

CASE NO.:
Appeal (civil) 1779 of 2005

PETITIONER:
State of Orissa & Ors.

RESPONDENT:
Loknath Ray & Ors.

DATE OF JUDGMENT: 15/03/2005

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T
(Arising Out of S.L.P. (C) No. 19486 of 2003)

ARIJIT PASAYAT, J.

Leave granted.

The factual background can be adumbrated concisely as follows:

The respondent no.1 filed a writ application before the Orissa High Court claiming that he was appointed as "fourth peon" by the Management of the concerned institution i.e. Samanta Singhar High School in district of Jaipur, Orissa (Respondent no.2) which is an "aided educational institution" as defined under the Orissa Education Act, 1969 (in short the 'Act') and Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 (in short 'Recruitment Rules'). It is not in dispute that if an institution is an aided educational institution, same is governed by the Act and rules framed thereunder. The Recruitment Rules are framed under the Act. As the functionaries of the State did not approve the appointment of respondent no.1 holding the same to be beyond the prescribed yardstick, writ application was filed for direction to the concerned authorities to accord approval to the appointment.

The High Court by the impugned judgment came to hold that the functionaries of the State were not justified in refusing to accord approval. Stand of the State Government was that circular dated 8.7.1981 contained yardstick for fixation of standard staff for the Non-Government Secondary Schools in supersession of earlier circulars. Under the "category of staff" the number of peons which can be appointed was clearly spelt out. Only if the roll strength of the institution exceeded a particular number, one post of "Daftary" was admissible. According to the State Government the post of "Daftary" is a promotional post and, therefore, the concept of a "fourth peon" as sought to be canvassed by the writ petitioner is without any legal foundation. The position was further clarified by Circular dated 27.3.1992. The High Court on consideration of the rival stands came to equate the "fourth peon" with "Daftary" and held that the claim of the writ petitioner warranted acceptance.

In support of the appeal, learned counsel for the State of Orissa submitted that the High Court missed to consider several vital aspects. Firstly, there is no prescription of a "fourth peon" in the yardstick

prescribed. The post of "Daftary " is a promotional post and it carries higher scale of pay. That being the position, the last entrant cannot claim the post of the "Daftary".

Reliance was placed on decision of this Court in State of Orissa & Ors. v. Rajendra Kumar Das & Anr. and connected matters (2003 (10) SCC 411) in support of the stand.

There is no appearance on behalf of the respondents.

At this juncture it is to be noted that at different points of time yardsticks were formulated. Government of Orissa, Education & Y.S. Department, issued Circular No. 28365-EYS dated 8.7.81 fixing standard staff for the non-government secondary schools. So far as peons are concerned, the relevant portions of the circular read as follows:

"Category of staff"	3 class	5class	7class
9. Peons (I) Office Peon	1		1
(ii) Office Attendant	1		1
(iii) Night watcher cum sweeper	1	1	1

Notes

.....

C)(ii) Where the roll strength of the school exceeds 100, one post of Daftary is admissible.

....."

Subsequently by another circular No.155000-XVIIIEP-50/91-E, dated 27th March, 1992 the position was further clarified as under:-

"I am directed to say that the question of fixation of revised yardstick for appointment of class IV employees in Non-government Secondary Schools was under consideration of Government for some time past. After careful consideration Government have been pleased to decide that the yardstick for class IV employees of Non-Government Secondary Schools shall be as follows:

Category of staff	3 class	5class	7class
(i) Office Peon	1	1	1
(ii) Science Attendant	1	1	1
(iii) Night Watcher cum Sweeper	1	1	1

Where the roll strength of 10 Class High School is 500 (five hundred) or more, one post of Daftary is admissible.

For the schools running shift system for shortage of accommodation one additional post of peon is admissible.

The yardstick will come into force with effect from the 1st January 1992 and Government order referred to above stands modified to the extent indicated above."

A comparison of the two circulars shows that under 1981 Circular the requisite roll strength was 100, which was changed to 500

subsequently in the 1992 Circular.

The expression used in the two circulars is "Daftary" and not "fourth peon". The High Court seems to have fallen in error by proceeding on the basis as if the circulars referred to "fourth peon". This is clear from the reading of the judgments impugned in the present appeal.

It is to be noted that the post of "Daftary" carries higher scale of pay and is a promotional post for class IV employees. That being the position, the High Court was not justified in directing approval of the writ petitioner's services as "fourth peon". But one significant aspect cannot be lost sight of. If a school was entitled to have a "Daftary", certainly the appointment was to be made by promoting one of the three persons i.e. Office Peon, Office Attendant and Night Watcher-cum-Sweeper, there being no other class IV post in the institution. It is for the Managing Committee of the institution to decide who is to be promoted and thereafter seek approval of the concerned authorities. That way the claim of the writ petitioner could have been considered by the authorities, on being appropriately moved by the management. It is undisputed that the writ petitioner was appointed by the managing committee, may be under a misreading of the relevant government order. The above position was indicated in Rajendra Kumar Das's (supra).

We, therefore, while allowing this appeal direct that the management of the respondent-institution shall move the concerned authorities for approval to the promotional appointment of a class IV employee, as "Daftary". Simultaneously, it can also recommend for appointment to the class IV post, in case approval is accorded to the recommendation for appointment of "Daftary" on promotion. The decision on both motions shall be taken within three months from the date of submission of the recommendation in accordance with law keeping in view the operative yardstick in force at the time of appointments were made. Even if there has been refusal earlier, the matter shall be reconsidered in the light of what has been stated above.

Before we part with this case we must indicate, as was done in Rajendra Kumar Das's (supra), that undisputedly there were several decisions of the Division Benches rendered at earlier point of time, taking a view contrary to the one taken in the impugned judgment. In fact, one such order is dated 3.12.1998 in O.J.C. No. 14004/97 referred to Rajendra Kumar Das's (supra). The decisions do not appear to have been brought to the notice of the learned Judges hearing the writ petitions. This speaks volumes about the seriousness exhibited by learned counsel appearing for the parties, particularly the State Government, before the High Court.

The appeal is allowed in the aforesaid terms, leaving the parties to bear their respective costs.