

PETITIONER:
PARMANANDA DAS

Vs.

RESPONDENT:
STATE OF ORISSA & ORS.

DATE OF JUDGMENT: 21/08/1997

BENCH:
SUJATA V. MANOHAR, M. JAGANNADHA RAO

ACT:

HEADNOTE:

JUDGMENT:
THE 21ST DAY OF AUGUST, 1997

Present:

Hon'ble Mrs. Justice Sujata V. Manohar
Hon'ble Mr. Justice M. Jagannadha Rao
Ms. Lata Krishnamurthi, Adv. (NP), Vinoo Bhagat, C.S.S.Rao,
J.P.Mishra, S.C.Patel, Advs. for the appellants.
Jana Kalyan Das, (Dr. Maya Rao and P.N.Mishra) Advs. (NP),
Ms. Kirti Mishra, Raj Kr. Mehta, Advs. for the Respondents.
Sibo Shankar Mishra and Uma Nath Singh, Advs. for the
intervenor in C.A.No. 5689-5711/97

J U D G M E N T

The following Judgment of the Court was delivered:

With C.A.No. 8404-8408\95
C.A.No.5689-5711\97 @ SLP (C) No.22941-22963\94
C.A.No.5712-5715\97 @ SLP (c) No. 12054-12057\95
C.A.No.5716-5718\97 @ SLP (C) no. 14273-75\95
C.A.No.5719\97 @ SLP (C) No. 8676\96
C.A.No.5720-21\97 @ SLP(c) No. 12960-61\96
C.A.No.5722\97 @ SLP (C) No. 23351\94
C.A.No.5723-5727\97 @ SLP (C) No. 48-52\95
C.A.No.5728-30\97 @ SLP (C) No. 53-55\95
C.A.No.5731-34\97 @ SLP (C) No. 6399-6402\95

J U D G M E N T

M. JAGANNADHA RAO, J.

Leave granted in the SLPs.

These appeals are all connected and can be disposed of together. All the appeals except two (Civil Appeals arising out of SLP No. 8676 of 1996 and 12960-61 of 1996 are filed against the order of the Orissa Administrative Tribunal dated 3.10.1994 in O.A. 343 of 1994 and batch. The two SLPs, referred to above arise out of an order dated 16.2.1995 in O.A. 315 of 1995 and 335 of 1995. C.A. 7155\1993 arises out of judgment in OA 631\1991 dated 10.10.1992.

We shall set out the facts in the civil Appeals arising out of SLPs No. 22941-63/94 These SLPs are filed against orders of the Full Bench of the Orissa Administrative Tribunal in OA No. 343\1994. By the said, the Full Bench of the Tribunal agreed with the views expressed by the Division Bench of the Tribunal in the referring Order dated 2.5.1994

and observed that the views expressed by an earlier Division Bench in OA No. 647\1992 that the Government letter dated 13.3.1992 had materially changed the earlier Government decision dated 13.2.1991 "without any sense or basis" and that the later letter was in conflict with the former and should not be given effect, was not correct, in as much as no conflicting features were brought to the notice of the Full Bench. These appeals before us are by the trained matric Assistant teachers in primary schools in Orissa (District wise) and the contesting parties are the non-matric Assistant teachers. The contest is in regard to inter se-seniority between them and promotion as head Pandits in each District.

Initially, matric and non-matric candidates with 2 years elementary training were being appointed as Assistant Teachers in Non-Government primary schools (Lower primary and Upper primary schools). The senior-most Assistant teachers were being posted as Head Pandits or Head Masters in the said schools on payment of extra-allowance of Rs.2/- in addition to the regular salary of an Assistant teacher. By 1969, in several of these schools, the non-matric trained Assistant teachers were working as Head Pandits/Head Masters because of their seniority. This position continued even after the recommendation of the 4th pay Committee in 1974.

Government of Orissa issued Resolution dated 23.7.1983 laying down certain principles for promotion to the post of Head Pandits. Each District was to be a separate unit both in the cadre of Assistant Teacher and of Head pandits. Clause No. (iv) of the principles said:

"(iv) - Promotion should be strictly on the basis of training, seniority and suitability."

In other words, for purpose of promotion, no distinction was to be made on the ground that an Assistant Teacher was a matric or non-matric. There is no quarrel about this principle by the non-matric Assistant teachers. The grievance of these teachers was mainly in regard to Clauses (ix) and (x). Clause (ix) said :

The trained Matric Asstt. teachers promoted to the post of Head Pandit should be posted to schools having three or more teachers and the non-matric trained teachers promoted as Head Pandits be posted to schools having two teachers.

Clause (x) said :

The trained matric teachers and trained non-matric teachers promoted to the posts of Head Pandits should be allowed the scales of Rs. 320-560/- and Rs. 300-470/- respectively.

These clauses (ix) and (x) created distinction between matric and non-matric in the matter of promotion as Head pandits and in the matter of scales of pay. Therefore, the non-matrices approached the High Court of Orissa in O.J.C. No. 2102 of 198. However, to redress the grievance regarding clause (ix) the Government came forward, during the pendency of the case, with Resolution on 25.6.1988 omitting clause (ix) from the earlier Resolution. The result was that the distinction in regard to promotion as Head pandits between matrices and non-matrices came to be removed. In the High Court, the grievance regarding clause (x) relating to pay scale alone remained. The High Court disposed of the case relying on the above-said Resolution

dated 25.6.1988, which had removed the disparity in the matter of promotion, and other factors and struck down clause (x) relating to the disparity in pay scales, by Judgment dated 12.5.1989. Thus both clause (ix) and (x) came to be removed.

But between 1983 and 25.6.1988, in as much as at that time, due to clause (ix) there was a distinction in the matter of promotion as head Pandits between matric and non-matric teachers, the Department was having, in each District, separate lists of matric teachers. This aspect was emphasised in the proceedings of the Directorate of Elementary and Adult Education dated 30.3.1987. It was stated that the Government had by a resolution dated 13.1.1987 upgraded 7169 posts of trained Non-Matric Primary Teachers to those of Head pandits in the scale of Rs. 480-1240 (in 2 teacher schools) and 14,246 posts of trained Matric Primary School teachers to that of Head Pandits in the scale of 840-1345 (in 3 or more teacher schools) during 1986-87. It was further stated that in view of the principles laid down in Government resolution dated 28.7.1983 the matric trained teachers be posted as head Pandits in the scale of 840-1345 in primary schools with 3 or more teachers while non-matric trained teachers are to be posted as head pandits in the scale 840-1240 in schools with 2 teachers. This resolution dated schools with 2 teachers. This resolution dated 30.3.1987 resulted in preparation of 2 separate lists of matric and non - matric teachers before the passing of resolution dated 25.6.1988 which removed the distinction in matters of promotion.

Though the distinction between the matric teachers and non-matric teachers stood removed, in the matter of posting as head Pandits from 25.6.1988 (and consequently in the matter of scales on 12.5.1989 by the Court Judgment), there was delay in the implementation of this decision of 25.6.1988. It was only on 21.12.1990 by another resolution, that Government modified Clause (x) of the Resolution dated 23.7.1983 stating that the non-matrics had approached the High Court against Clause (ix) and (x) that, after the Judgment, it had been decided that the pre-revised scale of Rs.320-550 admissible to trained Matric Head Pandits be applied to Non-Matric Trained Head Pandits and para (x) of 23.7.1983 Resolution be "deemed to have been modified accordingly." It was also clarified that in the revised scale, both matric and non-matric Head Pandits were to draw the scale 840-1345.

Then came the Resolution dated 13.2.1991 of the Government mentioning the principles for selection of Head pandits in primary schools. As in para (iv) of the Resolution dated 25.7.1983, it was stated that the appointment as head pandits was to be made on the basis of training, seniority and suitability. qualification was not one of the factors. Clause (a) said that the unit will be the District and selected will be by the District Selection Committee and lists will be prepared for each recruitment year. Inter-se seniority will depend on their relative position in the selection list. Clause (b) and (c) referred to the teachers who were not selected through the District Selection Committee and as to their appointment as head pandits.

On 5.11.1991, the Government, however, stated that promotions accorded prior to issue of Government Resolution 5827/E dated 13.2.1991 should remain operative and the status-quo should be maintained, provided that the gradation list was prepared and promotions given to the post of Head Pandit in conformity with the earlier government Resolution

No.3436/E dated 23.7.1983.

On 13.3.1992, the Government wrote to the Director of Elementary Education, stating that the scales of Head pandits matrics and Non-matrics have been equalised on 21.12.1990 (w.e.f.1.1.1985) and that therefore it was being "clarified" that (i) there shall be no two categories of posts of head Pandits as created in G.O. No. 1488/E dated 13.1.1987; (ii) the total posts of 21.410 (7169+14,241) of Head Pandits would be manned by both categories of teachers without any distinction and they will be in 540-1345 (revised as 1200-2040 w.e.f. 1.5.1989); (iii) fresh District-wise Gradation List of Primary School Teachers as per the new principles enunciated in the Government Resolution 5827/E dated 13.2.1991 be prepared by taking into consideration "training, seniority and suitability" and giving greater weightage to seniority with training, subject to suitability, in the matter of promotion to the post of Head pandits.

This Resolution dated 13.3.1992 led to the filing of O.A. 674 of 1992 and batch, by trained matriculate teachers. It was contended by them that they should be kept in a separate gradation list and that the directions given for a single unit in each District for the matric and non-matric teachers for promotion of Head Pandits was bad and that this amounted to treating unequals as equals, and the directions to prepare a combined list of matric and non-matric teachers given in the Resolution dated 13.3.1992 be quashed. The Tribunal felt that there was difference between the 13.2.1991 and 13.3.1992 Resolution and after referring to the history of the litigation as well as Government Resolutions, finally observed that the latter Resolution dated 13.3.1992 changed the earlier Resolution dated 13.2.1991 "without any sense or basis". The Tribunal directed implementation of the Resolution dated 13.2.1991 and observed the letter dated 13.3.1992 was in conflict with the government Resolution dated 13.2.1991.

This decision by the Division Bench of the Tribunal in OA No. 674 of 1992 dated 17.6.1993 created further litigation when the present batch of cases OA No. 393 of 1994 etc. were filed by the Non-matric Teachers before the Tribunal. Another Division Bench of the Tribunal by way of a reasoned order dated 2.5.1994 differed from the earlier decision dated 17.6.1993 of the Tribunal and created the matter to a Full Bench That resulted in the present Judgment dated 3.10.1994 by the Full Bench agreeing with the views dated 2.5.1994 expressed by the second Division Bench. It is this Order of the Full Bench that is questioned in this Appeal by matriculate teachers.

Learned counsel for the Appellant - matric teachers contended that as a result of the judgment and the Resolution of the Government dated 13.3.1992 implementing the Resolution dated 25.6.1988, several matric Pandits faced reversion even though at one stage Government had passed a status quo order on 5.11.1991. He contended that the earlier decision of the Tribunal in OA No. 674 of 1992 dated 17.6.1993 had become final and that non-matric teachers cannot be posted as head Pandits in the schools in which earlier only matric teachers were entitled to be posted.

On the other hand, learned counsel for the state of Orissa and counsel for non-matric teachers pointed out that the Tribunal in its earlier judgment in OA No. 674 of 1992 dated 17.6.1993 ought not to have said anything which went against the High Court judgment in OJC No. 2102 of 1983 dated 12.5.1989 which had become final. The judgment had accepted the resolution of the Government dated 25.6.1988

and even proceeded to quash the distinction between the scales of pay. Further there was no conflict between the resolutions dated 13.2.1991 and 13.3.1992 and the Tribunal, in its earlier judgment in OA 674 of 1992 stated that there was some conflict and unnecessarily characterised the resolution dated 13.3.1992 as being "without any sense or basis". No reasons have been assigned for the said conclusion.

The point for consideration is whether the Full Bench of the Tribunal was not right in overruling the judgment of the Division Bench on OA 674 of 1992 dated 17.6.1993?

In our view, the Full Bench of the Tribunal was right in not accepting the decision of the earlier Division Bench in OA No. 674 of 1992 dated 17.6.1993. From the chronology set out by us, it is clear that initially before 23.7.1983, there was no distinction between matric teachers and non-matric teachers in the matter of promotion. A distinction was intervened by Resolution dated 23.7.1983 which in clause (ix) restricted the promotion to schools with 3 or more teachers, only to matric teachers. Clause (x) introduced a disparity in scales of pay. Clause (ix) was omitted by Resolution dated 25.6.1988. Clause (x) relating to scales of pay was struck down by the High Court in OJC 2102 of 1983 by judgment dated 12.5.1989. This was done by holding that once the Resolution dated 25.6.1988 removed the distinction in matters of promotion, the principle of equal pay for equal work applied. If the decision dated 25.6.1988 was implemented immediately, there would have been not much problem. Such implementation was postponed till 21.12.1990 when necessary clarifications were given and principles for promotions stated in para (iv) of the Resolution dated 23.7.1983 (that promotion will be based on training, seniority and suitability i.e. not on qualification) was reiterated by Resolution dated 13.2.1991 and implementation directed on 13.3.1992. It is clear that para (iv) of the Resolution dated 23.7.1988 stood and together with the Resolution dated 25.6.1988, which was accepted by the High Court on 12.5.1989 and which judgment had become final, there is no scope for re-opening the issue again when the matric teachers approached the Tribunal in OA 674 of 1992. As pointed out in the referring order by the latter Division Bench of the Tribunal, the principle for promotion stated in the resolution dated 13.3.1992 that only 'training, seniority and suitability' were to be is nothing new and it is the same thing as clause (iv) of the resolution dated 23.7.1983. In these circumstances, there was no scope for maintaining two gradation lists for matric and non-matric teachers. In our view, the distinction between matric and non-matric teachers in the matter of promotion stood removed from 25.6.1988 and that date shall be treated as the effective date for working out the promotions of the teachers in each District. Accordingly, combined seniority lists of matric and non-matric teachers as on 25.6.1988 have to be prepared District-wise and finalised and then promotion to the posts of head Pandits - whether the schools are of 3 or more teacher or less than three teachers - will have to be worked out after applying the principle of 'training seniority and suitability'. We are of the opinion that the Full Bench had rightly held that there is no conflict between the resolutions dated 13.2.1991 and 13.3.1992 and that the earlier Division Bench was not correct in coming to the conclusion that the Resolution dated 13.3.1992 was in conflict with the Resolution dated 13.2.1991.

It appears that on account of the different resolutions

passed or decisions give by the High Court/Tribunal there were reversions of non-matric Pandits at one time and of matric Pandits at some other time and there were various interim order passed at different stages either by the Government or the Tribunal. In view of the decision now given by us, the rights of the parties will be accordingly worked out by the Government as expeditiously as possible. We are also of the view that as far as possible the matric teachers promoted as head Pandits could be continued without reversion in view of the fact that in the last several years, more vacancies must have arisen in the posts of Head Pandits. The appeals arising out of SLP 22941 of 1994 etc filed by the matriculate teachers are accordingly dismissed. Appeals filed by matric teachers arising out of SLPs 8676 of 1996 and 12960-61 of 1996 are also covered by the above judgment and are disposed of accordingly.

In CA 7155 of 1993, the appellant is a non-matriculate teacher. He was serving as head Pandit from 5.4.1962 and he has filed this appeal against the judgment of the Tribunal in OA 632 of 1991 dated 19.10.1992. The OA was dismissed. it was held that as per the Resolution dated 23.7.1983, the BDO was right in preparing two separate gradation lists for matric and non-matric teachers by his proceedings dated 10.4.1991. The grievance of the appellant in the appeal will also stand redressed by our decision rendered above. The Civil Appeal is, therefore, allowed and disposed of in the light of the main judgment rendered by us as stated above.