

**(1988) 04 OHC CK 0040**

**In the Orissa High Court**

**Case No :** Original Jurisdiction Case No. 978 of 1986

Arjun Charan Jena

APPELLANT

Vs

Director of Secondary Education and Others

RESPONDENT

**Date of Decision :** 26-04-1988

**Acts Referred:**

Orissa Education Act, 1969 — Section 19

**Citation :** (1988) 66 CLT 293

**Hon'ble Judges :** P.C. Misra, J;D.P. Mohapatra, J

**Bench :** Division Bench

**Advocate :** R. Mohanty and A.C. Mohanty, for the Appellant; Additional Government Advocate, R.K. Mohapatra, S.D. Das and B.B. Mohanty, for the Respondent

**Final Decision :** Dismissed

## Judgement

D.P. Mohapatra, J.—Arjun Charan Jena, a teacher in Banchhabata High School in Cuttack II Circle has filed this application under Articles 226 and 227 of the Constitution of India, praying to quash the order of the Director, Secondary Education, Orissa dated 11-3-1986 as per Annexure-6 and the letter dated 30-1.1986 from the Deputy Director (Secondary), Orissa, to the Inspector of Schools Cuttack-II Circle, Jajpur as per Annexure-8. By the former order the Director in exercise of his power as appellate authority set aside the order dated 26-3-1983 by the Managing Committee terminating the service of Alekha Chandra Prusty as Headmaster of the School and directed his reinstatement in his former post; under the letter (Annexure-8) the Deputy Director instructed the Inspector of Schools not to pay the salary of the Petitioner who was then as the Headmaster of the School.

The Director of Secondary Education, Orissa, Inspector of Schools, Cuttack-II Circle, Jajpur, Alekha Chandra Prusty the Deputy Director, Secondary Education Orissa and the Managing Committee, Banchhabata H. E. School have been arrayed as opposite parties 1 to 5 respectively in the writ application.

2. The Petitioner's case shortly stated is that he was an Asst. Teacher in Banchhabata High School a private educational institution till the Managing Committee received communication dated 3-10-1985 from the Inspector of Schools as per Annexure-1 that it had been sanctioned grant-in-aid with effect from 1-4-1983: Alekha Chandra Prusty, (opposite party No. 3) was continuing as Headmaster of the School till 28-3-1983 when his service was terminated by the Managing Committee in pursuance of a disciplinary proceeding, The Petitioner then the senior-most Asst. Teacher in the school, was requested to act temporarily as Headmaster until, further orders as per communication of the Secretary of the School dated 28-3-1983 (Annexure-2). Subsequently, he was promoted as Headmaster of the School with effect from 3.7-1983 (Annexure-3). The opposite party No. 3 being aggrieved by the order at termination of his service filed an appeal before the Director, Opposite Party No. 1 which was allowed all 11-3,1986 by the impugned order as per Annexure-6. Prior to that the Deputy Director by the impugned order dated 30-1-1986 as per Annexure-8 had withheld payment of salary to the Petitioner.

3. The Petitioner's contentions are mainly two fold:

(i) that the Director had no jurisdiction to direct reinstatement of opposite party No. 3 in the post of Headmaster of the School; and

(ii) that the Petitioner was entitled to be paid all emoluments as Headmaster of School and there was no justification to withhold payment of his dues. According to the Petitioner the institution having become an aided educational institution since 1-4-1983. Article 287 of the Orissa Education Code read with provisions of Orissa Education Act were applicable regarding termination of service of Headmaster, the Education Tribunal was the appellate authority against the order of termination of service of opposite party No. 3 and the order of termination of service of opposite party No. 3 was legal and justified and it was not available to be interfered with by the Director.

4. Opposite Parties 1, 2 and 4, the authorities under the Education Department of the State Government in their return have admitted the averments that the Petitioner was temporarily in charge as Headmaster of the School with effect from 28-3-1983 to 2-7-1983 and was subsequently appointed as regular Headmaster of the School with approval of the Inspector of Schools with effect from 3-7-1983. Approval was accorded to the appointment since the Petitioner was the senior-most Assistant Teacher in the School but higher scale of pay prescribed for the post of Headmaster which was allowed to the Petitioner by the Managing Committee was not approved by the Inspector of Schools as he had not completed seven years of teaching experience as a trained graduate teacher to get the scale prescribed under rules. It is further averred in the return that the Petitioner is still continuing as the regular Headmaster of the School but in the scale of pay as prescribed for the post of trained graduate teacher. These opposite parties took the stand that provisions of the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of

Aided Educational Institutions) Rules, 1974 are not applicable to the case since at the? relevant time the School was not an aided institution. As such, the Director opposite party No. ] as the Head of the Department entertained the appeal dated 15-4-1983 filed by opposite party No. 3 and disposed of the same as per decision of the State Government communicated in its letter No. 13585 (2) EYS dated 27-3-1983 as per Annexure A/3. Thus the opposite parties justified both the impugned orders filed as Annexures 6 and 7 to the writ application.

The opposite party No. 3 in his counter has also justified the action of the Director in reinstating him since the disciplinary proceeding initiated by the Managing Committee on the basis of which the order terminating his service as Headmaster having been passed in patent violation of principles of natural justice could not be sustained. Refuting the contention raised by the Petitioner that the Director had no jurisdiction to entertain the appeal the opposite party referring to the decision of the State Government as per Annexure A/3 contended that since the provisions of Article 287 of the Orissa Education Code had become unworkable after dissolution of the Appeal Committee of the Board of Secondary Education and the provisions of the 1974 Rules were not applicable to the institution which was then a privately managed one, the State Government under Article 162 of the Constitution had the power to fill up the vacuum by empowering the Director to entertain and dispose of the grievances of the teacher of such institutions. It is the further contention of opposite party No. 3 that though he submitted his joining report on 17-3-1986 before opposite party No. 2 in view of the order passed by this? Court in 2-4-1986 directing status quo to be maintained, the same has not been accepted and he has not been able to join the School.

Opposite party No. 5 in its return supported the stand taken by the Petitioner and contended that the impugned orders as per annexures 6 and 8 were erroneous and unsustainable .

5. From the pleadings of the parties discussed in the foregoing paragraphs the following questions arise for consideration:

- (1) Whether the Director, opposite party No. 1, was competent to entertain and dispose of the appeal filed by opposite party No. 3 ;. and
- (2) Whether the Petitioner? was entitled to get the pay and other emoluments, as Headmaster of the School during the period he served as such.

The validity of the impugned order as per Annexure-6 depends on the answer to the first question while that the impugned order as per Annexure-8 depends on the answer to the second.

While the learned Counsel for the Petitioner and opposite party No. 5 contended that the first question should be answered in the negative and the second in the affirmative, it was the submission of the learned Counsel appearing for opposite

parties 1 to 4 that the answer should be in the reverse order that is the first question in the affirmative and the second in the negative.

From the pleadings of the parties there appears to be no controversy that the school was a private educational institution managed by a Managing Committee till it was communicated with the decision of the authority dated 30-10-1985 that it was entitled to receive grant-in-aid at 30% with effect from 1-4-1983. Prior to 30-10-1985 there was no communication to the Managing Committee regarding payment of grant-in-aid. As such, it has to be taken that the institution continued to be a privately managed institution till 30th of October, 1985. Consequently it follows that by the date of the order of termination of service of opposite party No. 3, i.e. 28-3-1983, the school was not an aided institution. As such the Orissa Education Act and the provision of 1974 Rules were not applicable to the institution. The provisions applicable to such a school were those of the Orissa Education Code. Under Article 287 (28) of the Code, it was provided that if a permanent teacher is discharged it must be recorded in the resolution of the Managing Committee before discharging him and it must be communicated to him forthwith. Any teacher discharged with or without notice may submit an appeal to the Inspector of Schools within 10 days of receiving the order of discharge, if the Inspector agrees with the Managing Committee, he will inform, the Appellant and no further action will be taken. If he disagrees with the Managing Committee he will forward the appeal to the Secretary of the Board of Secondary Education with the remarks of the Managing Committee thereon and his own opinion. The decision of the Board of Secondary Education will be final. The expression 'if he disagrees with the Managing Committee' in Article 287 (28) was dropped while framing Regulation 34 of the Board of Secondary Education under the Orissa Secondary Education Act, 1953. Interpreting this provision this Court in the case of Jagabandhu Patnaik v. Secretary, Orissa Board of Secondary Education and Ors. ILR 1968 Cutt. 59, held that after coming into force of Regulation 34, there is no discretion left to the Inspector and he is bound to forward to the appeal Committee of the Board all appeals, whether he agrees or disagrees with the Managing Committee. This position was reiterated in the case of Narayan Chandra Mallik v. Ram Chandra Mallik and Ors. 1970 Lab. I.C. 104, wherein it was held that Regulation 34 will prevail over Article 287 (28) of the Code. The Orissa Secondary Education Act, 1953 came to be amended by the Orissa Act 6 of 1979 which came into force on 26-3-1979, whereunder Section 19 of the Act which empowered the Board to appoint the Appeal Committee was substituted omitting the power of the Board to appoint such committee. Accordingly Regulations 33 to 35 in Chapter VIII of the Regulations which made provisions regarding duties of the committee and finality of the decision of the committee became otiose. The forum for appeal provided under Article 287 (28) of the Code as modified by Regulation 34 became nugatory. This position has been accepted by this Court, the case of Bhagirathi Behera v. State of Orissa and Ors. O.J.C. No. 1215179-D/24-6-1986.

The State Government in order to fill up the vacuum caused in the situation

referred to above took the decision reflected in the order dated 27-3-1983 as per Annexure A/3 and directed the Director of the Department to hear and dispose of appeals by teachers of the specified class of institutions. This decision was taken by the Government in exercise of its Executive power which was available: to be exercised in the absence of any statutory provision holding the field. The position is not in dispute that Article 162 of the Constitution empowers the State Government to exercise executive power in respect of all matters in which it has power to legislate. Therefore, the challenge to the decision of the State Government as per Annexure A/3 and the power of the Director to pass the order as per Annexure-6 in pursuance of the said decision is devoid of force. As such, the first question has to be answered in the affirmative.

6. The other question arising for decision is whether the Petitioner was entitled to get the pay and other emoluments as Headmaster of the School. Admittedly he did not have the requisite experience as trained graduate teacher to entitle him to get the prescribed scale of pay as Headmaster of a High School. Therefore, the Inspector of Schools did not, and in our opinion rightly approve the recommendation of the Managing Committee for payment of salary of the Petitioner at the prescribed scale. He was therefore drawing the scale of pay admissible to a trained graduate teacher. The Petitioner would therefore be entitled to receive the pay and other emoluments at the scale of pay admissible for a trained graduate teacher for the period he has served as Headmaster in the School. If there is any outstanding amount due to him the same shall be paid to the Petitioner within two months. This question is answered accordingly.

7. On the aforesaid analysis the writ application is dismissed subject to the above observations. There will be no order for costs.