

State of Orissa and Another

Vs

N.N. Swamy and Others

Civil Appeal Nos. 1357-1358 of 1975

(P.K. Goswami, P.N. Shinghal JJ)

27.01.1977

JUDGMENT

GOSWAMI, J. –

1. These appeals by special leave are directed against the judgment of the Orissa High Court of February 4, 1974.
2. There was a private college known by the name of Khallikote College. This is an institution which grew out of a school established in 1856. The management had to meet with financial crisis in the past and obtained financial help in the shape of liberal endowment under a trust deed from the then zamindar of Khallikote. The institution, it is stated, became one of the premier colleges in the town of Behrampur, Ganjam District, Orissa. The College was at first affiliated to the Andhra University at Waltair and thereafter to the Utkal University and since 1967 it has been affiliated to the Behrampur University.
3. The Government of Orissa took over the management of the College on and from March 9, 1971, and a formal agreement was executed between the managing committee of the College and the Governor of the State. The College was taken over by the Government in pursuance of the unanimous resolution of the managing committee of February 18, 1970, and the transfer to the Government was of all the assets of the College but without any liability. The managing committee continued to be liable for the outstanding liabilities, if any, of the College for which Government was not liable. The College after the take over was administered as a Government College.
4. The eight writ petitioners in the High Court (Respondents herein) were working as Readers in different faculties in the said College on the date of the aforesaid transfer in the scale of pay Rs. 510-860 whereas the Government scale for Readers was Rs. 600-1000. On the date of take over, namely, March 9, 1971, each of the respondents was drawing a salary somewhere less than Rs. 600; three of them less by only Rs. 30.
5. The material particulars of the ten Readers of the College who were all earlier in private employment, including the eight Respondents, are as follows (Annexure I, Volume II of the Paper Book) :

#-----	"Sl. Name	Date of	Date of						
Date of Confirm-	Pay as on	No. Birth	1st promo-	ed as	9-3-1971	appoint-	tion (date		
ment. take over)	-----	-----	-----	-----	-----	-----	1	2	3
7-----	-----	-----	-----	-----	-----	-----	4	5	6
	1. Sri N. N. Swamy	18-3-34							

21-7-58 1-12-68 Reader Rs. 5702. Sri N. Satapathy 6-9-33 July' 59 27-1-70 Reader Rs. 5403. Sri P. Haridas 10-3-36 25-10-61 25-10-69 Lecturer Rs. 5404. Sri J. J. Rao 16-3-36 7-7-59 1-7-68 Reader Rs. 5405. Sri K. C. Samantra 5-7-70 Lecturer All the posts are permanent.6. Sri G.J. Chineswar 30-9-31 3-9-57 1-10-67 Reader Rs. 570 Rao7. Sri Ch. Chandra 1-7-35 1-8-58 1-1-67 Reader Rs. 570 Sekhar Patro8. Sri Narayana Behera 1-10-37 2-8-62 13-9-70 Lecturer Rs. 5109. Sri T.K. Satyanmurty 14-9-27 1-7-49 4-5-59 Reader Rs. 66010. Sri V.S.R. Gupta 28-12-30 1-7-52 4-9-69 Lecturer Rs. 600."-----##

6. It will appear that five Respondents out of eight were confirmed as Readers prior to the take over. Three Respondents were confirmed as Lecturers but were promoted as Readers prior to the transfer of the College. The last two Readers in the list who were lucky to draw salary of the amount of Rs. 660 and Rs. 600 respectively as on the date of take over, were treated differently by the Government from the eight Respondents on the sole ground that they were drawing as Reader salary of more than Rs. 600. It is rather poignant that the tenth Reader in the list was only a confirmed Lecturer whereas, as already shown, five of the Respondents were confirmed Readers although drawing salary less than Rs. 600.

7. On July 30, 1970, the Government prescribed qualifications for appointment as a Reader by a Circular of that date addressed to the Director of Public Instruction (Higher Education) Orissa, which appears to supersede the earlier circulars on the subject. It was stated in that circular that the "Government have been pleased to order that following principles shall henceforward be followed in the appointment of Readers, namely,

(a) no officer who has not had at least 8 years of teaching experience as a Lecturer would be eligible for consideration; and

(b) the post of Reader shall originally be filled up by promotion subject to the satisfactory performance and conduct of the officer as a lecturer".

8. On March 23, 1971, the Government issued a circular containing conditions governing taking over the services of the teaching staff of the College. Paras 4 and 5 of that circular, which are material for our purpose, may be quoted :

4. The State Government shall offer ad hoc appointment to all staff in position on the date of take over subject to para 5, and sub-para (d) of this paragraph for a period not exceeding six months in each case, treating all such staff as fresh entrants to Government service. The final absorption of such staff in Government service shall be subject to the following conditions :

* * *

(b) That after termination of services of surplus personnel, the cases of staff retained in Class I and Class II shall be referred to the Orissa Public Service Commission for determination of their suitability to hold posts in Class I or II as the case may be. The services of those who are not found suitable by the P.S.C. (Public Service Commission) shall also be terminated by giving one month's notice in each case. Those found suitable by the Commission shall be finally absorbed in respective Trade of the O.E.S. (Orissa Education Service) for which they are found suitable. It

is hereby clarified that at the time of reference to the P.S.C. for determination of suitability for appointment as Readers, cases of Lecturers of Government College, eligible for appointment as Readers shall also be simultaneously referred to the P.S.C. for consideration against those posts.

(c) While making reference to the P.S.C.... cases of those ad hoc Readers who would have been normally entitled to pay of less than Rs. 600/- per month on 9.3.1971 by application of the formula "minimum of the scale of pay of Readers in force in the Colleges on the date of their appointment as such by the Ex-Managing Committee plus one increment in that scale for every completed year of service upto 9.3.71" would be referred for determination of their suitability for absorption as Lecturers only.

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5. Ad hoc appointments shall be issued to all Professors and such of the Readers in position, who on the date of takeover were in receipt of pay of Rs. 600 per month or more, in the scale of pay Rs. 600-1000 against posts of Readers. Readers who on the date of take over were in receipt of pay of less than Rs. 600/- per month and all lecturers in position on that date shall be given ad hoc appointment against the post of lecturers in the scale of Rs. 260-780/- with effect from the date of take over.

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9. Basing on the aforesaid provisions of the above circular the Director of Public Instructions sent on April 20, 1971, to each of the respondents appointment letters whereby they were appointed as Lecturers in Class II temporarily on ad hoc basis for a period of six months with effect from the forenoon of March 9, 1971, or till the appointment is made in consultation with the Orissa Public Service Commission, whichever is earlier, subject to verification of character and antecedents and production of medical fitness certificate. Appointments were, thus, offered to the respondents under the terms and conditions of take over which have been already extracted.

10. The grievance of the respondents is that although they had all the requisite qualifications for the appointment as Reader and they were all holding the posts of Reader before the take over and five of them were even confirmed Readers but since under the aforesaid terms of the take over they were drawing a salary of less than Rs. 600 on the date of take over, their names were not referred to the Public Service Commission for consideration of their suitability for appointment as Readers in the Government College. It is not disputed that they are otherwise educationally and by experience qualified for the post of Readers. The High Court found that the requirement of eight years of teaching experience, as mentioned above, which is needed for appointment as a Reader is more than amply fulfilled by each of the respondents. The High Court accepted the Writ Petitions and held that the respondents were entitled to consideration by the Public Service Commission for appointment as Readers and hence these appeals by the State which are confined only to the above question.

11. It is submitted by Mr. Ramamurti on behalf of the appellants that the High Court erred in directing the Government to take into account, as experience, the service of the respondents while they were in the private college since, according to him, the necessary qualification is eight years experience in Class II, Orissa Education Service (O.E.S.). This submission is based on the Orissa Education Service Class I (Recruitment to the College Branch) Rules, 1971, issued on July 19,

1971, produced for the first time in this Court. It is submitted that since the respondents have not completed eight years of service in the O.E.S. Class II (Lecturer's grade) in Government service, they are not entitled to be considered by the Public Service Commission for appointment as Readers. We are unable to accept this submission based on these Rules. These Rules of July 19, 1971, were not produced in the High Court and the reason is obvious that these were not relied upon by the State in connection with the appointment of the respondents as Readers after the College had been taken over by the Government on March 9, 1971. The argument has, therefore, to be supported on the intrinsic strength of the circular of March 23, 1971.

12. Apart from this, there is a stronger reason not to entertain this submission at this stage. Even in the Special Leave Petition filed by the State on July 15, 1974, there was no mention whatsoever about the aforesaid Rules and necessarily no ground was taken in the Petition on the basis of these Rules. Being conscious of this position Mr. Ramamurthi filed a Civil Miscellaneous Petition 4069 of 1976 before this Court on April 30, 1976, to urge this additional ground. After hearing Mr. Ramamurthi we rejected this prayer for urging the additional ground by such a belated application when the High Court had no opportunity to consider the question.

13. The only question, therefore, which requires decision in these appeals is whether the respondents were denied equal opportunity under Article 16 of the Constitution in the matter of appointment as Readers under the Government in the manner laid down in the circular of March 23, 1971.

14. The following facts are admitted :

15. The respondents and two others, namely, T. K. Satyamurthy (No. 9) and V. S. R. Gupta (No. 10) in the list (Annexure I) were all Readers in the private College, each having put in more than eight years of service there as a Lecturer. T. K. Satyamurthy was promoted as Reader on May 4, 1969 and was drawing Rs. 660 on the date of taking over. V.S.R. Gupta was promoted as Reader on September 4, 1969 and was drawing Rs. 600, the minimum according to the aforesaid Government circular, on the date of taking over. He was not even confirmed as a Reader but was only confirmed as a Lecturer. Amongst the respondents N. N. Swamy (No. 1), N. Satapathy (No. 2), J. J. Rao (No. 4), G. J. Chineswar Rao (No. 6) and Ch. Chandra Sekhar Patro (No. 7) in the list (Annexure I) were confirmed as Readers and four of them were promoted even earlier than No. 9 and No. 10. It is thus clear that the condition of drawing of Rs. 600 or more on the date of taking over, which has been laid down in the said circular as a particular qualification for eligibility for appointment as Reader and later for consideration of their suitability by the Public Service Commission for appointment as Reader, is arbitrary and discriminatory. This condition has no nexus, whatever, with the object underlying the qualification test in an educational institution having regard to the most essential condition of intrinsic quality and efficiency of the teachers. It is not unknown that private institutions generally have great handicaps in the matter of finance and oftener the teaching staff in a private college has not the same scales of pay and sometimes even has much lower scales than that of the Government colleges. It is one thing to lay down appropriate educational and intelligibly relevant qualifications for certain posts in a college and also teaching experience of a specified duration but complete ignorance, without valid reason, of the teaching experience of a lecturer in a private college, otherwise qualified, on the sole ground of drawing a particular amount of salary on a particular date cannot be countenanced. T. K. Satyamurthy (No. 9) was promoted as a Reader while in the private college much later than the four of the respondents (Nos. 1, 4, 6 and 7 Annexure I). He happened to draw Rs. 660 on the date of take over, while the respondents were drawing a little lower pay. The former was preferred and given the ad hoc appointment of a Reader and was held as

eligible for consideration by the Public Service Commission for appointment as Reader and the claims of the respondents were ignored. Thus even amongst the Readers in the private college, similarly situated, the only ground for ignoring the claims of the said respondents was drawing of a lesser pay, even though it may be less by Rs. 30, on March 9, 1971. This ground for a most unreasonable differentiation in picking and choosing from amongst the employees similarly situated on an absolutely artificial and irrelevant consideration results in denial of equal opportunity to the respondents in the matter of employment under the Government under Article 16 of the Constitution.

16. It is well-settled that under Article 16(1) of the Constitution matters relating to employment not only mean the initial appointment but also include all matters relating to employment, whether prior or subsequent to the employment and also include promotion. (See *The General Manager, Southern Railway v. Rangachari* ([1962] 2 SCR 586 : AIR 1962 SC 36 [1961] 2 SCJ 424).)

17. Our attention was drawn to a decision of this Court in *Smt. Juthika Bhattacharya v. State of Madhya Pradesh* ([1976] 4 SCC 96 : 1976 SCC (L & S) 561), on behalf of the appellants, wherefrom it was pointed out that Government could validly impose comparatively stringent qualifications for posts in schools taken over from private management, since persons there may be appointed without the requisite experience as needed in Government schools. That case is entirely different from the present case. There may be no difficulty in accepting the position that Government can screen the teachers at the time of fresh appointment in Government service after taking over any institution from private management. The educational qualifications and teaching experience which may be insisted upon may be appropriately stringent having regard to the quality of education which Government intends to impart in the college after taking over the same from the private management. If the quondam private employees in the College did not fulfil the qualifications, experience and other requisite conditions, they may not be eligible for appointment since Government may not undertake to take over all the employees by maintaining the *status quo ante*. Such a position, if taken by the Government, is consistent with implementation of a correct educational policy and will not incur the frown of Article 16 of the Constitution. The question is entirely different when, as in the present case, the respondents answering the test of educational qualifications, as well as, experience of teaching in a recognised private college are discriminated amongst the very category of Readers on an irrational and illusory consideration. Denial of an opportunity to these respondents even for being considered for the post of Reader is clearly violative of Article 16 of the Constitution.

18. When a fairly well-recognised institution, as in this case, run for more than a century, is completely taken over by the Government for management, it is not merely taking over the land and buildings, tables and chairs. It has to tackle, at the same time, a human problem, that is to say, the fate of the teachers and the staff serving that institution. The institution, with which we are concerned, was taken over, by consent, as a going educational concern and it goes without saying that it must be administered on sound lines having regard to quality, efficiency and progress in all respects. It is understandable that the employees had to join the new service under the Government, for the first time, and so could be, in that sense, fresh entrants. But to say that the teaching experience of the Readers in the private institution is completely effaced to the extent that they will not be even eligible, on the plea of absence of teaching experience in Government service, for consideration for appointment as Readers is a seriously grim issue. We feel assured that such an argument had not been canvassed by the State in the High Court on the basis of the Rules of July 19, 1971, since these rules came into force after the take over for which a separate circular had already been issued to take care of the special exigency. Action under the Government circular of March 23,

1971, alone, was in controversy in the High Court. The said circular took recognition of the service in the private college in the case of two Readers (9 and 10 in Annexure I). The only differentia was, therefore, the salary drawn by the Readers on the date of take over. That action based on the salary aspect under the said circular had to stand the test of Article 16 in the High Court, as well as, before us. The argument in favour of complete erasure of the past teaching experience in the private college, first time presented before us, fails to take note of the distinction between eligibility and suitability. Eight years' teaching experience in a college and the fulfilment of other requisite qualifications make a person eligible for appointment as a Reader, but whether he is suitable for selection for the post is an entirely different matter.

19. We are, therefore, clearly of opinion that all the respondents are eligible to be referred to the Public Service Commission for the post of Reader. Their names shall be referred to the Commission, accordingly. Whether they will be suitable for appointment as Readers will be a matter entirely for due and proper consideration of the Public Service Commission whose recommendations will be considered by the Government in the matter of final absorption. The High Court was right in allowing the above claim in the writ applications. The appeals fail and are dismissed with costs.

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