

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 796 OF 2008

STATE OF ORISSA & ORS.

Appellant (s)

VERSUS

PRABHAWATI PADHIHARI

Respondent(s)

O R D E R

The third appellant College was established on 4.9.1988. The said college was recognised on 3.2.1990, the recognition being limited to faculties and subjects mentioned therein. On 3.4.1992, the Education Department, Government of India granted concurrence to the opening of new subjects of Sociology and Education and Economics in the third appellant College subject to the condition that the Government shall not bear any financial burden arising out of the opening of the said subjects.

2. The respondent was appointed as a Lecturer in Education in the third appellant College purely on temporary basis. The appointment of respondent was approved by the Governing Body of the third appellant College on 9.9.1994. The respondent filed writ petition (C ) No.9586 of 2005 seeking a direction to the State government to approve her appointment as against the first post of Lecturer in Education and release all consequential service benefits within a

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reasonable time. In pursuance of the order passed in the said writ petition directing consideration, the Government considered the case of the respondent for grant of benefit of grant-in-aid and rejected the claim by order dated 23.07.2002.

The reason given

for such rejection was that the respondent's post was

not eligible for grant-in-aid as on 1.6.1994 and the State Government had extended aid only to those cases where the candidates acquired eligibility before 1.6.1994. Thereafter the respondent approached the High Court with a second writ petition. The High Court by the impugned order dated 28.9.2005 allowed the writ petition, quashed the order dated 23.07.2002 and directed the appellants to approve the appointment of respondent against the post of Lecturer in the third appellant college and release all consequential benefits as was done in the similar situated persons referred in the order. The said order is under challenge in this appeal by special leave.

3. Relying upon the provisions of The Orissa (Non-Government College, Junior Colleges and Higher Secondary Schools) Grant-in-Aid Order, 1994, the appellants contend that the post of respondent was not admissible to grant-in-aid. A reading of Rule 4,

Rule 5(2)(A), Rule 9(2)(B)(ii), 9(4) and 10 of the

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grant-in-aid order discloses the following position:

(a) A women's college functioning regularly for three years or more as on 1.6.1994 after obtaining the Government recognition and affiliation of the University, is eligible for aid.

(b) The post in such a college would be admitted for grant-in-aid, if it has been in existence for three years or more.

(c) The date of eligibility in respect of post in the educational institution shall in no case be a date prior to 1.6.1994.

When these conditions are applied, it is clear that the order dated 23.7.2002 rejecting the claim of

respondent was correct and there was no justification for the High Court to interfere with the said order. The respondent did not make out a case for grant of aid as sought in the writ petition.

4. However, the respondent has contended that in case of several Lecturers, grant-in-aid had been extended to posts which did not fulfil the conditions of the grant-in-aid order. The appellants denied that any ineligible college or post has been extended grant-in-aid, in regard to the colleges in Dasgaon and Bhainsa. Even assuming that any post in a college had been wrongly extended any benefit, the respondent can not claim any relief, on the ground of

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negative equality in the absence of a legal right.

It is now well settled that guarantee of equality before law is a positive concept and cannot be enforced by a citizen in a negative manner. If any

illegality or irregularity has been committed in favour of any individual, others cannot invoke the jurisdiction of the court, that the same irregularity or illegality should be committed by the State in their favour, on the reasoning that they have been denied the benefit which has been wrongly extended to

others in an irregular and illegal manner. The remedy in such a situation is to question the validity of the benefit wrongly extended to others who were not entitled for the same, but not to claim similar benefit. [See Gursharan Singh & Ors.

vs. New Delhi Municipal Committee and others 1996(2)

SCC 459 and Chandigarh Administration vs. Jagjit Singh 1995(1) SCC 745. Therefore, there is no merit

on the said contention.

5. The appeal is allowed, the order of the High Court is set aside and the writ petition is dismissed. We, however, make it clear that this will not come in the way of the State Government considering the case of the respondent for grant of relief, if she has become subsequently eligible for whatsoever reasons.

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.....J.  
[R.V.RAVEENDRAN]

.....J.  
[H.L. DATTU]

NEW DELHI  
FEBRUARY 3, 2010

ITEM NO.105

COURT NO.4

SECTION XIA

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS  
CIVIL APPEAL NO(s). 796 OF 2008

STATE OF ORISSA & ORS.

Appellant (s)

VERSUS

PRABHAWATI PADHIHARI

Respondent(s)

(With office report)

Date: 03/02/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.V. RAVEENDRAN  
HON'BLE MR. JUSTICE H.L. DATTU

For Appellant(s)

Mr. Sibor Sankar Mishra, Adv.

For Respondent(s)

Mr. R. Venkatramani, Sr. Adv.  
Mr. S.K. Patri, Adv.  
Mr. Sukumar, Adv.  
Mr. K.C. Nayak, Adv.  
Mr. Kamal Mohan Gupta, Adv.

UPON hearing counsel the Court made the following  
O R D E R

The appeal is allowed in terms of the signed order. The order of the High Court is set aside and the writ petition is dismissed. We, however, make it clear that this will not come in the way of the State Government considering the case of the respondent for grant of relief, if she has become subsequently eligible for whatsoever reasons.

(O.P. Sharma)  
Court Master

(M.S. Negi)  
Court Master

(Signed order is placed on the file).