

CASE NO.:

Appeal (civil) 3190 of 1999

Appeal (civil) 4670 of 1999

PETITIONER:

PABITRA MOHAN DASH ETC..

Vs.

RESPONDENT:

STATE OF ORISSA & ORS.

DATE OF JUDGMENT: 04/01/2001

BENCH:

G.B.Pattanaik, B.N.Agarwal

JUDGMENT:

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JUDGMENT

PATTANAIAK, J.

These two appeals are directed against a Special Bench judgment of the Orissa High Court dated 25th January, 1999. By the said judgment some of the directions contained in the earlier Full Bench decisions have been set aside. The appellants, who were Head Masters of different Private Schools, and those schools became later on Aided Educational Institutions, and finally became full fledged Government schools, are aggrieved by the impugned judgment of the Orissa High Court as in implementation of the said judgment they cannot be continued as Head Masters.

Prior to the enactment of the Orissa Education Act, 1969(hereinafter referred to as The Act), the educational activities in the State of Orissa were being regulated through a collection of executive instructions issued by the Government from time to time and those instructions had been embodied in a Code, called Education Code. The provisions of the Code had no statutory support and, as such, the Government was not able to exercise effective control over the management of the Non-Government Educational Institutions. The management of such institutions were playing hire and fire with the services of the teachers of the institution. The Orissa Legislature felt that such employees of the Non-Government Educational Institutions should be protected from the exploitation by the management, and government also should have some control over those Non-Government Institutions so that conditions of the institutions would not deteriorate. It is with this object the Orissa Education Act was enacted in the year 1969 and since then has been amended from time to time to suit the needs of the hour and by now the Act of 1969 has been amended 9 times. Section 3 (m) defines the word prescribed to mean prescribed by rules. Section 6

provides the procedure for recognition of the Educational Institutions. Sub-section (12) of Section 6 stipulates that no Educational Institution shall be eligible for affiliation or recognition by the Board of Secondary Education constituted under the Orissa Secondary Education Act, 1952 or the Council of Higher Secondary Education constituted under the Orissa Council of Higher Secondary Education Act, 1992 unless it has received recognition under the Act and continued to be so recognised. Section 10 provides the conditions of service of the staff of aided institutions. Section 10-C provides for constitution of a common cadre in relation to all or any class of employees of all or any category of aided Educational Institutions as may be specified in the order. Much prior to the enactment of the Act in 1969 the Orissa Legislature had enacted the Act in the year 1952 (Orissa Act 10 of 1953) called Orissa Secondary Education Act 1952 (hereinafter referred to as the Secondary Education Act). The Act intended to establish a Board to regulate, control and develop secondary education in the State of Orissa. The expression prescribed has been defined in Section 2(i) of the aforesaid Act to mean prescribed by regulations made by the Board under the Act. Section 3 of the aforesaid Secondary Education Act cast duty on the State Government to constitute a Board called the Board of Secondary Education to regulate, control and develop Secondary Education in the State of Orissa. The Board is a body corporate with perpetual succession and a common seal. Section 2(k) defines recognition to mean recognition for the admission to the privileges of the Board including its examination. Section 2(i) defines Regulation to mean Regulation made or deemed to have been made by the Board under the Act. Section 21 is the power of the Board to make Regulation for the purpose of carrying into effect the provisions of the Act. Chapter IX of the Regulations deals with certain pre-conditions in respect of the educational institutions. Regulation 1 of Chapter IX provides that no school which is not recognised by the Board shall be permitted to present candidates for any examination conducted by the Board. Regulation 17 deals with the conditions to be fulfilled before permission is granted to open certain classes and for a school with class IX and above it must have a Head Master who has to be a trained graduate in arts or science with minimum 7 years experience after training. It is this condition prescribed under the Regulation for being appointed as Head Master of an aided educational institution which is the subject matter of controversy in the impugned case and was the subject matter of controversy in the cases where earlier Full Bench of the High Court had taken some decisions which stood reversed by impugned judgment of the Special Bench of Orissa High Court. In exercise of power under Section 27 of the Act a set of Rules have been framed, called, the Orissa Education (Recruitment and Conditions of Service of teachers and principals and staff of Aided Educational Institution) Rules, 1974 (hereinafter referred to as the Recruitment Rules). Rule 6 provides procedure for selection of candidates on determining their merit and suitability in the manner as determined in Regulation of Selection Board. Rule 7 provides condition of eligibility of candidates. Rule 7(c) further stipulates that the age or qualification for appointment as a teacher and for other posts would be the same as for similar or corresponding post in educational institution established or maintained by the Government. Rule 8 carves out certain exceptions to the selection by the Board as provided in Rule 6. Rule 8(3) is

the procedure for filling up the post of Head Master and Head Mistress of schools. Regulation 17 of Chapter IX of the Boards Regulation as well as Rule 8(3) of the Regulation Rules are extracted hereinbelow in extenso:-

Regulation 17. A school seeking to open Class IX shall be required to fulfil the following conditions before permission to open the Class is given (1) ADDITIONAL ACCOMMODATION:- Class room of the prescribed size Additional classroom of minimum floor area of 192 sq. Ft. And minimum width of 16 ft. (If more than two additional subjects are taught in the school, for every additional subject one more room has to be provided.) (2) ADDITIONAL STAFF:- (I) Headmaster :- A Trained Graduate in Arts or Science with minimum 7 years experience after training. (II) One Trained Graduate teacher (preferably having Sanskrit as one of the subjects in degree stage) (III) Non-teaching staff:- (iii) L.D. Assistant - One

(3) ADDITIONAL FURNITURE :- These should conform the approved list. (4) ADDITIONAL APPARATUS:- These should conform the approved list. (5) LIBRARY :- At least books worth Rs.250/- have to be purchased in addition to the books already in stock.

Rule 8(3) of Education Rules Vacancies in the posts of Headmasters of aided Boys High Schools and Headmistresses of Girls High Schools and Readers, including Principals of aided Colleges under the fold of the system direct payment of full-salary- cost shall be filled up by the eligible trained graduate teachers of respective categories of High Schools and Headmasters and Head mistresses of respective categories of Middle English Schools, and by the lecturers belonging to the common cadre of the Aided Colleges, as the case may be, from the select list prepared by the Selection Board in the Manner prescribed in the Regulation framed by the Selection Board for the purpose, on the basis of the recommendation of a Committee to be constituted by the Government which shall be headed by the Director. The selection shall be made on the basis of seniority in the common feeding cadre and performance. The zone of consideration shall be thrice the number of vacancies: Provided that ad hoc promotions to the posts of Readers which included Principals of aided Collegesasters of aided Boys High Schools and Headmistresses of aided Girls High Schools under the fold of the system of direct payment-of-full-salary-cost may however, be made from the concerned common feeding cadre for a period of one year or till the date of receipt of select list from the Selection Board, whichever is earlier with the prior approval of Government:

Provided further that in the absence of common feeling cadres, appointment to the posts of Headmasters of aided Boys' Hgh Schools and Headmistresses of aided Girls High Schools of the State under the fold of the system of direct-payment- of-full-salary cost can be made by the authority from amongst the eligible trained graduate teachers of the respective categories of aided High Schools and aided Middle English schools, as the case may be, on the recommendation of the Selection Board through an open advertisement. The Selection shall be on the basis of the length of service and performance as trained graduate teachers in aided High Schools or Headmasters and Headmistresses in aided Middle English Schools.

It may be noticed that Regulation 17 providing the qualification of the staff, as aforesaid, came into force on 29.4.1977 and Rule 8(3) of the Recruitment Rules came into force on 3.5.1988. The provisions of the aforesaid Acts, Regulation and Rules are complimentary to each other and are essentially intended to confer powers on the Educational Authorities of the Government to exercise control over the management of the institutions and also provide conditions of service of the employees so that the management will not be free to have any person as the employee of the institution nor would it be free to terminate the service of the employee whenever it likes, even though the power of the Management vest with the Committee of the Management of the school. It must also be borne in mind that no school would be entitled to present its students appearing at the High School Certificate Examination unless the school gets recognition from the Board of Secondary Education and further the school must satisfy the Board before getting recognition that it has the minimum staff with the prescribed qualification as provided under Regulation 17.

Prior to the enactment of Orissa Education Act, under the so called Administrative Instructions called the Orissa Education Code the staffing pattern of High School provided that the school shall have 4 posts of trained graduate teachers including the headmaster apart from other teachers and clerical staff. Thus any trained graduate teacher could be appointed as Headmaster under the set of Administrative Instructions. Until 29.4.1977 when the Regulations framed under the Secondary Education Act, 1952, was amended the prescribed qualification for the post of Headmaster of a school was merely a trained graduate. By virtue of the amended Regulation, the said prescribed qualification for the post of headmaster of a school became a trained graduate in arts or science with minimum 7 years experience after training. It is to be noticed that schools whether private or aided or Government will have to get recognition from the Board of Secondary Education without which it would not be permissible for the institution to present its candidates at the annual High School Certificate examination and necessarily, therefore, the institution will be entitled to get recognition only if it has the required number of staff with the prescribed qualification and consequently a Headmaster will have to be a trained graduate in arts or science with 7 years teaching experience after becoming such trained graduate. Though the regulation framed under the Board of Secondary Education Act prescribed the qualification for the post of a Headmaster neither the Education Act nor the Recruitment Rules of 1974 framed in exercise of powers under the Act of 1969 deal with or prescribe the qualification for the appointment of the Headmaster of a High School. Rule 8 of the Recruitment Rules, however, provides exception to the selection by the Board and Rule 8(3) of the said Rules provides the procedure for filling up of the vacancies in the post of Headmaster and the aforesaid Rule 8(3) came on 3.6.1988. As has been stated earlier, under the Orissa Education Code the prescribed qualification for the post of Headmaster of a school was merely a trained graduate whereas with effect from 29.4.1977 the prescribed qualification for the post of Headmaster under the Regulations framed under the Board of Secondary Education Act became a trained science graduate with 7 years of teaching experience after becoming a trained graduate. Since the provisions of the Regulation, Act and

the Rules are complimentary to each other, it must necessarily be held that no school can have a Headmaster after 29.4.1977 who does not possess the qualification of 7 years of teaching experience as a trained graduate teacher. The schools usually start in villages on private donations and continue for some period on the tuition fee received from the students and the donation of the local public. After continuing for some period the State Government grants financial assistance, called Grant-in-aid and on receipt of such grant schools became aided educational institutions, as defined in the Act as well as the Recruitment Rules of 1974. Though the conditions of service of an aided educational institution is governed by the provisions of Recruitment Rules of 1974 which Rule confers adequate control with the Educational Authorities even in the matter of appointment of teachers in the institutions but the same having no application to the private schools, the Managing Committee of the private schools who continue to be the employer and were appointing teachers including the Headmaster on their own. Though such private schools are also required to get recognition from the State Government without which they would not be eligible for affiliation or recognition by the Board of Secondary Education constituted under the Orissa Secondary Education Act, 1952, yet at the time of recruitment of the personnel the Educational Authorities were not having any control over the process of recruitment and in the process many private schools which later on became aided educational institutions and finally landed up as Government schools continued to have Headmasters even subsequent to 29.4.1977 when Regulation 17 was inserted by amendment without 7 years of teaching experience after being a trained graduate. Right of such people to continue as Headmaster came to be considered in the First Full Bench Judgment in the case Golakh Chand Mohanty vs. State of Orissa and others After elaborate discussion of the different provisions of the Act, Regulation and the Rules the said Full Bench in its judgment recorded five conclusions which have been quoted in paragraph 3 of the impugned judgment of the Special Bench. A Batch of Writ Petitions subsequent to the aforesaid Full Bench decision in Golakh Chand Mohantys case (supra) when were listed before a Division Bench the Division Bench felt that by applying the ratio of the Full Bench decision in Golakh Chand Mohantys case (supra) great harassment would be caused to all those teachers who had been appointed as Headmasters of different un-aided schools when there was no such embargo or requirement of 7 years of teaching experience as trained graduate teacher was there and consequently, Golakh Chand Mohantys case (supra) may be re-considered. These batch of cases were heard by the subsequent Full Bench and the subsequent Full Bench also came to the conclusion that the decision in Golakh Chand Mohantys case (supra) does not need re-consideration, as has been noticed in paragraph 4 of the impugned judgment of the Special Bench. After answering the reference, the cases were listed before the Division Bench of the Orissa High Court and the learned Judge of the Division Bench felt, because of conflicting views of the earlier Division Benches of the said Court on the question whether the Inspectors order or approval of an incumbent of headmaster-in-charge of the school is protected under conclusion no. 2 recorded by the Full Bench in the case of Golakh Chand Mohany (supra), and accordingly referred the cases again to a larger Bench. When the cases were listed before the Full Bench, the Full Bench felt that though a single question has been referred to but yet there remain

some grey areas in the earlier two decisions of the Full Bench and, therefore, Special Bench of Five Learned Judges was constituted to examine the entire controversy afresh. After a thorough consideration of the matter Special Bench recorded its conclusion in paragraph 19 which are quoted hereunder :-

(a) The decision of the Full Bench of this Court in Golakh Chandra Mohantys case (supra) as contained in sub-paras (2), (3) and (4) of paragraph 26 is contrary of law. In paragraph 26(2) of the judgment, use of expression appointments is admittedly improper as there is no question of direct appointment. In paragraph 20, the Full Bench itself observed that all posts were to be filled up as required by Rule 8(3) of the Rules. Regulation 17(2) of Chapter IX of Boards Regulations is applicable to both aided and unaided institutions and only when a person is trained graduate with minimum of seven years of experience after training is eligible to become as Headmaster. (b) In Priti Ranjans case (supra) the second Full Bench observed that the date 3.6.1988 has rational nexus with the object sought to be achieved by the provisions. The conclusion is indefensible in view of the analysis made above. The basis for such conclusion was enactment of Rule 8(3). IN VIEW of the analysis made that the Regulation 17(2)(i) operated at all times, the basis for such conclusion does not hold good. The conclusion in Golakh Chandra Mohantys case (supra) as followed in Priti Ranjan Pradhans case that in cases where prescribed qualification had not been acquired by 3.6.1988, but were acquired subsequently were to be approved is clearly without any basis. (c) The orders of approval passed by the Inspectors of Schools are of no consequence and do not have any force on the question of promotion in terms of Rule 8(3).

It is these conclusions of the Special Bench which are being assailed in these appeals.

Mr. Ranjit Kumar, learned counsel appearing for the appellant in C.A. 3190 of 1999 contended with force that the earlier Full Bench in Golakh Chandra Mohantys case (supra) having considered the relevant provisions of the Act, Regulation and Rules framed thereunder and having issued Five directions which were re-affirmed by the Second Full Bench judgment and those judgments not being assailed by the State or any other aggrieved party, benefit accrued to the persons pursuant to the said judgment cannot be taken away by the subsequent Special Bench judgment which is being impugned in these appeals. He further contended that the provisions of the Orissa Education Code having continued to remain in force so far as private schools are concerned, and there being no requirement under the Orissa Education Act, 1969, or the Recruitment Rules framed thereunder of the year 1974 that the Headmaster must be a trained graduate with 7 years of teaching experience as a trained graduate, the headmasters of private schools later on cannot be deprived of that right when the school becomes aided school or the government school. This judgment of the Special Bench on that score, therefore, cannot be sustained. The learned counsel further urged that the expression approval in second direction of Golakh Chandra Mohantys case (supra) must mean approval of Inspector of schools and consequently wherever the appointment as Headmaster has been approved by the Inspector of School until the impugned Special Bench Judgment those Headmasters cannot be discontinued of their

right to continue as Headmaster and getting the pay scale attached to Headmaster and the impugned judgment must be held to be only prospective in nature.

Mr. A.K. Pradhan, the learned counsel appearing in other Civil Appeal reiterated the contentions raised by Mr. Ranjit Kumar and further added that there was no bar for direct recruitment for the post of Headmaster so long as the schools were neither aided nor government and to those category of employees, the provisions of Recruitment Rules will have no application inasmuch as the Recruitment Rules of 1974 apply to service conditions of the Aided Educational Institutions. Consequently those employees right to get the scale of pay attached to Headmaster cannot be said to have been taken away by the impugned judgment. He had also urged that in view of the terms of reference in the batch of cases it was not open for the Special Bench to re-examine the entire matter afresh even though the State or any other person had not challenged the Full Bench Judgement in Golakh Chandra Mohantys case (supra) as well as the subsequent Full Bench decision re-affirming the same.

Mr. J.R. Das, the learned counsel appearing for the State of Orissa, Mr. P.N. Mishra, learned senior counsel appearing for some of the interveners and Mr. Sanyal, learned senior counsel appearing for another set of interveners on the other hand contended, that the latter Full Bench while hearing the batch of cases having felt it necessary to re-examine the correctness of the observations made in the Golakh Chandra Mohantys case (supra) and for that purpose having constituted a larger Bench of 5 Judges, the contention that it had no jurisdiction to go into the matter is wholly unsustainable. According to Mr. J.R. Das the expression approval in the direction no. 2 in Golakh Chandra Mohantys case (supra) must mean approval contemplated under Rule 8(2)(b) of the Recruitment Rules of 1974 and consequently any approval of any illegal appointment not by the Competent Authority or somebody else would not amount to the approval. It was also urged that the provisions contained in Board of Secondary Education and the Regulations framed thereunder, the Orissa Education Act and the Recruitment Rules of 1974 laid down the conditions of services of the Aided Educational Institution being complimentary to one another and the Regulation itself having provided the minimum qualification for the post of Headmaster as trained graduate and 7 years teaching experience it would not be permissible for a Court to hold otherwise, and therefore, the Special Bench rightly took up the matter and removed the anomalies. Even on the question of adjustment of equity or equitable consideration this contention that the minimum qualification prescribed under the statutory provision cannot be dispensed with by the judgment of Court and as such the Special Bench rightly held the so called approval, if any, of the Inspector of Schools is null and void.

Having examined the rival contentions and on a thorough scrutiny of two earlier Full Bench decisions as well as the impugned judgment of the Special Bench we are of the considered opinion that the Special Bench rightly thought it appropriate to reconsider the entire matter afresh and re-determine the issues involved in the light of the relevant provisions of the Act, Rules and Regulations after hearing at length on all issues and there was no infirmity on that score even though the point of reference

was of a limited nature. Courts exist to interpret the law and while examining the provisions of any Act, Rule or Regulation, if it is felt that the earlier decision on the question is not clear on any particular issue or has created confusion in resolving the disputes or has caused hardship to a group of people, it would be the duty of the court to re-examine the matter after giving opportunity to all parties concerned and by such process question of taking away anybodys vested right does not arise. In the case in hand it is not a particular writ or order that had been issued in favour of any individual is sought to be nullified by the subsequent Special Bench decision. On the other hand the erroneous conclusion of the relevant provisions of the Act, Regulation and Rules are sought to be corrected and we see no infirmity in this approach of the Special Bench. That apart, though point of reference may be of a limited nature but in answering the same if the Court feels that it would be in the interest of justice to constitute a larger Bench and examine the correctness of any earlier conclusion which might have been made on an erroneous interpretation of any provision, then there would be no fetter for adopting that procedure. In this view of the matter we see no infirmity with the approach of the Special Bench in re-examining the issues afresh in the light of the relevant provisions of the Act, Rules and Regulations. We have also carefully examined the conclusions of the impugned judgment of the Special Bench and we are unable to persuade ourselves to agree with the submission of Mr. Ranjit Kumar that the said conclusions are either erroneous on interpretation of relevant provisions or in any way intended to take away the rights of any persons who have got the benefit of the earlier Full Bench decision. It is not disputed that with effect from 29.5.1977 Regulation 17 in the Board of Secondary Education has been brought into force which makes it obligatory for every institution to have a Headmaster who must be a trained graduate and must have 7 years of teaching experience as a trained graduate teacher. If subsequent to 29.5.1977 any appointment has been made to the post of Head Master contrary to the aforesaid provisions of the Regulation then the said appointment would be invalid appointment and would not confer any right on the appointee. The expression approval used in the second direction in Golakh Chandra Mohantys case is referable to the approval contemplated under Rule 8(2)(b) of the Recruitment Rule and, therefore, if there has been an approval by the Director then in such a case the appointment made after the prior approval would not be invalidated. In our considered opinion the conclusion of the Special Bench that an approval of the Inspector is no approval in the eye of law is the correct position, and as such, does not require any interference by this Court. We would further make it clear that a person who has been appointed as Headmaster incharge cannot claim any right on the basis of that appointment even if the same might have been approved by any Competent Educational Authority. The Incharge Headmaster is not the same as the Headmaster of the school and it merely entitles a person to remain incharge and discharge the duties of a Headmaster. In this view of the matter where the appointment itself has been to the post of Headmaster as in-charge, and such appointment had been approved, obviously the said appointee cannot claim to be continued as Headmaster or to be entitled to get the scale of pay attached to the post of Headmaster. The Special Bench in the impugned judgment has correctly analysed the different provisions of the Rules and Regulations and have rightly

come to the finding on the directions 2, 3, 4 and 5 of the earlier Full Bench decision in Golakh Chandra Mohantys case.

In the aforesaid premises, we do not see any infirmity with the conclusions arrived at by the Special Bench requiring interference by this Court. The appeals accordingly fail and are dismissed.

JUDIS