

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 26434 of 2013

An application under Articles 226 & 227 of Constitution of India.

AFR

Saroj Chandra Behera

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Petitioner

-Versus-

**Hindustan Aeronautics Ltd., Koraput
& others**

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Opp. Parties

Advocate(s) appeared in this case:-

For Petitioner : M/s. S. Mallik, P.C. Das,
M.K. Acharya, Advocates

For Opp. Parties: Mr. A.R. Dash, S.K. Nand-1,
B. Mohapatra, K.S. Sahu &
L.D. Achari, Advocates
[for **Hindustan Aeronautics Ltd.**]

Mr. P.K. Panda, Standing Counsel
For S & ME Department.

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

14th September, 2022

SASHIKANTA MISHRA, J.

A High School was established by Hindustan Aeronautics Limited (HAL), a fully owned Government company under the direct control of Government of India,

at Sunabeda in the district of Koraput in the year 1968. The School was named Aeronautics DAV High School (ADAV High School). The School had a Managing Committee of its own and was affiliated to the Board of Secondary Education, Odisha. The students of the School were appearing in the HSC examination under the control of the said Board. The School was being fully financed by the HAL management till 1974. The Government of Odisha granted full grant-in-aid towards salary cost of the teaching and non-teaching staff of the School in 1974 and as such, the School became an aided educational institution within the meaning of Section 3(b) of the Odisha Education Act. The scale of pay of the staff of the School was equal to their counterparts in the Government High Schools in terms of Rule 9 of the Odisha Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974. An Educational Society was constituted and registered by the HAL management in the name and style of Aeronautics Education Society to run and manage the educational institutions established and managed by the

HAL management at Sunabeda with the General Manager of Koraput Division as the Chairman of the Society. The petitioner was initially appointed as a Trained Graduate Teacher in the year 1980 and his appointment was approved by the Inspector of Schools, Koraput by order dated 13.05.1982 with effect from the date of his joining i.e., 02.09.1980. The Secretary of HAL management in his letter dated 03.04.1993 wrote to the Inspector of Schools intimating that the Aeronautics Education Society would fully finance the school from 1993-94 and that they would not accept any aid from the Government of Odisha. On 06.05.1994, the Inspector of Schools, Koraput issued a letter to the General Manager, HAL requesting him to intimate as to whether the management is agreeable to take over the school and fully finance it. In response, by letter dated 22.08.1994, the General Manager intimated the Inspector of Schools that the Aeronautics Education Society is prepared to manage the ADAV High School and to finance the School fully. Accordingly on 05.05.1995, the Government of Odisha in School and Mass Education Department intimated the HAL authorities that

Government has no objection to the management of the school being taken over by the authorities of HAL subject to the condition that HAL will not claim grant-in-aid from the State Government. On such terms and conditions the management of the School was taken over by the HAL authorities from the year 1993-94. It is stated that the HAL management did not honor its commitment made to the Government by not extending the benefit of revision of scales of pay and other benefits which the staff would have got from the State Government had they been continuing as employees of a taken-over school. Further, the age of retirement of the teaching and non-teaching staff of aided educational institutions in Odisha was 60 years and so was the age of retirement of the employees of HAL. The Government of India also made the retirement age of its employees at 60 years. However, the opposite party authorities continued to superannuate the teaching and non-teaching staff of the school on completion of 58 years of age. The date of birth of the petitioner being 05.01.1956, he was entitled to continue till the end of January 2016 but the opposite party authorities took steps to retire him

on superannuation with effect from 31.01.2014 at the age of 58 years. It is further stated that even though the post of Head Master was lying vacant since long and the petitioner was the senior most teacher, he is functioning as In-Charge Headmaster with the designation as Asst. Headmaster only by allowing him revision of Grade Pay from Rs.4200/- to Rs.4600/- and Conveyance Allowance of Rs.400/- per month. Such Grade Pay was also not paid to him. Further, the Revised Scale of Pay Rules, 1998 came into force with effect from 01.01.1996 revising the scale of pay of the Government employees from the said date. As per the provisions of the said Rules, employees were allowed Time Bound Advancement (TBA) scale of pay on completion of 15 years of service in the same post. Even though the petitioner completed 15 years of service in 1995 benefits of Revised Scale of Pay Rules, though made applicable HAL employees, were denied to the petitioner and other staff of the school. The revision of scale of pay pursuant to the Revised Scale of Pay Rules, 2008 was also made applicable to the school from August, 2009 and as such, the petitioner is entitled to such revision with effect

from 01.01.2006. The same was not paid to the petitioner. The petitioner submitted several representations to the authorities but the same evoked no response. As such, the petitioner was constrained to approach this Court in the present writ application seeking the following relief:

“Under the aforesaid facts and circumstance the petitioner humbly prays that this Hon’ble Court may graciously be pleased to,

1. Direct/Order that the Petitioner shall be allowed the revised scale of pay w.e.f. 1.1.1996 and 1.1.2006 and the other financial and service benefits accrued to him consequent upon such revision with a concurrent direction to pay the differential arrear salary within a stipulated period.

2. Direct/Order that the petitioner shall be allowed to continue till completion of 60 years of age which is the age of retirement of the employees of the aided educational institution and also the employees of HAL.

3. Direct/Order that the petitioner shall be allowed the D.A. at the same rate as has been allowed to the State Government, Central Government and HAL employee.

4. Pass such other orders as may be deemed fit and proper in the interest of justice.

And for this act of kindness the petitioner as in duty bound shall ever pray.”

2. The Opposite Party No.1, (HAL management) has filed a counter. It is basically contended that the

School in question was taken over by the Aeronautics Education Society, which is a Society registered under the Societies Registration Act having its own bye-laws which inter alia, include the service conditions of employees like the petitioner. Such service conditions of the employees do not include or attract any of the service conditions governing the employees of HAL and such service conditions of the Society are comprehensive and wholesome in itself. It is further stated that the issues raised in the writ petition are directed against the Society and not the management of HAL. It is however clarified that the age of superannuation of teachers in the State High Schools is 58 years and not 60 years.

3. Counter affidavit has been filed also by Opposite Party Nos. 2 and 3. While the basic facts relating to establishment of the School, coming under the grant-in-aid fold and its subsequent takeover by the Aeronautics Education Society have not been disputed, the claim of the petitioner as laid in the writ petition is seriously disputed. It is stated that with effect from 1995, ADAV High School is functioning as a private High School being administered by

the Society which is an independent registered society having its own bye-laws managed by its managing committee and generating its own funds. It is stated that the petitioner is not entitled to any claim for salary benefits etc. at par with the State Government or Central Government/HAL employees especially when no such term was included either in his appointment letter or in the undertaking given by AES to the State Government during takeover of the School. It is further stated that apart from the monetary benefits, AES also provides several non-monetary benefits as per its policies which are not available under the State Government such as, residential quarters, water/electricity at subsidized rates, free medical treatment at HAL hospital, unlimited reimbursement of medical expenses and LTC etc. It is also stated that GPF having been stopped with effect from 2004 and contributory PF at the rate of 10% by the State Government for its employees but, being covered under the EPF Act, 1952, the AES pays contributory PF at the rate of 12%. Further, leave encashment, which is not available under the state Government, is applicable to AES

employees at the rate of 15 days of leave per year. That apart, certain allowance like conveyance allowance, officiating allowance etc. not available to the State Government employees are paid by AES to its employees. It is stated that the petitioner has accepted and availed all these benefits over the years without any demur and hence, is estopped to claim the relief laid in the writ petition. On such background facts a paragraph-wise reply is offered to the writ petition denying and disputing each of the averments thereof. As regards revision of pay as per the Revised Scale of Pay Rules, 1998 and 2008, it is stated that the same are not applicable to the petitioner since he is an employee in a private High School administered by the AES. The petitioner cannot seek parity with employees of Government and aided Schools. In any case in the interest of the employees, AES has revised the scale of pay of its employees with effect from August, 2009. The Society has also granted payment of TBA benefits to the teaching staff of the Society vide Circular dated 23.4.2007. As regards the date of retirement, it is reiterated that the age of retirement under the Government of Odisha is also 58

years and the appointment letter as well as terms and conditions of appointment of employees under the AES also stipulate the retirement age as 58 years. Moreover a meeting was held on 17.07.2012 between the AES management and the representatives of teachers to resolve certain disputes/differences raised by the teachers. In the said meeting it was decided that DA would be paid to the teaching staff of AES at the rate of 58% from July 2012 that is, one step below the Government of Odisha DA Pattern henceforth and the same will also be followed in future and the differential amount shall be payable once in a year from the effective date of declaration by the Government of Odisha, the arrear DA for the period from August 2009 to June 2012 shall be calculated considering the entitlement would be two steps below the applicable DA rates declared by the State Government and efforts will be made for extending such DA arrear after obtaining necessary approval. The gratuity ceiling was also enhanced, the leave rules were revised and as regards the age of superannuation, it was decided to keep it unchanged at 58 years. In short, the claim of the petitioner

is seriously disputed on the ground of waiver, acquiescence and estoppel.

4. The petitioner has filed a composite rejoinder to the counter affidavits filed by Opposite Party No. 1 and Opposite Party Nos. 2 and 3. It is reiterated in the rejoinder that despite coming forward to take over the management of the School and committing to provide full finance towards all expenditure including salary cost, HAL management went back on its assurance, as a result of which the service conditions of the staff was changed to their detriment. It is further stated that the employees of HAL are getting similar benefits that is, pay and allowances as extended to the Central Government employees. The State Government has also extended the pay revision from the date it is made applicable to the employees of the Central Government pursuant to the Fifth and Sixth Pay Commission Report. The benefit of TBA is allowed to HAL employees and employees of the State Government but the same has not been allowed to the petitioner though he is entitled to the same as an employee of an aided educational institution.

5. A further additional affidavit has been filed by Opposite Party Nos. 2 and 3. It is stated that at the time when the School was an aided institution, there was discontentment among the teaching and non-teaching staff that were getting grant-in-aid from the Government. Therefore they, including the present petitioner, submitted a joint representation on 10.05.1993 indicating the details of various discrepancies/discrimination as to their pay and perks and requested the General Secretary of the Society to manage the School on direct supervision like brother and sister institutions running under the ownership of the management of the Society for the better benefit of the employees working under the payroll of the Society. Pursuant to letter dated 05.05.1995, the Deputy Secretary to Government in the Department of School and Mass Education, the Inspector of Schools, Koraput Circle vide letter dated 22.6.1995 wrote to the Headmaster of ADAV High School asking him to send the willingness of employees in the School for taking further action at his end with the information that grant-in-aid will not be released from 01.06.1995 onwards in favor of the School. In

response, the then Headmaster of the School vide letter dated 27.06.1995, requested all the teaching and non-teaching staff including the present petitioner, who were getting grant-in-aid from the Government, to submit their option in the proforma supplied to them on the very same day. At the relevant time, 25 staff of the School were getting grant-in-aid and out of the same, 22 including the present petitioner opted in the prescribed proforma agreeing for withdrawal of grant-in-aid and taking over of the management of the ADAV High School, Sunabeda by the AES. As such, the Secretary of the ADAV School Managing Committee vide letter dated 13.12.1996 wrote to the Inspector of Schools, Koraput Circle, Koraput requesting therein to transfer those three unwilling staff to any other aided School. The 22 staff who had opted for withdrawal of grant-in-aid gave their respective applications for final withdrawal of the GPF for the period from February 1994 to May 1995 which were duly forwarded by the Headmaster to the Inspector of Schools. It is stated that in such view of the matter the petitioner is estopped to question the legality of the action of the society

alleging discrimination after 19 years. It is also stated that the petitioner is guilty of suppression of material facts and of having approached the Court with unclean hands.

6. Heard Mr. Sidehswar Mallik, learned counsel for the petitioner and Mr. A.R.Dash, learned counsel appearing for the opposite parties- HAL.

7. Mr. Mallik would argue that the status of an educational institution which has once received aid from the Government, cannot be reversed at any point of time. Elaborating his argument, Mr. Mallik would submit that originally the School was a private school which came into the grant-in-aid fold from 1974 to 1995. As such, it was an aided educational institution within the meaning of Section 3(b) of the Odisha Education Act, 1969. There is no provision in the Act permitting reversion of an aided educational institution to the status of a private school. Secondly, the status of the School was allowed to be changed to a private school only on the assurance by the HAL management that it would manage the institution and not claim any aid from the Government. The management however went back on its assurance and instead allowed a

registered Society to manage the institution. As a result, the service conditions of the employees were changed to their detriment, which is not permissible in law. It is well settled that the benefits available to the employees cannot be changed to their detriment at the will of the management. Mr. Mallik further argues that having been part of the grant-in-aid fold, the petitioner is still entitled to all the benefits that are available to the State Government employees as also the employees of the aided institutions.

8. Mr. A.R. Dash, on the other hand contends that the petitioner has not come to the court with clean hands as he has suppressed material facts. It is argued that at the time of exercise of option i.e., at the time of taking over of the school by the Society, the petitioner could have raised objection or protest if he had any reason to do so. In fact three employees out of 25 did not exercise the option for which they were transferred to other institutions. The petitioner willfully exercised his option to remain under the management of the Society. Therefore, it is no longer open to him to raise any grievance in this regard at such a belated stage. It is further argued by Mr.

Dash that the petitioner was one of the signatories in the representation submitted by the employees of the institution expressing their desire to be taken out from the Government fold as they felt that it would be beneficial to them. Finally, referring to the minutes of the meeting held between the representatives of the teachers and the Society held on 17.7.2012, Mr. Dash contends that having agreed to the terms and conditions laid down therein it is no longer open to the petitioner to turn around and take a different view altogether, that too at this belated stage.

9. The facts of the case as can be culled out from the rival pleadings and contentions put forth before this Court give rise to two important issues namely, limitation and estoppel.

The petitioner's grievance as can be seen from a perusal of the prayer made in the writ petition is purported non-payment of revised scale of pay with effect from 01.01.1996 and 01.01.2006 and the consequential benefits relating thereto, to be allowed to serve till completion of 60 years of age and to be granted DA at the same rate as allowed to the State Government, Central

Government and HAL employees. Whether the claims as above bear any merit or not is dependent on certain intrinsic facts which go to the root of the matter. Admittedly, the institution was established in the year 1968 as a purely private institution. It came into the grant-in-aid fold, partly according to the answering opposite parties, in the year 1974. On 10.05.1993 the teaching staff of the school submitted a representation to the General Secretary of Aeronautics Education Society, copy of which is enclosed as Annexure J/2 to the further affidavit filed by the answering opposite parties. Reading of the said representation would reveal that according to the teaching staff, the teachers under the Government payroll were facing a lot of difficulties regarding sanction of EL, loan, etc. whereas, the HAL management extends several facilities like medical, LTC, quarters, postgraduate allowance etc. It was therefore apprehended by the representationists that if the School functions as a non-Government aided institution, they would be losing the said facilities. On such grounds it was appealed to manage the School under the direct supervision of the Society. This

representation led to several correspondences between the HAL management and the Government. The Government wanted written willingness of the teaching and non-teaching staff before taking any decision in the matter. Such willingness appears to have been submitted by 22 out of 25 employees, including the petitioner. Accordingly, the Government expressed its no objection to the proposal for taking over of the school by the HAL management on the condition that it shall not claim any aid from the Government in future. Such being the factual background for taking over of the school by the AES, if the employees including the petitioner had any reason to feel let down or deprived, it was open to them to raise their protest at the relevant time. Nothing appears to have been done in all these years when much water has flown down the bridge. It is therefore no longer open to the petitioner or for that matter, any other person to question the correctness of the decision of the Government or the HAL management or even of the Society in taking over the School and running it as a purely private institution. The argument that once an institution becomes an aided educational institution within

the meaning of the Act it cannot be reverted to its previous status appears to be ill-founded for the reason that there is nothing in the Act to prohibit the same.

10. In the case of ***State of UP vs. Principal, Abhay Nandan Inter College and others***, reported in 2021 SCC OnLine SC 807, the Apex Court held as follows:

“If an institution does not want to accept and comply with the conditions accompanying such aid, it is well open to it to decline the grant and move in its own way xxxxx.”

The argument advanced on this score is therefore, untenable.

11. Be that as it may, fact remains that the petitioner along with the other employees willfully accepted the change at the relevant time thereby acquiesced to the charge. Therefore, they cannot raise any grievance on such score at this distance of time.

12. It is also to be noted that not only that the petitioner being one of the teachers initiated the process of takeover by the HAL management/AES and expressed their positive willingness for the same, they also accepted the

change for all these years by reaping the benefits offered to them by the private management without even a semblance of protest or demur. The decision taken in the meeting held on 17.07.2012 was also never challenged before the appropriate forum. On the contrary, the decisions taken therein were accepted without any protest by the signatories including the petitioner. This is therefore, also a clear case of acquiescence and waiver.

13. This also raises the important issue raised by the answering opposite parties regarding suppression of material facts. The petitioner, while claiming the aforementioned relief has not whispered a word either in the writ petition or in the rejoinder about the meeting held on 17.07.2012 even though the very same issues were discussed and agreed upon. This tells upon the conduct of the petitioner. It is well settled that a litigant has to approach the Court with clean hands without suppressing any material fact. Having regard to the conduct of the petitioner as referred above, this Court is constrained to observe that the petitioner has observed the rule entirely in

its breach. This Court therefore, records its strong disapproval of the conduct of the petitioner.

14. Even otherwise, the petitioner being a signatory to the meeting held on 17.7.2012, wherein the very same issues raised in the present application having been dealt with and decided in a particular manner, it is no longer open to the petitioner to challenge the same subsequently. This is a case where the law of estoppel would apply in full force inasmuch as having accepted a particular decision by endorsing his signature thereto, the petitioner cannot be allowed to subsequently turn around and challenge the same.

15. Even on merits, it is seen that the relief claimed in the writ petition is no longer available to be granted to the petitioner for the reason that as per the decision taken on 17.7.2012 necessary revision of the scale of pay has already been made with consent of the employees with effect from 2009. As regards the age of retirement, it is seen that the terms and conditions of the appointment, which the petitioner had accepted willfully at the relevant time, clearly provide that the age of retirement

would be 58 years. Significantly, at the relevant time the age of retirement in case of Government employees was also 58 years. The claim that the retirement age should be 60 years is therefore, found to be without any basis. As to the claim for DA, it is seen that as per the decision taken on 17.07.2012, DA at the rate of 58% was allowed from July 2012 at the rate of one step below the Government of Odisha DA pattern henceforth and shall also be followed in future with the differential amount payable once in a year from the effective date of declaration by the Government of Odisha. There is no reason to find fault with such decision. It is also seen that the employees of the ADAV High School including the petitioner were entitled to several other benefits which their counterparts in the State Government or aided educational institutions were not entitled to such as, residential quarters, medical benefits, LTC etc. As has been rightly contended by learned counsel appearing for the answering opposite parties, if the said benefits are monetized, it would amount to much more than what the petitioner would have got had he continued under the Government payroll.

16. For the following reasons therefore, this Court finds that the relief claimed by the petitioner in the present writ petition cannot be granted on the ground of long delay as also the principles of waiver, acquiescence and estoppel. Even on merits, the petitioner's claim is found to be without any valid or justifiable basis. In such view of the matter, the writ petition being devoid of merit is, therefore, dismissed but in the circumstances, without any cost.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 14th September, 2022/ A.K. Rana, P.A.