

Manoj Krishna Nayak And Ors. vs State Of Orissa And Ors. on 26 March, 1984

Equivalent citations: AIR1984SC1002, (1984)IILLJ25SC, 1984SUPP(1)SCC216, 1984(16)UJ555(SC), AIR 1984 SUPREME COURT 1002, (1985) 59 CUT LT 1, 1984 UJ (SC) 555, (1984) 1 ORISSA LR 33, 1984 SCC (L&S) 645, (1984) 2 LABLJ 25, (1984) 1 SERVLR 797

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Bench: A. Varadarajan, Ranganath Misra, S. Murtaza Fazal Ali

JUDGMENT

Ranganath Misra, J.

1. The appeals are by special leave and are directed against the decision of the Orissa High Court in an application under Article 226 of the Constitution. The Special Leave Petition seeks to challenge the same decision of the High Court. Appellants before us are teachers in the employment of the State of Orissa, while the petitioners of the special leave petition though belonging to the cadre of teachers have been serving as Sub-Inspectors of Schools also under the same State Government.

2. For the first time a set of rules under the proviso to Article 309 of the Constitution were framed by the Governor of Orissa known as the Orissa Education Service Class II (Recruitment to the School Branch) Rules, 1971 and were brought into force with effect from August 16, 1971. The service as defined in Rule 3(e) covers the posts of District Inspectors of Schools, Gazetted Head Masters and Head Mistresses of Schools and Secondary Training Schools and Assistant Director of Public Instruction (Schools) and such other posts as the Government may by general or special order specify from time to time. Recruitment to the service under Rule 4 was by two methods direct, by a competitive examination and by promotion, from amongst the members of the Orissa Senior Subordinate Education Service, School Branch. Rule 5 provides the procedure for recruitment by competitive examination while Rule 6 prescribes the conditions of eligibility. Rule 14 makes provision for appointment by promotion while Rule 15 provides the conditions of eligibility for it. The recruitment examination as also preparation of the list of officers to be considered for promotion are ultimately to be handled and screened respectively by the State Public Service Commission. Rule 20 makes provision for seniority between direct recruits and promotees as also inter se between respective categories. Rule 21 authorises the State Government to make any relaxation of the provisions of the Rules in respect of a class or category of persons in consultation with the Public Service Commission. That Rule also authorises the State Government after previous consultation with the Commission to take a decision that the provisions of the Rules in the matter of

competitive examination may be kept in abeyance for such period as required.

3. Rule 10(2) requires that $\frac{1}{3}$ of the vacancies have to be filled up by direct recruitment. Obviously the remaining $\frac{2}{3}$ go to promotees.

4. Though the Rules came into force from 1971, direct recruitment had been kept in abeyance. On August 3, 1974, on the basis of the recommendations of the Fourth Pay Committee of 1974, the State Government fixed the scale of pay of Head Masters and Head Mistresses in Government schools but it was only on July 18, 1978, that the Government directed that the earlier orders should be given effect to and vacancies should be filled up.

5. In February 1979 Government sanctioned the posts and in the early part of 1980 the Departmental Promotion Committee as contemplated under the Rules met to screen the cases of deserving teachers for promotion. On June 15, 1980, steps were taken to fill up the direct recruit quota. The number of existing vacancies was taken as 195 and keeping the requirements of Rule 10(2) in view steps were taken to fill up 65 vacancies by direct recruitment. On August 5, 1981, the High Court was moved by way of a writ petition but of which the present appeals arise. But within a few days thereafter the Government issued orders appointing 158 teachers as Gazetted Head Masters in Class II Service and it was specifically indicated in the order that the appointments were made subject to availability of direct recruits.

6. In the writ petition the vires of the Rules was challenged and it was claimed that the requirement of seven years' teaching experience for promotees and no such experience for direct recruits was discriminatory and to support this plea reliance was placed on the Regulations of the Board of Secondary Education of the State where for the Head Master of a high school seeking recognition, a seven years' service experience was prescribed.

7. The High Court took into consideration the several contentions placed before it but upheld the Rules. So far as the filling of the vacancies was concerned, the High Court found that the decision to fill up 158 vacancies had been taken prior to the Government order of 1980 when it decided to give effect to the provisions of direct recruitment. The Court, therefore, took the view that the 158 vacancies should go to the promotees and only the remaining 37 vacancies could be filled up by direct recruitment. It, therefore, quashed the advertisement under Annexure I issued by the State Public Service Commission in regard to 65 vacancies to be filled up by direct recruitment.

8. Civil Appeal No. 8859 of 1983 is by teachers who were opposing the writ petition in the High Court and were interested in direct recruitment. The main contention raised in this appeal is that the direction of the High Court to quash the notification under Annexure I for filling up the 65 vacancies by direct recruitment was bad. The connected Civil Appeal is by the petitioners before the High Court and the decision of the High Court upholding the vires of the Rules is assailed. Both these appeals, therefore, arise out of- the decision of the High Court in the same writ petition. The special leave petition which has been tagged to these cases is by two teachers who were not before the High Court in the writ petition but claim to have been represented by their Association.

9. At the hearing it was contended that there are five different cadres in the Orissa Education Service so far as relevant for the present case and they are (1) Class I consisting of Inspectors of Schools and Director of Public Instruction; (2) Class II consisting of gazetted Head Masters/District Inspectors of School; (3) Senior Subordinate Education Service consisting of non-gazetted Head Masters/Deputy Inspectors of Schools; (4) Junior Subordinate Education Service consisting of Assistant Teacher/Sub-Inspectors of Schools and (5) the Lower Subordinate Education Service consisting of other categories of teachers. So far as the Class II service is concerned promotion is available from categories 3 and 4. Appellants in either of the appeals did not canvass that the Rules were incompetent. The High Court has examined the challenge to the Rules at considerable length and we agree with its conclusion that none of the rules is open to challenge on the grounds taken. The main contention in regard to the challenge on this score was that experience was totally ignored in the case of direct recruitment. The scheme under the Rules of filling up vacancies in Class II service by direct recruitment as also promotion is not an innovation. There are several services constituted under law where such schemes are operating and while in respect of promotees experience is a requisite qualification, for direct recruits no experience is insisted upon as a pre-requisite. We are, therefore, not impressed by the submission that non-prescription of experience for the direct recruits is 'a ground which would vitiate the Rules. Civil Appeal arising out of Special Leave Petition (Civil) No. 14994/83 has, therefore, to be dismissed and the High Court's decision that the Rules are valid has to be upheld.

10. Coming to the other appeal, in course of hearing we suggested to Mr. Govindan Nair appearing on behalf of the respondent State that a few more posts could be sanctioned and the 158 teachers who have already been promoted and the 65 vacancies which are to be filled up in terms of the notification under Annexure I should be allowed to be operative. As already indicated, the existing vacancies were 195. As 158 appointments by promotion had been made, the vacancies available were only 37. There was a shortage of 28 posts if 65 vacancies by direct recruitment had to be filled up. Mr. Govindan Nair fairly agreed after taking instructions from an officer of the Education Department of the State who was present in Court that the State (Government would increase the number by 28 so as to accommodate the 158 promotees as also the 65 direct recruits in terms of the notification under Annexure I. Accordingly, that part of the High Court's direction which quashed Annexure I is set aside and the State Government is directed in terms of the statement of Mr. Govindan Nair before us that 28 posts should be made available within two months from today and brisk steps should be taken to finalise the recruitment in terms of Annexure T. The appeal is allowed.

11. We have heard counsel with reference to the point raised in the Special Leave Petition. As already indicated these petitioners were not parties before the High Court. The impugned judgment does not deal with their claim. They seem to be aggrieved on account of no exemption having been granted to their category as in the case of teachers already in service. We were told that Government had allowed the exemption to a limit of 9 years in all for other teachers in service. A statement was made from the Bar on behalf of other parties that some Sub-Inspectors of Schools like the petitioners in the Special Leave petition did apply to the Public Service Commission in terms of Annexure I and their applications have been entertained for consideration. Keening these aspects in view, we are not inclined to entertain the petition and the same is, therefore, rejected.

12. All parties are directed to bear their respective costs.