

Ajit Kumar Ray, Vs. Director, Higher Education Orissa and ors.

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Court : Orissa

Decided On : Jan-29-1996

Reported in : 1996(I)OLR209

Judge : D.P. Mohapatra, Acting C.J. and ;R.K. Dash, J.

Appeal No. : Original Jurisdiction Case Nos. 339 and 4481 of 1995

Appellant : Ajit Kumar Ray, ;sanghamitra Nayak and State of Orissa and ors.

Respondent : Director, Higher Education Orissa and ors.

Advocate for Def. : Pitambar Acharya and A.C. Samantray for opp. party No. 4 in OJC 4481/95, ;J. Patnaik, H.M. Dhal, A.A. Das and B. Mohanty for opp. party No. in OJC No. 339/95 and ;Addl. Govt. Adv.

Advocate for Pet/Ap. : Pitambar Acharya and A.C. Samantray in OJC No. 339/95 and ;J. Patnaik, H.M. Dhal, A.A. Das and B. Mohanty in OJC No. 4481/95

Judgement :

R.K. Dash. J.

1. Since common questions of law and fact are involved in these two writ applications this order is passed which shall govern both the cases. For the sake of convenience we shall first take up the case in OJC No. 339 of 1995.

2. Petitioner Ajit Kumar Ray as well as opp. party No. 4 Smt. Sanghamitra Nayak are two Lecturers in Sociology of Lokanath Mahavidyalaya, Patkura. The controversy between them relates to inter se seniority for holding the second post in Sociology. This is the second round of litigation between the parties for resolution of the self-same dispute, the earlier being in OJC No. 8419 of 1992 which was filed by opp. party No. 4. While disposing of the aforesaid proceeding the Court directed that the Secretary of the college will convene a meeting of the Governing Body for consideration of the question of inter se seniority and the Governing Body will consider the same giving opportunity of hearing to the parties and determine the inter se seniority stating reasons. Thereafter, the Secretary would forward the decision of the Governing Body to the Director, Higher Education, within a week of the date of decision and the Director on receipt of the same would pass appropriate order according approval to the appointment of the person who is held to be entitled to hold the second post of Lecturer in Sociology. It was further observed that it would be open to the Director to hold such further enquiry as he deems proper giving opportunity of hearing to the parties concerned. For considering the question of fixation of inter se seniority among the teachers of aided educational institutions Court relied upon its earlier decision in the case of Sarat Kumar Mishra v. Managing Committee of Teisipur High School : 55(1983) CLT 446 and observed that 'there is no statutory rule or administrative instruction for fixation of inter se seniority among the teachers. It is, therefore, within the discretion of the appointing authority to determine the inter se seniority by general consideration of merit, educational qualification, age, past experience and several other factors'. Pursuant to the direction of the Court, the Governing Body in its special meeting held on 4-6-1994 examined the service records, age, past experience and educational qualifications of the petitioner vis-a-vis opp. party No. 4 and took an unanimous decision in favour of the petitioner holding him to be senior to opp. party No. 4. The decision of the Governing Body was communicated to the Director of Higher Education, but he instead of according approval to the said decision remanded the matter to the Principal-cum-Secretary of the college for fresh consideration. In pursuance of his direction the Governing Body again met on 24-7-1994 and by a majority decision resolved that the petitioner has an edge over opp. party No. 4 both in educational qualification and past experience

and consequently out of 8 members of the Governing Body, 5 voted in favour of the petitioner to declare him as senior and 3 voted in favour of opp. party No. 4. The majority view taken in favour of the petitioner holding him as senior to opp. party No. 4 was communicated to the Director and on the basis of the said recommendation the Director should have approved the petitioner's appointment to the second post of Lecturer in Sociology. But without doing so, he at the behest of the father of opp. party No. 4. a political stalwart passed an order in the nature of judgment vide Annexure-6 to the effect that opp. party No. 4 shall be deemed to be holding the second post and the petitioner, the third post in Sociology from the date of their joining in the college. Such conclusion, urges the petitioner, was based on extraneous materials which are not germane for determination of the question in controversy. The Governing Body being the employer took a decision determining inter se seniority between the parties in accordance with direction of this Court, but the Director instead of approving the same took this own decision as aforesaid which is not supported by good reasons and therefore, the same being illegal and improper is not sustainable in law. Elaborating as to how he should be considered as senior to opp. party No. 4, the petitioner has urged that he is elder to opp. party No. 4, his date of birth being 5-5-1957 and opp. party No. 4's being 14-2-1960. So far as past experience is concerned, before joining Lokanath Mahavidyalaya, he was a Lecturer in Sociology from 2-7-1981 at Karilopatna, whereas opp. party No. 4 was a fresh candidate without any past experience. After joining Lokanath Mahavidyalaya he continued to perform his duty from the date of his joining uninterruptedly, but opp. party No. 4 had absented herself from the college for a long period from 14-11-1990 to 1-5-1994 and only on 2-5-1994 joined her duty on the direction of this Hon'ble Court in OJC No. 3419 of 1992. As regards educational qualification, he passed High School Certificate Examination in second division, I. A. in second division with Sociology, B. A. (Honours) with distinction in Sociology, M. A. First Class in Sociology in Grade-A and M. Phil in first division (third position in the merit) in Sociology ; whereas opp. party No. 4 though passed High School Certificate Examination and P. U. Arts in second division and B. A. with first class honours with distinction, but her honours subject was Political Science and not Sociology. So far as M. A. in Sociology is concerned, she passed in Grade-B. Further although she has acquired M. Phil, but

the subject was Anthropology. So when compared, he is more qualified than opp. party No. 4. Added to it, he is senior to opp. party No. 4 because he joined on 7-7-1983 whereas opp. party No. 4 joined on 25-7-1983. In this view of the matter, the petitioner has urged that the decision of the Director, Higher Education vide Annexure-6 should be quashed and he should be declared as senior to opp. party No. 4 and consequently State of Orissa and the Director, Higher Education-opp. parties 1 and 2 should be directed to calculate and pay all the dues to which he is entitled.

3. Opp. party No. 4 in her counter affidavit has refuted most of the allegations made in the writ application. Her positive assertion is that in the interview conducted by the Governing Body of Lokanath Mahavidyalaya she stood first in the merit list for which she was given appointment on 5-7-1983 against the existing vacancy and later on, in view of the exigency of work, the petitioner was given appointment for a period of two years. So in all respects she was treated to be holding the second post of Lecturer in Sociology and continued to hold so for about 5 years. But all on a sudden the petitioner was declared to be holding the second post of Lecturer in the said subject. This change could be brought about by the Governing Body, urges opp. party No. 4, by creating false and fabricated documents and correcting the selection list. On the basis of false and fabricated materials supplied by the Governing Body the Government released the grant-in-aid in favour of the petitioner and this exercise was done with ulterior motive to deprive her from receiving financial benefits under the Grant-in-aid Scheme. Challenging the illegal action of the Governing Body as well as the Government, she filed a writ application bearing OJC No. 8419 of 1992. Upon hearing the parties the Court directed the Governing Body of the college to convene a meeting and decide the inter se seniority between the parties and place the decision before the Director who in turn would pass appropriate order after giving opportunity of hearing to the parties. In view of the above direction, the meeting of the Governing Body was convened twice and the matter relating to inter se seniority between the parties was discussed at length, but no final decision could be taken. Finally in meeting dated 24-7-1994 the Governing Body decided to place the matter before the Director for decision. Consequently the Director conducted an enquiry, perused the relevant documents and passed orders vide Annexure-6 declaring

that opp. party No. 4 shall be deemed to be holding the second post of Lecturer in Sociology.

4. In the other OJC No. 4481 of 1935 Smt. Sanghamitra Nayak, opp. party No. 4 is the petitioner, in short, her claim is that since she is holding the second post in Sociology and is entitled to receive the salary under the Grant-in-aid Schema, but she has not been paid her dues as yet. So she seeks for a direction to the Director of Higher Education for payment of her salary under the Grant-in-aid Scheme.

5. We have heard the counsel representing the parties at length and perused the documents and the orders passed in earlier OJC Mo. 8419 of 1992. While disposing of the said writ application the Court ordered that the Secretary of the college will convene a meeting of the Governing Body for considering the question of inter se seniority between the parties after giving them an opportunity of hearing and pass a reasoned order, and thereafter the Secretary of the college will forward the decision to the Director of Higher Education who in turn will consider the matter and pass appropriate order according approval to the appointment of the person who is held to be entitled to hold the second post of Lecturer in Sociology, It was further ordered that it would be open to the Director to hold such enquiry as he deemed proper giving opportunity of hearing to the parties concerned.

6. Meeting of the Governing Body of the college was held twice and decisions were taken vide Annexures 4 and 6. In the first Governing Body meeting held on 4-6-1994, age of the petitioner and the opp. party No. 4, their date of joining, educational qualification and experience were taken note of and considered. It was stated that the petitioner reported for duty on 7-7-1983 whereas opp. party No. 4 on 25-7-1983, although former's appointment was for a period of two years and the appointment of the latter was a usual appointment. As regards age, the petitioner was elder to opp. party No. 4. With regard to the past experience, the members of the Governing Body were of the opinion that the petitioner had previous experience since he was for about two years Lecturer in Sociology at Karilopatna College. On the other hand, opp. party No. 4 was a fresh candidate without any previous experience and further she while continuing as Lecturer of the college remained on long leave from 14-11-1990 to 1-5-1994. From a

comparative study of their educational qualification the members of the Governing Body were of the opinion that the petitioner has an edge over opp. party No. 4. The decision taken in the previous Governing Body meeting was also discussed. It was alleged before them that the mark-sheet prepared during the selection had been tampered with and also there were some corrections therein. However, judging from the records and the relevant merit-list, the Governing Body felt that the petitioner should be treated as senior, but since the first Governing Body had given term appointment to the petitioner which subsequently was regularised it decided that it would be appropriate for the Director to consult the Law Department in the matter. The next Governing Body meeting was held on 24-7-1994 where the proceedings of the previous Governing Body meeting were confirmed. In the said meeting the question of inter se seniority between the parties was again considered. There could not be any unanimous opinion. The majority group opined that since the petitioner has an edge over opp. party No. 4 in all respects he should be held to be senior. The other group consisting of 3 members on the other hand, opined in favour of opp. party No. 4. The President did not cast his vote. At last the Governing Body decided to place the matter before the Director for his decision. On receipt of the above two decisions of the Governing Body, the Director passed orders vide Annexure-6 that opp. party No. 4 shall be deemed to be holding the second post and the petitioner the third post of Lecturer in Sociology. The reasons for arriving at such decision have been set out in the order as under:

- (1) That in the merit list prepared by the Selection Committee in 1982, opp. party No. 4 had secured first position and the petitioner second position.
- (2) That the management offered appointment to the opp. party No. 4 against a regular vacancy and to the petitioner against a term vacancy for a period of two years.
- (3) That subsequently the Governing Body changed the merit position.
- (4) That nature of post held by the parties gives ample evidence that the post held by the petitioner was lower in status than opp. party No. 4.

The aforesaid decision taken by the Director is not in accordance with the direction of this Court made in aforementioned OJC No. 8419 of 1992. Subsequent to the passing of the aforesaid order by the Director, the Governing Body took a decision under Armexure-7 that the petitioner being senior to opp. party No. 4 has been holding the second post of Lecturer in Sociology.

7. Admittedly there is no statutory rule or any Executive Instruction for fixation of inter se seniority between Lecturers/Teachers. This Court, therefore, in the case of *Sri Sarat Kumar Mishra v. Managing Committee of Teisipur High School and Ors.* reported in 55 (1983) CLT 446, observed :

'There is no statutory rule or administrative instruction for fixation of inter se seniority among the teachers. It is, therefore, within the discretion of the appointing authority to determine the inter se seniority by general consideration of merit, educational qualifications, age, past experience and several other factors.'

The aforesaid decision was relied upon in the order in OJC No. 8419 of 1992, a copy of which had been forwarded to the Director, Higher Education. True it is, it was specifically ordered in the aforesaid writ application that the Director, Higher Education will pass appropriate order and if necessary after holding further enquiry. But he failed to consider the decision of the Governing Body in both the meetings that in consideration of age, educational qualification, experience, etc. the petitioner is senior to opp. party No. 4. The merit-list of 1982 which weighed with the Director to hold opp. party No. 4 to be senior is alleged to have been tampered with. In the first Governing Body meeting the members were satisfied that there have been some corrections which are not attested. Without any further material the Director should not have put much reliance on the said merit list for taking a decision.

8. Admittedly the petitioner is elder to opp. party No. 4 and is more experienced than her. Petitioner has been working all throughout in the cadre since the date of appointment, whereas opp. party No. 4, as alleged in the writ application, remained absent for quite a long time, that is, 14-11-1990 to 1-5-1994. This part of the petitioner's case has not been controverted by opp. party No. 4. Coming to the educational qualification, the petitioner had Sociology as honours subject in B. A.,

whereas the honours subject of opp. party No. 4 was Political Science, in M. A. the petitioner secured 'A' grade, whereas the grade of opp. party No. 4 was 'B'. So the petitioner is more qualified and meritorious than opp. party No. 4. All these factors were lost sight of by the Director while considering the inter se seniority between the parties. The original merit list prepared by the Selection Committee is not before us. A xerox copy of the merit list of 1982 is filed as Annexure-8. A perusal of the same reveals that there has been some over-writings and corrections in respect of the marks secured by the petitioner and opp. party No. 4. Except that merit list no other material was available with the Director to arrive at a finding that in the selection held by the Selection Committee opp. party No. 4 secured first position and the petitioner the second position. In our considered opinion, the Director should not have put reliance on it for taking a decision on the question of inter se seniority between the parties. The Governing Body of the college being the employer and observation having been made by it that the petitioner is senior to opp. party No. 4 in all respects, the Director should have given weight to the said decision and held the petitioner to be senior. Taking all these aspects into view, we are of the considered opinion that in all respects, that is, age, qualification, experience and merit, the petitioner is above opp. party No. 4 and therefore, he is entitled to hold the second post of Lecturer in Sociology.

9. Accordingly we allow the writ application in OJC No. 339 of 1995, quash the order of the Director under Annexure-6 and declare the petitioner to be senior to opp. party No. 4. Consequently we direct that all the service benefits to which he is entitled to in the Second post of Lecturer in Sociology of Lokanath Mahavidyalaya, Patkura, be given to him. In view of our such conclusion, the writ application filed by Smt. Sanghamitra Nayak (OJC No. 4481 of 1995) does not merit any consideration and hence is dismissed. In the circumstances, there shall be no order as to costs.

D.P. Mohapatra, A.C.J.

10. I agree.