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itishree Ray Vs. State of Orissa and ors.

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Court : Orissa

Decided On : Jul-25-1997

Reported in : 1997(II)OLR232

Judge : Susanta Chatterji and ;P.K. Mohanty, JJ.

Acts : Orissa Education (Recruitment and Conditions of Service of Teachers and Members of The Staff of Aided Educational Institutions) Rules, 1974 - Rule 5(1) and 5(8)

Appeal No. : Original Jurisdiction Case No. 4284 of 1995

Appellant : itishree Ray

Respondent : State of Orissa and ors.

Advocate for Def. : P.K. Ray, Addl. Govt. Adv.

Advocate for Pet/Ap. : B. Pal, M.K. Mohanty and N.R. Rout

Disposition : Petition allowed

Judgement :

P.K. Mohanty, J.

1. The petitioner a classical teacher in an aided school prays for a direction to the opposite parties to accord approval to her services at Badapari High School till the

post is filled up by a candidate sponsored by Selection Board and pay her salary in the prescribed scales of pay from the date of her joining.

2. The short fact of the case of the petitioner is that a post of classical teacher in Badapari High School at village Badapari under Puri Education Circle having fallen vacant in the month of January, 1994. the Management requested to the Selection Board to sponsor a candidate for the post of classical teacher, but however as no recommendation was received from the Board and the students of the school suffered a lot, the Management invited applications from intending candidates for filling up the said post under Rule 5(8) of the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules. 1974 (hereinafter called 'the Recruitment Rules'). The petitioner haying been selected by the Selection Committee, the Managing Committee vide Resolution No. 81 dated 15.7.1994 decided to appoint her as a classical teacher of the school. The Headmaster-cum-Secretary of the Managing Committee vide his letter No. 49 dated 25.7.1994 issued appointment letter in favour of the petitioner and forwarded a copy of the same to the Inspector of Schools for his information and necessary action. The, petitioner joined the post on 29.7.1994 and since then she has been working in the school and her 89 days' appointment is being extended from time to time copies of appointment letters as well as the joining reports are annexed as Annexures 2 and 3 to the petition. The petitioner alleges that even though one year is going to elapse, yet the Inspector of Schools has not yet given approval to the appointment of the petitioner and as a result, the petitioner is not getting her salary since the date of her appointment. Hence the writ application.

3. The opposite parties have filed a comprehensive counter affidavit refuting the claim of the petitioner, contending inter alia that appointment of ad hoc teacher in non-Government aided High School has beers banned and the power of management in this regard has been ceased vide Directorate letter No. 17368 dated. 11.5.1988 a copy whereof is Annexure-A to the counter affidavit. It is, therefore the stand of the opposite parties that the appointment order issued in favour of the petitioner by the management being in contravention of the instructions contained in letter dated 24.5.1988 (Annexure-A), the question of

approval of the petitioner's appointment does not arise.

4. The petitioner has filed a rejoinder to the counter affidavit stating inter alia that the Directorate letter No. 17368 dated 11.5.1988 and Memo No. 8098 dated 24.5.1988 under, Annexure-A are mere executive instructions and the executive instructions cannot override or prevail upon the statutory provisions of the Recruitment Rules, more specifically Rule 5(8). It is not necessary to apply to the Selection Board for appointment to vacancies for a period of six months or till the date of receipt of the list referred to in Sub-rule (2). It is further stated that due to transfer of the Classical teacher. Sri Chakradhar Mishra, the post having fallen vacant and Sanskrit being a compulsory subject with 100 marks the Managing Committee made an application to the Selection Board under Rule 5(1) of the Recruitment Rules, but no candidate having been sponsored or appointed by the Selection Board, the Managing Committee was left with no alternative than to appoint the petitioner in the greater interest of the institution and its students.

5. Shri B. Pal, learned senior counsel appearing on behalf of the petitioner contends that admittedly Badapari High School is an aided school and as such an aided educational institution within the meaning of Section 3(d) of the Recruitment Rules. Under Rule 5, the Secretary of the Managing Committee of an Aided Educational Institution before 31st day of August every year is to apply to the Selection Board through the concerned Inspector of Schools the vacancy or vacancies in the teaching post. The Selection Board under Sub-rule (2) thereof on receipt of the, application recommend a list of candidates in order of merit to the concerned Director for allotment of the candidates to the concerned Institution.

It is submitted that, it is not necessary to apply to the Selection Board for appointments to the vacancies for a period of six months or till the date of receipt of the list referred to in Sub-rule (2) of the Recruitment Rules, whichever is earlier, and such appointment may be made by the Managing Committee with prior approval of the Inspector of Schools under Sub-rule (9) to Rule 5 of the Rules and it shall be competent for the Managing Committee to extend the term of appointment beyond six months till recommendation of the Selection Board is received with prior approval of the Government. Shri Pal, learned Senior Counsel

has referred to a decision in the case of Managing Committee Majhipada M. E. School v. State of Orissa and Ors. reported in 1992 (I) OLR 447 to contend that prior approval means mere approval and this can be post facto approval for lack of prior approval and for that reason the appointment of a teacher cannot be invalid. He has further referred to a decision in the case of Snigdha Patnaik v. State of Orissa and Ors. reported in Vol. 72 (1991) CLT 261 and contends that in view of the ratio decided in the aforesaid cases; the Inspector was to approve the recommendation; for approval and for continuance of the petitioner in the school until a Selection Board candidate is available as per Rule and after the approval is made the monthly salary was to be paid regularly. The learned Senior Counsel has referred to an unreported decision in O.J.C. No. 8875 of 1996 disposed of on 27.3.1997 and contends that Rule 8(2)(a) of the Rules, 1974 authorises appointment for a period not exceeding three months and the said Rule being a statutory one an executive instruction to put a ban on such appointment cannot override the statutory provision. It is contended that, in such circumstances, this Court in the aforesaid decision directed the opposite parties to approve services of the petitioners of these cases from the date of appointment with stipulation that the approval ceased to operate as soon as a teacher is sponsored or deputed by the Selection Board to the school. It is, therefore, the submission of the learned counsel for petitioner that in view of the ratio of the decisions referred to above the petitioner's appointment is in terms of the provision of the Recruitment Rules, 1974 and as such there is absolutely no reason for the educational authorities.

6. Shri P. K. Ray, learned Additional Government Advocate on the other hand contends that the school is an aided educational institution and the Managing Committee has given ad hoc appointment to the petitioner against the vacancy of the post of a classical teacher on 15.4.1994. Shri Ray contends that when a vacancy is not foreseen by 31st August of any year, the Managing Committee is authorised to make any appointment for a period of six months only, but, if the appointment intended to be made for more than six months then application has to be, made and such appointment shall continue till the date of receipt of recommendation of the Selection Committee. It is his further submission that in the aforesaid contingencies, the principal condition for appointment is the prior approval of the Inspector of Schools and infraction of this provision, invokes penal

action under Section 11 of the Act against the Managing Committee. Rule 5(9) provides that extension of appointment beyond six months can be made only with the prior approval of the Government inasmuch as executive instruction of the Director dated 11.4.1988 imposes total ban on appointment until further instructions as are received from the Directorate subject to the condition that the ban shall not apply to the appointment made on or before 31.12.1984 and such appointments only has been allowed to continue pursuant to the Circular letter of the Directorate dated 6.4.1988.

7. Heard Sri B. Pal, learned senior counsel appearing for the petitioner and Sri P. K. Ray, learned Additional Government Advocate. The main contention of Sri Ray for the State and its officials is that in view of the ban order dated 11.5.1988 of the Director, Secondary Education, Orissa in Annexure-A, the appointment made by the Managing Committee is illegal and void having been made during the ban period and as such no approval could have been granted. This point has been examined in the case of Rabindra Kumar Lenka v. State of Orissa and Ors. in O.J.C. No. 8875 of 1996 decided by a Bench of this Court on 27.3.1997. It has been decided therein, referring to the earlier decision in O.J.C. No. 55 of 1990 (Annapurna Panda v. State of Orissa) disposed of on 17.4.1990 that Rule 8(2)(a) of the 1974 Rules authorises appointment for a period not exceeding three months and the said rule being a statutory one, an executive instruction putting ban on such appointment cannot override the statutory rule. In view of the aforesaid decision of this Court, the contention of the learned Addl. Government Advocate that the appointment order of the petitioner is illegal and void having been made during the ban period has to be rejected. It is the specific assertion of the petitioner that the Managing Committee of the School had made a request so the Selection Board duly forwarded by the Inspector of Schools for sponsoring/recommending a candidate to full up the post of Classical teacher in the school, which fell vacant in the year 1994, No teacher has yet been sponsored as revealed from the counter affidavit, in as much as in absence of a classical teacher, classes in Sanskrit would not have been taken causing serious dislocation to the teaching of the students preparing for High School Certificate Examination. If the opposite parties were of the view that the appointment could not have been made, it was open to them to sponsor a candidate immediately and/or to reject the recommendation of

the Managing Committee to approve the appointment of the petitioner. That having not been done at any point of time till the counter affidavit in this case was filed, indicating that in view of the ban order, the approval could not have been granted, the petitioner who is the appointee and the Managing Committee which had made the appointment to safeguard the interest of the students of the school, cannot be faulted. In that view of the matter, we are of the considered opinion that the appointment of a petitioner to the post of a classical teacher temporarily has beers made validly by the Managing Committee and as such the same has to be approved, However, in view of the Recruitment Rules, the appointment of the petitioner can only be continued and remain valid till a Selection Board candidate is sponsored by the Director in terms of the Orissa Education.(Recruitment and Conditions of Service and Members of the Staff of Aided Educational Institutions) Rules,.1974.

8. In the result, we allow the writ application and direct the opposite parties to approve the services of the petitioner from the date she was appointed by the Managing Committee. The approval so granted however shall cease to operate as soon as a teacher is sponsored or deputed by the Selection Board to the school. The petitioner shall be entitled to her salaries for the period of service so far rendered and would continue to receive the same till a Selection Board candidate is available to the school. There shall be no order as to costs.

Susanta Chatterji, J.

9. I agree.

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