved the services of the petitioner with effect from the date of his joining, could not have denied the pensionary benefit.

5. A counter affidavit has been filed by opposite party nos. 1 and 2. In paragraph-4 of the counter, it has been admitted that Swami Vivekananda Memorial College, Jagatsinghpur is an aided college, which is in receipt of aid from the State Government in respect of its +2 and +3 wings even prior to promulgation of Grant-In-Aid Order 1994 and ...

such, it is category-I college as per the definition contained in paragraph-4 (A) (I) of Grant-in-Aid Order,1994. Also the salary component of the eligible employees of the said college, is being guided under the provisions of Section 7(c) of Orissa Education Act,1969. It is further admitted that the eligible employees appointed against admissible posts of the college after completing five years of qualifying service by 01.06.1994 have been approved under the grant-in-aid scheme of the Government as per paragraph-9 (2) (B) of the Grant-In-Aid Order,1994 and have been extended grant-in-aid under direct payment scheme at par with other State Government employees.

It is further stated that the Grant-In-Aid Order,1994 was repealed by the new Grant-In-Aid Order,2004 wherein the provision of grant-in-aid under direct payment scheme was curtailed and in its place a fixed bulk amount in shape of block grant was paid to the eligible left out employees with effect from 01.01.2004, who were otherwise eligible to receive grant-in-aid as per the Grant-In-Aid Order,1994. This was done in view of financial constraints of the State Government for which the Government decided to take away payment of grant-in-aid from the employees of non-government colleges under the direct payment system and only to give block grant to the college concerned. Under the block grant system a fixed aid which is not at par with the salary under the direct payment scheme was placed with the college authority.

It is further stated in paragraph-6 of the counter affidavit that the Government introduced again the Grant-In-Aid Order,2009 with effect

488 non-government aided colleges in the State, who were continuing against admissible posts after 01.06.1989 and within 01.04.1998 and such employees were extended with block grant @ 100% with effect from 01.02.2009. It is stated that the petitioner being a non-teaching staff continued against an inadmissible post of Peon (Cycle Stand Guard) and his appointment was approved under Grant-In-Aid Order 2009 and he was extended with block grant @ 100%. It is further stated in paragraph-7 of the counter affidavit that the petitioner was covered under Grant-in-Aid Order, 2009 and his appointment was approved against the post of Library Attendant since the said post was admissible to the Swami Vivekananda Memorial College, Jagatsinghpur after 01.06.1989 and within 01.04.1998.

It is stated that since the petitioner is only receiving block grant which has no linkage with the salary and allowance as is being paid to the employees, who are in receipt of grant-in-aid under direct payment scheme, the petitioner is not covered under 1981 Rules and hence not entitled to the pensionary benefits under the said Rules.

6. The 1981 Rules have been framed by the State Government with the object of providing social security to the staff of aided educational institutions. The Rules came into force on 01.04.1982 vide S.R.O. No.118/82 published in Orissa Gazette Ext. No.234 dated 20.02.1982.

Rule-3 speaks about the applicability of the Rules which is extracted hereunder :

"3. Application of the rules:- These rules shall apply to teaching and non-teaching staff of all recognized non-

Government Colleges, High Schools, Senior Basic Schools and M.E. Schools which come under the direct payment system and all non-Government Primary Schools including Sanskrit Tols and Junior Basic Schools fully aided Government in Education and Youth Services Department directly through Panchayat Samities constituted under the Orissa Panchayat Samiti Act, 1959 or through a Notified Area Council or Municipal constituted under the Orissa Municipal Act, 1950.

Provided that Government may, be general or special order may be issued in that behalf, specify and other educational institutions or category or institutions and the staff working therein to whom the rules shall apply."

7. With regard to the principles of the interpretation of statute, a Division Bench of this Court in the case of *M/s. Sterlite Energy Limited v. State of Orissa and others :2011 (Supp.-I) OLR 761* after examining a number of judicial pronouncements of the Hon'ble apex Court held as follows :

"On an analysis of the judicial pronouncements relating to the rules of interpretation, as discussed above, the legal position that emerges is that in interpreting a statute the Court must, if the words are clear, plain, unambiguous and reasonably susceptible to only one meaning, give to the words that meaning, irrespective of the consequences. Those words must be expounded in their natural and ordinary sense. When the language is plain and unambiguous and admits of only one meaning, no question of construction of

statute arises, for the Act speaks for itself and it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. The words used in a statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions, the Court would prefer to adopt the construction which is likely to assist the achievement of the policy and purpose of the Act."

8. For application of 1981 Rules to the staff of recognized non-government colleges, Rule-3 thereof requires that the college concerned must have come under the "direct payment system". This apart there is no other requirement. The plain language of Rule-3 makes it clear that irrespective of the nature of grant-in-aid given by the Government to various staff of a college, once the college has required status of one coming under the direct payment system then even if a staff is not getting full salary from the Government under the direct payment system or getting only some aid in whatever form including 'block grant', he will be covered under the Rules and be entitled to pensionary benefits under the Rules taking into account the amount of aid he receives from the Government as salary and the period of his qualifying service. It is apparent from a plain reading of Rule-3 that the expression, "come under the direct payment system" qualifies the institution (college/school) concerned and not a particular staff of the institution. Had it been the intention of the legislature that the expression would qualify the 'staff',

then it could have simply said that the staff of aided institutions who are/were receiving their salary under the direct payment system will be covered under the 1981 Rules.

9. It is admitted by the opposite parties in their counter affidavit that SVM College, where the petitioner was working, is an aided college which came under the direct payment scheme. It is also admitted that petitioner's appointment was approved under the Grant-in-Aid Order 2009 against the post of Library Attendant from the date if became admissible and he was extended block grant @ 100%. Since the petitioner is a non-teaching staff whose appointment has been approved against an admissible post (Library Attendant) and he has been allowed grant-in-aid in the nature of block grant, he cannot be denied the benefits of 1981 Rules. Therefore, the order of the Director under Annexure-9 refusing pensionary benefits to the petitioner is unsustainable and the same is hereby quashed. It is directed that the pension case of the petitioner be considered in accordance with the 1981 Rules and disposed of within a period of four months.

The writ petition is disposed of. No costs.

CH. B.K. Nayak. J