ORISSA HIGH COURT
CUTTACK

OJC NO. 5070 OF 20002

In the matter of application under Articles 226 and 227 of the Constitution of India.

State of Orissa and others ..... Petitioners

Versus

Harihar Rath ..... Opposite Party

For Petitioners - Standing Counsel for School & Mass Education Department.

For Opp.Party - M/s S. B. Jena, S.J.Nanda, S.Behera & S.S.Mohapatra.

PRESENT :-

THE HON'BLE MR. JUSTICE I.M.QUDDUSI
AND
THE HON'BLE MR. JUSTICE PRADIP MOHANTY

Date of hearing and judgment : 25.10.2005

I.M.QUDDUSI, J. This writ petition has been filed against the judgment and order dated 20.11.2000 passed by the Orissa Administrative Tribunal, Cuttack Bench, in O.A. No.3584 (C) of 2000, which was filed before the Tribunal by the opposite party against the order dated 21.10.2000 (Annexure-3) reducing his rank from Trained Graduate Teacher to Trained Matriculate Teacher and the pay scale from Rs.5000-8000/- to Rs.3600-5600/- and also for recovery of the excess amount paid to him in the scale of pay of Rs.5000-8000/-.

2. The brief facts of the case are that the father of the opposite party, who was working as a Peon in Dharamasala Vanipitha, which is an educational institution, retired from service on 27.07.1998 on invalidation ground. The Rehabilitation Assistance Rules were applicable at the time of retirement of his father on invalidation ground. The said Rules provide for appointment, according to the qualification, to one of the dependants of a retired person, who had retired on invalidation ground, as well as to one of the dependants of a deceased employee. The opposite party submitted application for appointment under the Rehabilitation Assistance Scheme on 13.09.1998 for Trained Graduate Teacher, as he was having the requisite qualification, i.e., B.A., B.Ed., to hold such post. Subsequently, on 08.10.1998, the Rules were amended and the provisions for appointment in the cases of retirement on invalidation ground were excluded from the scope of the Rehabilitation Assistance Scheme. Further, only the posts carrying the maximum of scale up to Rs.6000/- were allowed for such appointment. However, a clarificatory circular was issued by the Government in General Administrative Department on 30.11.1998 to the effect that the pending applications would be disposed of in accordance with the Rules as they stood before the amendment. The opposite party was given appointment in the post of Trained Graduate Teacher on 18.12.1999 in the pay scale of Rs.5000-8000/- in Ahiyas High School in the district of Jajpur. He submitted his joining report and started working as a Trained Graduate Teacher and also started receiving his monthly salary. After about ten months, an order was issued by the Inspector of Schools, Jajpur Circle, Jajpur on 21.10.2000 reducing the rank of opposite party from Trained Graduate Teacher to that of Trained Matriculate Teacher and also reducing his scale from Rs.5000-8000/- to that of Rs.3600-5600/- with a further direction that the Headmaster of the concerned institution should recover the excess amount drawn by the

opposite party in instalments from the date of his actual joining in the said post on the ground that the Trained Graduate Post against which he was given appointment was a promotional post and by virtue of the Government Order dated 07.09.2000 he was entitled to enjoy the lower scale.

3. Being aggrieved, the opposite party filed the above-mentioned O.A. before the Tribunal, which was disposed of with the direction that he should be treated as a Trained Graduate Teacher and would be adjusted against a vacancy in the direct recruitment quota and till the above adjustment was given effect to, he should continue to enjoy the Trained Graduate scale.

4. Learned Standing Counsel for School and Mass Education Department has submitted that in view of the restriction imposed to make appointment, after the amendment came into force, only to posts carrying the maximum scale up to Rs.6000/-, the order appointing the opposite party to a post carrying higher scale of pay was illegal and, therefore, his rank and pay scale was reduced.

5. It is not disputed that when the application for appointment under Rehabilitation Assistance Scheme was submitted by the opposite party, i.e., on 13.09.1998, no amendment had come into force. The amendment came into force subsequent to the same, i.e., on 08.10.1998. A clarificatory order was issued on 30.11.1998 clarifying that the applications pending before the amendment would be treated as if the amendment had not come into force. The restriction providing appointment to posts carrying the maximum pay scale up to Rs.6000/- also came into force subsequently by the same amendment and as such the same will not have any retrospective effect, and due to this reason the opposite party was given appointment according to his qualification, i.e., in the post of Trained Graduate Teacher. It is also to be noticed that the restriction to make appointment to posts carrying the maximum scale up to Rs.6000/- under the Rehabilitation Assistance Scheme was only for the

dependants of the deceased employees, as the provision to give appointment to the dependants of the employees retired on the ground of invalidation was excluded by the said amendment. Hence, such restriction was not applicable in case of the opposite party. It is also not disputed that no opportunity of hearing was given to the opposite party before reducing his rank and pay scale. Hence, we have no hesitation to hold that the order reducing the opposite party in rank as well as reducing his pay scale was passed against the principles of natural justice.

6. In the case of Basudeo Tiwary v. Sido Kanhu University and others, AIR 1998 SC 3261, the Hon'ble apex Court in paragraphs 9 and 10 of its judgment has held as under:

> "9. The law is settled that non-arbitrariness is an essential facet of Article 14 pervading the entire realm of State action governed by Article 14. It has come to be established, as a further corollary, that the audi alteram partem facet of natural justice is also a requirement of Article 14, for, natural justice is the antithesis of arbitrariness. In the sphere of public employment, it is well settled that any action taken by the employer against an employee must be fair, just and reasonable treatment. This aspect was exhaustively considered by a Constitution Bench of this Court in Delhi Transport Corporation v. D.T.C. Mazdoor Congress, reported in AIR 1991 SC 101.
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> 10. In order to impose procedural safeguards, this Court has read the requirement of natural justice in many situations when the statute is silent on this point. The approach of this Court in this regard is that omission to impose the hearing requirement in the statute under which the impugned action is being taken does not exclude hearing – it may be implied from the nature of the power- particularly when the right of a party is affected adversely. The justification for reading such a requirement is that the Court merely supplies omission of the legislature, (vide Mohinder Singh Gill v. The Chief Election Commissioner, AIR 1978 SC 851) and except in case of direct legislative

negation or implied exclusion (vide S.L. Kapoor v. Jagmohan, AIR 1981 SC 136)."

7. In view of the above-mentioned facts and circumstances, we see no good ground to interfere with the impugned judgment and order passed by the Tribunal.

8. The writ petition is misconceived and is therefore dismissed.

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I.M.QUDDUSI,J.

PRADIP MOHANTY,J. I agree.

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PRADIP MOHANTY,J.

High Court of Orissa, Cuttack,
The 25th day of October, 2005/***Samal***