

Maleswari Devi Vs. State of Orissa and ors.

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Court : Orissa

Decided On : Oct-30-1995

Reported in : 1996(I)OLR202

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

Acts : Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 - Rule 8 and 8(3)

Appeal No. : O.J.C. No. 810 of 1993

Appellant : Maleswari Devi

Respondent : State of Orissa and ors.

Advocate for Def. : Addl. Govt. Adv. and ;Shaktidhar Das, A.K. Choudhury and M.M. Basu

Advocate for Pet/Ap. : M.K. Mohanty, Adv.

Judgement :

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

1. The core question involved in this case related to determination of inter se seniority of the petitioner Smt. Maleswari Devi and Smt. Bhanumati Acharya and Jyotsna Rani Mohapatra (opp. parties 5 and 6 respectively) as trained graduate

teachers. The petitioner has prayed for a declaration that she is senior to opp. parties 5 and 6; to revise the gradation list of trained graduate teachers (Annexure-2); and to issue a direction to the opp. parties to appoint her as Headmistress of Rambha Girls' High School, which is an aided educational institution within the meaning of Section 3 (b) of the Orissa Education Act, 1969. The State of Orissa represented by the Secretary, Education and Youth Services Department; the Director of Secondary Education, Orissa; the Circle Inspector of Schools, Ganjam Circle, Berhampur, and the Secretary, Managing Committee, Rambha Girls' High School are the other opp. parties in the case.

2. The case of the petitioner, shorn of unnecessary details, may be stated thus : After completion of B. Ed. Course and before declaration of result of the B. ED. Examination, the petitioner was appointed as an Assistant Teacher in Rambha Girls' High School on 18-8-1983. She passed B. Ed. Examination in November, 1983, At that time, Rambha Girls' High School was a recognised un-aided educational institution. Opp. party No. 5 was appointed as an Assistant Teacher in Deogaon Boys' High School, a private school, from 1984 till 1986, when her service was terminated on the ground of misconduct. Thereafter, she was appointed as an Assistant Teacher on 23-9-1986 in a trained graduate post in Rambha Girls' High School. Opp. party No, 6 was appointed as an Assistant Teacher on the same day as the petitioner, i. a., 18-8-1983, but she acquired B. Ed, qualification in 1984, The petitioner claims seniority over opp. parties 6 and 8 on the basis of length of service in the school (Rambha Girls' high School), The Secretary of the Managing Committee of the school, appointed opp. party No. 5 as in-charge Headmistress of the school. Petitioner's protest against the illegal appointment went unheeded, in the gradation list published by opp. party No. 3, the Inspector of Schools, Ganjam Circle,, on 9-3-1992 (Annexure-2), both opp. parties 5 and 6 were shown above the petitioner. The petitioner filed objection (Annexure-3) to the said gradation list on 11-7-1992, which has not yet been disposed of. In the meantime, the Director by the order dated 18-12-1992 (Annexure-3/A) has allowed opp. party No. 5 to draw Headmistress's scale of pay subject to the result of the writ petition in OJC No. 714 of 1992. The contentions of the petitioner are that opp. party No. 5 having joined Rambha Girls' High School on 23-9-1986 cannot be held to be senior to the petitioner; that the action of the

Secretary of the Managing Committee in appointing opp. party No. 5 as In-charge Headmistress ignoring the claim of the petitioner and approval of such appointment by the Inspector are illegal and invalid and the consequential order of the Director as per Annexure-3/A allowing opp. party No. 5 to draw the scale of pay of Headmistress is unsustainable.

3. Opp. party No. 3, the inspector of Schools, Ganjam Circle, in his counter-affidavit has stated, inter alia, that the gradation list as per Annexure-2 is a provisional one and has not yet been finalized the Director will consider the matter and the gradation list will be finalised in terms of his order. In the writ application filed by opp. party No. 5, OJC No. 7419 of 1992, the High Court directed the Director of Secondary Education to pass final order regarding entitlement of the petitioner in that case (present opp. party No. 5) to the Headmistress's scale of pay taking into consideration the relevant materials on record and if he was satisfied that she had acquired 7 years' teaching experience as a trained graduate teacher by 10-12-1990 to allow her to draw the Headmistress's scale of pay from that date. In pursuance of the said direction, the Director passed the order as per Annexure-3/A allowing opp. party No. 5 to draw the Headmistress' scale of pay subject to the result of OJC No. 714 of 1992, which was then pending. The further case of opp. party No. 3 is that opp. party No. 5 acquired B. Ed qualification on 10-12-1983 and she was allowed to draw Headmistress's scale of pay with effect from 10-12-1990 as evident from the letter dated 18-12-1992 (Annexure-3/A). Her appointment as in-charge Headmistress of Rambha Girls' High School has also been approved with effect from 23-9-1986 vide Annexure-8. On these facts, it is the contention of opp. party No. 3, there is no illegality in the order of the inspector approving opp. party No. 5's appointment as In-charge Headmistress and in the order of the Director allowing her to draw Headmistress's scale of pay on completion of 7 years of teaching experience as trained graduate teacher.

4. Opp. party No. 5 in her counter affidavit has denied that her service in R. K. High School, Deogaon was terminated on the ground of misconduct. She has asserted that on her application she was appointed as Headmistress of R. K. High School, Deogaon since 12-8-1983 and the said appointment was approved by the Inspector of Schools, Ganjam Circle, on 17-7-1984. While working as

Headmistress of the said school, opp. party No. 5 applied through her employer to Rambha Girls' High School to be appointed as Headmistress and on being selected for the post by the Managing Committee she joined as Headmistress of Rambha Girls' High School on 23-9-1986. In the circumstances, she contends that the Inspector and the Director rightly took into account her service as trained graduate teacher from 18-8-1983 while computing the period of experience for the purpose of drawing the sanctioned scale of pay of Headmistress. According to opp. party No. 5, the petitioner's appointment as an Assistant Teacher in Rambha Girls' High School since 1983 is not relevant and cannot be the basis to be declared senior to her (opp. party No. 5).

5. No counter affidavit has been filed on behalf of opp. party No. 6.

6. From the case of the parties, as discussed in the foregoing paragraphs, the position is manifest that when opp. party No. 5 was directly appointed as Headmistress in R. K. High School, Deogaon or in Rambha Girls' High School, she had not the requisite eligibility qualification of 7 years' teaching experience as a trained graduate teacher. Therefore, she could not have been appointed in the post on substantive basis. Presumably due to this difficulty she was appointed as In-charge Headmistress and in the approval order her basic post was described as trained graduate teacher. Inter se seniority of the petitioner and opp. parties 5 and 6 has not yet been finally settled and order of the Director in the matter is awaited. In the meantime, the Director has passed the conditional order allowing opp. party No. 5 to draw Headmistress's scale of pay with effect from 10-12-1990. Therefore, there is a legitimate basis for the petitioner's grievance that her claim to the post of Headmistress, substantive or as in-charge, has been by-passed/ignored. The grievance is all the more justified in view of the order of the Director sanctioning the Headmistress's scale of pay in favour of opp. party No. 6. If the petitioner who was in the school would have been considered by the Managing Committee for appointment of Headmistress In-charge, and in case it failed to do so, the inspector had pointed it out to the Managing Committee, then the petitioner might have been appointed in the post and would have been drawing the Headmistress's scale of pay now. Undisputedly, inter se seniority is a very relevant criterion for appointment of a trained graduate teacher as In-charge Headmistress, especially

when there is the possibility of the person getting the sanctioned scale of pay of the post on completion of 7 years of teaching experience. No explanation has been offered and we find no justification for the delay on the part of the Director in considering the question of inter se seniority of the parties (petitioner and opp. parties 5 and 6) which has been pending since 1992, particularly when the petitioner has filed an objection against the provisional gradation list (Annexure-2) since July, 1992. It is very relevant to state here that OJC No. 714 of 1992 has in the meantime been disposed of and this Court as held inter alia, that appointment of In-charge Headmasters who had not completed 7 years' teaching experience by 3-6-1988 shall not be approved and the said post shall be treated as vacant from 3-6-1988 and shall be filled up by complying with the requirements of Rule 8 (3) of the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 (in short, 'the Recruitment Rules'). Undisputedly, opp. party No. 5 had not acquired the requisite period of teaching experience by 3-6-1988. Therefore, the post of Headmistress of Rambha Girls' High School is to be taken as vacant and is to be filled up in accordance with Rule 8 (3) of the Recruitment Rules. Prior to that the controversy relating to the inter se seniority of the parties should be settled and the gradation list (Annexure-2) which, as stated by opp. party No. 3, is provisional should be finalised. Since opp. party No. 5 has been continuing as in-charge Headmistress of the school and disturbing her may cause a dislocation in the administration of the school, which will not be in the best interest of the institution she may continue in the post, but she will not draw the sanctioned scale of pay of Headmistress till the dispute relating to inter se seniority is finalised by the Director.

7. Therefore, we direct the Director, Secondary Education (opp. party No. 2) to finalise the question of inter se seniority of the petitioner and opp. parties 5 and 6 in the light of the objection filed by the petitioner to the gradation list (Annexure-2) after giving opportunity of hearing to the parties concerned, The exercise will be completed within 4 months of the receipt of the writ from this Court. Till then opp. party No, 5 will not draw the sanctioned scale of pay of Headmistress in Rambha Girls' High School.

8. The writ application is disposed of on the aforesaid terms. No costs.

This order be communicated to the opp. parties forthwith.

R.K. Patra, J.

9. I agree.

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