

IN THE HIGH COURT OF ORISSA AT CUTTACK

Writ Petition (Civil) No.24367 of 2011

Laxminarayan Dey ***Petitioner***

-versus-

State of Odisha and others ***Opposite Parties***

Appeared in this case:

For Petitioner : Mr. Manoj Kumar Mohanty,
Advocate

For Opposite Parties : Mr. P. K. Panda, Standing Counsel
for School and Mass Education
Department

CORAM:
THE CHIEF JUSTICE
JUSTICE A. K. MOHAPATRA

JUDGMENT

04.01.2022

Dr. S. Muralidhar, CJ.

1. The challenge in the present petition is to an order dated 9th March, 2011 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack (OAT), disposing of the Petitioner's T.A. No.3(C) of 2010. By the impugned order, the OAT declined the Petitioner's prayer that his services as Classical Teacher in the Kanimahuli High School, Mayurbhanj District must be

regularized from the date of his initial appointment as such. However, the OAT clarified that the Petitioner would be entitled to arrears of salary from the date of the Government taking over the school i.e. from 7th June, 1994 till his discontinuance i.e. 26th August, 1995.

2. This Court has heard the submissions of Mr. Manoj Kumar Mohanty, learned counsel appearing for the Petitioner and Mr. P. K. Panda, learned Standing Counsel for School and Mass Education (S & ME) Department, Government of Odisha.

3. The background facts are that the Kanimahuli High School was established in 1978. It was a private unaided school to begin with. It became eligible to receive grant-in-aid with effect from 1st February, 1987. The school became a grant-in-aid school with effect from 6th July, 1987. Once it became an aided educational institution, the Orissa Education (Recruitment and Conditions of Services of Teachers and Members of Staff of Aided Education Institution) Rules 1974 (hereafter 'the 1974 Rules') made in terms of the Orissa Education Act (OE Act) applied to the school. Subsequently, the Government took over the running of the school with effect from 7th June, 1994.

4. As far as the present Petitioner is concerned, the relevant facts are that initially one Sri Gouri Sankar Panigrahi was appointed as Classical Teacher on 1st July, 1978 at a time the school was not an aided institution. Sri Panigrahi tendered his resignation on 20th

May, 1981 and the Managing Committee of the school accepted it on 30th June, 1981. Thereafter, one Sri Suresh Chandra Pati was appointed as the Classical Teacher, but he too resigned on 25th September 1989, which was accepted by the school on 26th September, 1989. The Secretary of the Managing Committee appointed the present Petitioner as the Classical Teacher by an appointment letter dated 26th September, 1989. The appointment letter stated that he was being appointed on the basis of the interview conducted by the Selection Board. The appointment letter further stated "the appointment is purely temporary subject to the approval of the higher authority." However, for some reason, the Directorate of Secondary Education, Orissa was not moved for approval of the appointment till February, 1991. With effect from 7th February 1994, as already noted, the school was taken over by the Government. Since the Petitioner's appointment had not been made in terms of the 1974 Rules, his services were not taken over by the Government. The Head Master did not allow him to sign the Attendance Register after 26th August, 1995.

5. Before the OAT it was argued on behalf of the Petitioner that although the school became eligible for grant-in-aid with effect from 1st March, 1987, the school received the grant-in-aid for the first time on 6th October, 1989. It was contended that as per Section 3 (b) of the OE Act, the school became an aided educational institution only with effect from the date of receipt of the grant-in-aid. It was accordingly contended that since the Petitioner had been appointed on 26th September 1989, prior to

receipt of the grant-in-aid, his appointment did not require the approval of the Director of Secondary Education, Orissa. Reference was made to a letter dated 3rd May, 1991 of the Director addressed to the Inspector of Schools stating that since the Petitioner was appointed before the school received the minimum grant-in-aid, the Inspector was himself competent enough to approve the appointment of staff of non-Government High Schools.

6. However, the OAT did not accept these arguments. It was noted by it in para 6 of the impugned order that learned counsel for the Petitioner had at the outset conceded that in terms of decision of this Court dated 14th November, 1991 in OJC No.3097 of 1985 (*Nityananda Lenka v. State*) the school in question was an aided school covered by the 1974 Rules. The OAT noted that no request had been made by the Managing Committee for sponsoring the Petitioner's candidacy for appointment as Classical teacher prior to his appointment and, therefore, his appointment was not valid. The OAT declined to apply the decision of the Supreme Court in *Secretary, State of Karnataka v. Uma Devi, (2006) 4 SCC 1* in order to direct regularization of his services since the appointment of the Petitioner was without recourse to public advertisement or sponsorship by the Employment Exchange and was *de hors* the Rules.

7. Before this Court it was contended by Mr. M.K. Mohanty, learned counsel for the Petitioner, that since the grant-in-aid was

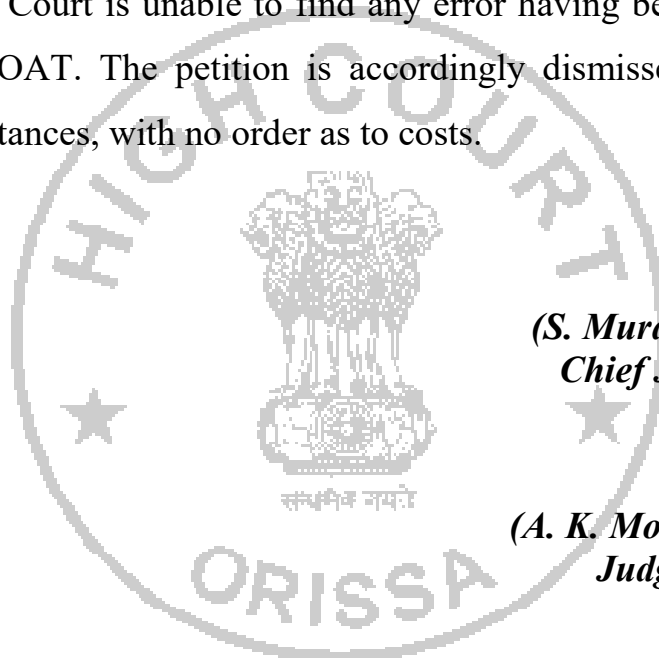
in fact received for the first time only on 6th October 1989, it could not be said that the Petitioner's appointment was made at a time when the school was already a grant-in-aid school and that it had to be made under the 1974 Rules.

8. The above argument is not acceptable for the simple reason that in terms of the judgment of this Court in *Nityananda Lenka (supra)* and in terms of the Office Order dated 6th July, 1987 of the Inspector of Schools, the school in question should be considered to be a grant-in-aid school since 1st March, 1987. The letter dated 3rd May, 1991 of the Director of Secondary Education cannot be said to be determinative of whether the Petitioner's appointment was at a time when the 1974 Rules did not apply. There has been no convincing reply by the Petitioner to the consistent stand of the Opposite Parties is that since the Petitioner's appointment was not in terms of the 1974 Rules, his services were not liable to be taken over by the Government, when the school was taken over by it.

9. It is not known why the Managing Committee of the school did not move the Department for approval of the Petitioner's appointment till February, 1991. In any event, that approval was never given. Meanwhile, on 7th June, 1994, the Government took over the school and even by that time the Petitioner's appointment had not been approved. Therefore, there was no obligation on the Government to take over the services of the Petitioner.

10. In the circumstances, the Court is of the view that the OAT was right in rejecting the prayer of the Petitioner that his services should be asked to be regularized by the Government. The only relief that could have been granted to the Petitioner is what in fact has in fact been granted viz., that he should be paid the arrears of salary for the period between 7th June, 1994 and 26th August, 1995.

11. The Court is unable to find any error having been committed by the OAT. The petition is accordingly dismissed, but in the circumstances, with no order as to costs.



(S. Muralidhar)
Chief Justice

(A. K. Mohapatra)
Judge

M. Panda