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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.1934 of 2025

State of Odisha & Ors.

....

Appellants

Mr. J. K. Khandayatray, Advocate

-versus-

Mary Tigga & Another

....

Respondent

Mr. S. Jena, Advocate
for Respondent No.1

CORAM:

JUSTICE KRISHNA SHRIPAD DIXIT

JUSTICE CHITTARANJAN DASH

Date of Hearing & Date of Judgment: 23.03.2026

Chittaranjan Dash, J.

1. This Intra-Court Appeal has been preferred by the State and its Officials challenging the order dated 14.05.2025 in W.P.(C) No.36028 of 2022, passed by the learned Single Judge.

2. The background facts of the case are that the Respondent was appointed as an Assistant Teacher in St. Joseph's Girls' Primary School, Hamirpur, Rourkela, a Christian minority managed institution, pursuant to an order of appointment issued on 07.08.1998, and she joined her service on 08.08.1998 against a vacancy caused due to the retirement of one Christina Kullu. Following such appointment, the school authorities forwarded the relevant documents to the District Inspector of Schools,



Rourkela for approval of her appointment. However, the said authority, vide letter dated 17.07.2001, returned the proposal on the ground that the Teachers' Training Examination qualification obtained by the Respondent from the Government of Sikkim was not equivalent to that of the Board of Secondary Education, Odisha, and required submission of an equivalency certificate. Subsequently, the Respondent obtained the requisite equivalency certificate from the Board of Secondary Education, Odisha on 05.06.2008, whereafter the proposal for approval of her appointment was again processed. The District Inspector of Schools, Rourkela forwarded the proposal to the Director, Elementary Education, Odisha, Bhubaneswar on 08.04.2009 for necessary approval. Thereafter, the Director, Elementary Education, Odisha, vide letter dated 02.09.2016, sought instructions from the Government in the School and Mass Education Department regarding approval of the Respondent's appointment. In continuation thereof, the Government in the School and Mass Education Department, by communication dated 11.07.2019, called for certain documents from the Block Education Officer, Bisra, who in turn furnished the required documents to the Government on 23.10.2019. Upon consideration of the materials, the Government, vide letter dated 07.12.2020, rejected the proposal for approval of the Respondent's appointment on the ground that prior approval of the Government had not been obtained by the Managing



Committee before issuance of the appointment order. Aggrieved by such rejection, the Respondent instituted W.P.(C) No. 36028 of 2022 before this Court on 18.12.2022, inter alia challenging the communication dated 28.01.2021 (issued pursuant to the Government decision dated 07.12.2020) and seeking approval of her appointment with effect from the date of joining along with consequential service and financial benefits. The Writ Petition was heard and finally disposed of by the learned Single Judge on 14.05.2025, whereby the rejection order dated 07.12.2020 was quashed and directions were issued to the State authorities to approve the services of the Respondent and release grant-in-aid and other admissible benefits. Pursuant thereto, the Appellants have preferred the present Writ Appeal against the said order dated 14.05.2025 passed in W.P.(C) No. 36028 of 2022 of the learned Single Judge.

3. Mr. Khandayatray, learned ASC, assailing the impugned judgment, submitted that prior approval of the Government was a condition precedent for appointment of a teacher in the institution and such approval having not been obtained, the appointment of the Respondent was contrary to the Rules and was rightly denied approval. He further submitted that the decision relied upon by the learned Single Judge in ***R. Ranjith Singh & Ors. vs. The State of Tamil Nadu & Ors.***, 2025 INSC 612 and others would not apply to the facts of the present case



as, according to him, the very initiation of the appointment was contrary to the applicable Rules.

4. Learned counsel for Respondent No.1, on the other hand, vehemently opposed the aforesaid contentions and submitted that the requirement of prior approval is an afterthought and does not find place in any statutory Rule applicable at the relevant time. It was further submitted that the Appellants have failed to demonstrate that the provisions referred to in Clauses 5(3) and 37(2) of the 2003 Order had any statutory force at the time when the Respondent was appointed. It was further contended that obtaining prior approval, if at all required, was a matter between the Managing Committee and the Government, and the Respondent, having duly discharged her duties, cannot be penalised for any alleged procedural lapse attributable to the Management. Learned counsel further submitted that the Respondent continued in service for more than two decades and her name remained on the rolls of the institution till she demitted office upon attaining the age of superannuation. It is not in dispute that her qualification to hold the post has never been questioned. In such circumstances, it was contended that the learned Single Judge has rightly interfered with the order of rejection and the same does not call for any interference in the present Appeal.

5. Having heard learned counsel for the parties and upon perusal of the materials on record, it clearly emerges that the



Respondent possessed the requisite qualification for engagement as a Teacher in the institution and her appointment has not been questioned on merit except on the ground of alleged procedural requirements to be complied with by the Managing Committee.

6. The relevant provisions of the Odisha Education (Minority Managed Aided Educational Institutions Employees, Method of Recruitment & Conditions of Service) Order, 2003 (hereinafter referred to as “2003 Order”) particularly Clause 5(3), which reads as follows:

“5(3) The appointing authority shall obtain prior approval of the Government whenever any post becomes admissible as per prescribed yardstick, and thereafter may make appointment against such post. Appointment without prior approval of the post will be considered ineligible only for availing grant-in-aid.”

A perusal of the above provision does not indicate that such a condition requiring prior approval was in force at the time of appointment of the Respondent in the year 1998. The Respondent was appointed on 07.08.1998, whereas the aforesaid provision came into force only with the 2003 Order vide Resolution No.5831/SME, Dt.28.02.2003 and therefore cannot be applied retrospectively.

7. However, on the other hand, Clause 37 of the said Order specifically provides as follows:

“37. (1) All nonsatutory rules, instructions, orders, resolutions, corresponding to these orders and



inforce immediately before the commencement of these orders are hereby repealed.

(2) All appointments made, orders issued or action taken against the employees of the institutions managed by the minority community prior to the commencement of these orders shall be deemed to have been made, issued or taken under these orders.”

8. A plain reading of the aforesaid provision indicates that it incorporates a legal fiction whereby appointments made prior to the commencement of the 2003 Order are recognised and continued within the fold of the said Order. The expression “deemed to have been made” cannot be construed to mean that all substantive conditions introduced under the 2003 Order would automatically apply retrospectively to such prior appointments. The scope of the deeming provision is limited to validating and recognising earlier appointments and not to subject them to conditions which were not in existence at the time of their inception. If Clause 37(2) were to be interpreted as importing the requirement of prior approval under Clause 5(3) retrospectively, it would lead to an incongruous situation whereby appointments validly made prior to 2003 would be rendered defective for non-compliance with a condition that did not then exist. Such an interpretation is neither borne out from the language of the provision nor permissible in law. Accordingly, the requirement of prior approval under Clause 5(3) must be held to operate prospectively, and the appointment



of the Respondent, having been made in the year 1998, cannot be invalidated on that ground.

9. Further, the position that a subsequent rule or executive instruction cannot be applied retrospectively so as to deprive an accrued right stands fortified by the decision of the Hon'ble Supreme Court in ***R. Ranjith Singh*** (Supra), wherein it has been held as follows”

“23. The State Government after realizing its mistake has gone to the extent of giving retrospective effect in the matter of seniority meaning thereby giving a preferential treatment to the in-service candidates who are less meritorious and who have already been granted a concession by permitting them to appear under the 20% quota earmarked for them. In the considered opinion of this Court, the action of the State Government in amending the recruitment rules with retrospective effect is certainly violative of Articles 14, 16 and 21 of the Constitution of India. A statute which takes away the right of an individual with retrospective effect deserves to be set aside by this Court.”

10. The Hon'ble Apex Court observed that a statute or rule which operates to the prejudice of an individual by retrospective application is liable to be set aside. Applying the aforesaid principle to the case at hand, the appointment of the Respondent, which was validly made in the year 1998, cannot be rendered ineligible for approval or grant-in-aid by invoking a condition introduced subsequently under the 2003 Order. Any such retrospective application of Clause 5(3) would have the effect of divesting the Respondent of benefits accruing from a valid



appointment and would therefore be impermissible in law. This principle lends further support to the conclusion that the rejection of the Respondent's claim on the ground of absence of prior approval is unsustainable.

11. It is also a settled principle of law that an employee cannot be made to suffer for any procedural lapse attributable to the employer, particularly when the employee is otherwise duly qualified and has rendered long years of uninterrupted service. In the present case, the alleged lapse pertains to the Managing Committee not obtaining prior approval, which is not attributable to the Respondent. Such a procedural deficiency, if any, cannot be put against the Respondent to deny her legitimate service benefits. It is trite that technical or procedural objections cannot be permitted to defeat substantive rights, more so in cases where the employee has served an impeccable service. Denial of approval and consequential benefits in such circumstances would result in manifest injustice and would run contrary to settled principles governing service jurisprudence.

12. In view of the above, and in the absence of any statutory Rule mandating prior Government approval at the time of engagement of the Respondent in the year 1998, this Court finds that the reasons assigned by the learned Single Judge, do not warrant any interference in exercise of appellate jurisdiction.

13. Needless to mention, the Respondent has, in the meantime, demitted office upon attaining the age of



superannuation. Accordingly, the directions issued by the learned Single Judge shall be complied with by the Appellants within an outer limit of four months from the date of receipt of this order.

14. The Writ Appeal stands dismissed accordingly.

(Chittaranjan Dash)
Judge

(Krishna Shripad Dixit)
Judge

A.K.Pradhan/Bijay/Sarbani