

## **Sri Rabinarayan Mohapatra vs State Of Orissa And Ors on 2 April, 1991**

**Equivalent citations: 1991 AIR 1286, 1991 SCR (1) 990, AIR 1991 SUPREME COURT 1286, 1991 (2) SCC 599, 1991 AIR SCW 984, 1991 LAB. I. C. 1102, 1992 (1) LABLJ 909, (1991) IJR 256 (SC), (1991) 1 SCR 990 (SC), (1991) 2 JT 82 (SC), 1991 (2) UJ (SC) 406, 1991 (2) ALL CJ 740, 1991 (1) SCR 990, 1991 SCC (L&S) 782, (1992) 80 FJR 73, (1991) 2 LABLJ 909, (1991) 62 FACLR 732, (1991) 1 ORISSA LR 450, (1992) 6 SERVLR 287, (1991) 2 APLJ 25, (1991) 16 ATC 547, (1991) 2 CURLR 6, (1991) 71 CUT LT 645, (1992) 1 LABLJ 909**

**Author: Kuldip Singh**

**Bench: Kuldip Singh, Rangnath Misra, M.H. Kania**

PETITIONER:

SRI RABINARAYAN MOHAPATRA

Vs.

RESPONDENT:

STATE OF ORISSA AND ORS.

DATE OF JUDGMENT 02/04/1991

BENCH:

KULDIP SINGH (J)

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KULDIP SINGH (J)

MISRA, RANGNATH (CJ)

KANIA, M.H.

CITATION:

1991 AIR 1286

1991 SCR (1) 990

1991 SCC (2) 599

JT 1991 (2) 82

1991 SCALE (1) 578

ACT:

Orissa Aided Educational Institution (Appointment of Teachers Validation) Act, 1989-Section 3-Legislative intention of -Appointment of teacher on 89 day basis with one day break-Discriminatory.

Orissa Aided Education Institutions (Appointment of Teachers Validation) Act, 1989-Section 3-Scope and application of - Conditions to be satisfied.

HEADNOTE:

The appellant was appointed as Hindi Teacher in the M.E. School for a period of 89 days from July 12, 1982 by the District Inspector (Schools) on the recommendation of the Managing Committee of the School. He continued to serve the school with repeated spells of 89 day-appointments and one day break in between the spells, till May 25, 1986. He was not paid the salary for the period of summer vacations during all these years.

Although the appellant continues to serve the school to date under orders of the managing committee, but his appointment after 1986 was not approved by the educational authorities, in spite of the resolution of the managing committee dated July 6, 1987.

The appellant filed a writ petition before the High Court claiming regularisation with effect from July 12, 1982, contending that he was entitled to be regularised in terms of the provisions of Section 3 of the Orissa Aided Educational Institutions (Appointment of Teachers Validation) Act, 1989.

The High Court dismissed the petition holding that the appellant was not entitled to the benefit of the Validation Act, against which present appeal was filed by the appellant contending that his services were to be regularised with effect from July 12, 1982 under the provisions contained in Section 3 of the Validation Act.

Allowing the appeal, this Court,

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HELD:1.1. The Validation Act has been enacted by the Orissa Legislature with the obvious object of granting relief to those members of the teaching community who are being exploited for years together by keeping them in short spell appointments like 89 day-appointments with one day break and in the process denying them their rightful dues and other service benefits.[994G-995A]

1.2 An appointment on 89 day basis with one day break which deprives a teacher of his salary for the period of summer-vacation and other service benefits, is wholly arbitrary and suffers from the vice of discrimination. The Validation Act covers the field upto December 31, 1984. The State of Orissa will do well to consider the cases of all those who have completed one year or more as ad-hoc teachers after December 31, 1984 and come-out with a scheme or any other appropriate measure to regularise their services.[995C-D]

2. To come within the preview of the Validation Act the following conditions are to be satisfied:

1. The appointment by the managing authority of the school on ad hoc basis must be on or after the 1st December 1976 but not later than 31st December 1984.

2. The services as such teacher is continuous for a period of at least one year without any break or with a

break or breaks in one or more aided schools;

3. Is continuing as such teacher or his services were terminated after the 31st December, 1984 save for misconduct. [995E-G]

2.2. The appellant was appointed on July 12, 1982 and has been working with the approval of the authorities for almost 4 years with short breaks. The managing committee is still utilising his services though there is no approval by the educational authorities for the period subsequent to 1986. The case of the appellant is, thus, fully covered by Section 3 of the Validation Act. [995G-996A]

3. The High Court erred in denying the benefit of the Validation Act to the appellant on the ground that his initial appointment for 89 days was conditioned by the stipulation that he would continue until replaced by a candidate from the select list. The High Court read into the Act what was not there, [996A-B]

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Rattan Lal v. State of Haryana, A.I.R. 1987 S.C. 478, followed.

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No.1396 of 1991.

From the Judgement and Order dated 8.3.1990 of the Orissa High Court in Case No. 2867 of 1987.

Mrs. Uma Metha Jain and M.A. Firoz for the Appellant. Ashok Kumar Panda for the Respondents.

The Judgement of the Court was delivered by KULDIP SINGH, J. Special leave granted.

Rabinarayan Mohapatra the appellant was appointed as Hindi Teacher in Bani-gochha, M.E. School (Orissa) for a period of 89 days or till a candidate selected by the State Selection Board was made available. He joined the school on July 12, 1982. The appointment was made by the District Inspector (Schools) on the recommendation of the managing committee of the school. He continued to serve the school with repeated spells of 89 day-appointments and one day break in between the spells, till May 25, 1986. He was not paid the salary for the period of summer vacations during all these years. Although the period of summer vacation during all these years. Although the appellant continues to serve the school to-date under orders of the managing committee yet his appointment after 1986 has not been approved by the educational authorities. The managing committee even passed a resolution on July 6, 1987, requesting the educational authorities of the State of Orissa to approve the continuous appointment of the appellant as Hindi Teacher but no action was taken by the said authorities.

The appellant filed a writ petition under Article 226 of the Constitution of India before the Orissa High Court claiming regularisation as Hindi Teacher with effect from July 12, 1982. The only

argument raised before the High Court was that the appellant was entitled to be regularised in terms of the provisions of Section 3 of the Orissa Aided Educational Institutions (Appointment of Teachers Validation) Act, 1989 (hereinafter called 'the Validation Act'). The relevant part of Section 3 of the Act is reproduced hereinafter :

3. Validation of certain appointments - Not withstanding anything contained in the Education Act or in the Rules or Regulations framed thereunder.-

(a) graduate teacher, intermediate and matriculate teachers, physical education teachers and classical teachers and Hindi teachers of aided schools appointed by the managing authorities of such schools on ad hoc basis on or after the 1st December , 1976 but not later than the 31st December, 1984;

(b) .....

(c) .....

who have continuous service as such teachers or lecturers for a period of at least one year without any break or with a break or breaks in one or more aided schools or Colleges and who are continuing as such teachers or whose services have been terminated after the 31st December ,1984 save for misconduct or.....shall for all intents and purposes, be deemed to have been validly and regularly appointed, and no such appointment shall be challenged in any court of law merely on the ground that the appointment was made otherwise than in accordance with procedure laid down in the Education Act and the Rules and Regulations framed thereunder;..... The High Court rejected the prayer for regularisation, and held that the appellant was not entitled to the benefit of the Validation Act, on the following reasoning;

"Admittedly, the petitioner was appointed on 12.7.1982 and continued till 18.7.1986 with breaks in between and the petitioner's appointment was conditioned by the stipulation that he would continue until replaced by a candidate from the Select List. His case, therefore, will not come within the preview of the Validation Act and, therefore, the question of issuing any direction to regularise his service in a substantive vacancy because of the Validation Act does not arise."

We have heard Mrs. Uma Mehta Jain, learned counsel for the appellant. This Court in *Rattan Lal v. State of Haryana*. A.I.R. 1987 S.C. 478 speaking through Venkataramaiah, J. (as the learned Judge then was ) observed as under:

"The State Government of Haryana has failed to discharge that duty in these cases. It has been appointing teachers for quite some time on an ad hoc basis for short periods as stated above without any justifiable reason. In some cases the appointments are made for a period of six months only and they are renewed after break of a few days. The number of teachers in the State of Haryana who are thus appointed on such ad hoc basis is very large indeed. If the teachers had been appointed regularly, they

would have been entitled to the benefits of summer vacation along with the salary and allowances payable in respect of that period and to all other privileges such as casual leave, medical leave, maternity leave etc. available to all the Government servants. These benefits are denied to these ad hoc teachers unreasonably on account of this pernicious system of appointment adopted by the State Government. These ad hoc teachers are unnecessarily subjected to an arbitrary 'hiring and firing' policy. These teachers who constitute the bulk of the educated unemployed are compelled to accept these jobs on an ad hoc basis with miserable conditions of service. The Government appears to be exploiting this situation. This is not a sound personnel policy. It is bound to have serious repercussions on the education institutions and the children studying there. The policy of 'ad hocism' followed by the State Government for a long period has led to the breach of Article 14 of the Constitution. Such a situation cannot be permitted to last any longer. It is needless to say that the State Government is expected to function as a model employer".

"We strongly deprecate the policy of the State Government under which 'ad hoc' teachers are denied the salary and allowances or the period of the summer vacation by resorting to the fictional breaks of the type referred to above. These 'ad hoc' teachers shall be paid salary and allowances for the period of summer vacation as long as they hold the office under this order. Those who are entitled to maternity or medical leave shall also be granted such leave in accordance with the rules."

The Validation Act has been enacted by the Orissa legislature with the obvious object of granting relief to those members of teaching community who are being exploited for years together by keeping them in short spell appointments like 89 day-appointments as here with one day break and in the process denying them their rightful-dues and other service benefits. In spite of repeated depreciation by this Court the practice continues to be followed by various State Governments in the country. Under the Constitution the State is committed to secure right to education for all citizens. Bulk of our population is yet illiterate. Till the time illiteracy is effaced from the country the resolution enshrined in the Preamble cannot be fulfilled. Education is the dire need of the country. There are neither enough schools nor teachers to teach. Insecurity is writ-large on the face of the teaching community because of nebulous and unsatisfactory conditions of service. In order to make the existing educational set-up effective and efficient it is necessary to do away with ad- hocism in teaching appointments. An appointment on 89 day basis with one day break which deprives a teacher of his salary for the period of summer-vacation and other service benefits, is wholly arbitrary and suffers from the vice of discrimination. The Validation Act covers the field upto December 31, 1984. The State of Orissa will do well to consider the cases of all those who have completed one year or more as ad-hoc teachers after December, 31, 1984 and come-out with a scheme or any other appropriate measure to regularise their services.

Mrs. Jain contended that on the plain reading of Section 3 of the Validation Act the appellant is entitled to be regularised as Hindi Teacher with effect from July 12, 1982. To come within the purview of the Validation Act the following conditions are to be satisfied:

1. The appointment by the managing authority of the school on ad hoc basis must be on or after the 1st December, 1976 but not later than 31st December, 1984;
2. The service as such teacher is continuous for a period of atleast one year without any break or with a break or breaks in one or more aided schools;
3. Is continuing as such teacher or his services were terminated after the 31st December, 1984 save for misconduct.

The appellant was appointed on July 12, 1982 and has been working with the approval of the authorities for almost 4 years with short breaks. The managing committee is still utilising his services though there is no approval by the educational authorities for the period subsequent to 1986. It is no body's case that his services were ever terminated on grounds of inefficiency or misconduct. The case of the appellant is, thus, fully covered by Section 3 of the Validation Act. We are of the view that the High Court erred in denying the benefit of the Validation Act to the appellant on the ground that his initial appointment for 89 days was conditioned by the stipulation that he would continue until replaced by a candidate from the select list. The High Court read into the Act what was not there. In response to the notice issued in the Special Leave Petition the managing committee through its Secretary-cum-Head Master has stated that the appellant is still continuing to serve as Hindi teacher in the school under the orders of the managing committee.

We therefore, set aside the judgment of the High Court and direct the respondents to treat the appellant as the regularly appointed Hindi teacher in the school with effect from July 12, 1982. The appellant shall be entitled to his salary, including the salary for summer vacations and other breaks which must be taken as non est, from the date of his regular appointment i.e. July 12, 1982. The respondents are directed to pay the arrears of salary and other emoluments due to the appellant as a result of his regularisation within a period of 3 months from today.

V.P.R.

Appeal allowed,