

A SMT. SANJUKTA PATTANAIK
v.
STATE OF ORISSA AND ORS.

DECEMBER 9, 1996

B [K. RAMASWAMY AND G.T. NANAVATI, JJ.]

Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Education Institutions) Rules, 1974: Rule 2(b).

C *Service Law—Appellant appointed as Clerk—Subsequently kept In-charge of the teaching post—Writ claiming appointment as teacher—Pursuant to interim direction given by High Court provisional approval given by Director of Education to appoint her as teacher—On a writ filed by respondent—State Court gave direction to reconsider appointment of appellant—Refusal by D director—Writ preferred by appellant dismissed—Appeal—Held appointment should be in accordance with the Rules—Mere fact that she was kept in charge of the teaching post, does not confer any right to appointment to a post, because she was not initially appointed to a teaching post—Mere discharge of duties as a teacher do not confer a right to claim the post as a teacher—The E provisional approval granted by the Director cannot be construed to be a ratification of the petitioner's appointment as teacher.*

Krishan Chandra v. State of Orissa & Ors., CA No. 13755/96 decided by Supreme Court on 1.11.1996, referred to.

F CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) No. 23361 of 1996.

From the Judgment and Order dated 18.9.96 of the Orissa High Court in O.J.C. No. 2148 of 1995.

G Vinoo Bhagat for the Petitioner.

K.N. Tripathi and J.R. Das for the Respondents.

The following Order of the Court was delivered :

H This special leave petition arises from the judgment and order of the

Orissa High Court, made on September 18, 1996 in OJC No.2148/95.

The petitioner was appointed as a clerk on June 1, 1974 against a vacancy. On August 9, 1990, she seems to have been kept in-charge of teaching post in the school. It is her claim that pursuant thereto she was teaching as a teacher. Since no action was taken by the authorities to have her appointed as a teacher, she filed OJC No. 671/91 on March 27, 1992 and pending disposal interim direction was granted. Pursuant thereto, she was appointed with provisional approval by the director on August 4, 1992. On a writ petition filed by the 5th respondent on April 15, 1993 alleging that she was not entitled to the post, the matter was directed to be reconsidered. The director refused appeal by proceedings dated March 4, 1995 resulting in filing of the present writ petition. It is contended that the High Court was not right in rejecting the claim of the petitioner, on the ground that all those cases which were pending consideration, required to be decided in accordance with Full Bench judgment of the High Court in OJC No. 5361/91, decided on December 2, 1994. Since the petitioners' claim was already considered and approval was given by the Director, it is not a pending case and she must, therefore, be appointed as a teacher. We find no force in the contention.

It is seen that appointment should be in accordance with the Rules to a post as defined under Section 2(b) of the Orissa Education (Recruitment and Conditions of Service of Teachers and members of the Staff of Aided Education Institutions) Rules, 1974. Since the petitioner was working in a clerical post, she is not entitled to be appointed and the view taken by the Director is correct. Admittedly, she was appointed as a clerk. While working as clerk, the mere fact that she was kept in charge of the teaching post, does not confer any right to appointment to a post, because she was not initially appointed to a teaching post. The Full Bench, therefore, has rightly interpreted that the initial appointment should be to a teaching post and a clerk, though directed to discharge the duties as a teacher, cannot claim the post as a teacher. Consequently, the earlier Division Bench judgment of the High Court was set aside. Resultant operation was that all those cases which had become final were directed not to be reopened and all those cases pending consideration either in writ petition or before the authorities were required to be dealt with in accordance with the Rules. Though the petitioner was provisionally given approval pursuant to the direction issued by the High Court in the said writ petition, that would be

- A** only subject to the appointment and since no appointment could be made and was in fact not made, the order could not be said to be in accordance with the Rules. The provisional approval granted by the Director cannot be construed to be a ratification of the petitioner' appointment as teacher. The view of this Court in *Krishna Chandra v. State of Orissa & Ors.*, (CA No. 13755/96) decided on November 1, 1996 is consistent with the above
- B** view and is of no help to the petitioner. Under these circumstances, we do not find any illegality in the order passed by the High Court warranting interference.

The special leave petition is accordingly dismissed.

T.N.A.

Petition dismissed.