
(2015) 04 OHC CK 0028
In the Orissa High Court
Case No : FAO No. 207 of 2011

Bishnupriya Mishra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 07-04-2015

Acts Referred:

Orissa Education Act, 1969 — Section 24-B, 24-C, 3(b)
Penal Code, 1860 (IPC) — Section 193, 219, 228

Citation : (2015) 04 OHC CK 0028

Hon'ble Judges : B.R. Sarangi, J.

Bench : Single Bench

Advocate : P.N. Mohanty, B. Jena and P.K. Mohanty, for the Appellant

Final Decision : Allowed

Judgement

Dr. B.R. Sarangi, J.—The appellant, who is a Classical Teacher has filed this appeal under Section 24-C of the Orissa Education Act, 1969 (in short "the Act") assailing the judgment dated 28.03.2011 passed by the State Education Tribunal in GIA Case No. 113 of 2007 vide Annxure-8 and further seeking for a direction that the respondent No. 5 being not an existing staff of the School and her services have been terminated w.e.f. 1995, she is not entitled to the relief granted by the appropriate forum.

2. The short fact of the case, in hand, is that the respondent No. 5 was appointed as a Classical Teacher on 07.12.1989 in Shree Jagannath Girls' High School, Barbatia in the district of Balasore and she joined the said post on 11.12.1989. Due to unauthorized absence for a long period, a show cause notice was issued calling upon her to submit explanation on 05.01.1994, to which she did not respond. Then another show cause notice was issued on 02.03.1994 to which she also did not respond and continued to remain absent unauthorizedly. Therefore, the Managing Committee of the School passed a resolution on 08.10.1994 to conduct an enquiry against respondent No. 5 for her misconduct. On the basis of the inquiry report, the Managing Committee decided to terminate

the services of respondent No. 5 by passing a resolution on 13.01.1995. Thereafter, following a due procedure of selection, the present appellant was appointed as a Classical Teacher on 15.03.1995. Accordingly, the appointment order was issued on 03.04.1995, pursuant to which, the appellant joined on 10.04.1995. The Government of Orissa in its School and Mass Education Department on 06.06.1995 notified the School in question to receive grant-in-aid w.e.f. 01.06.1994. Therefore, the School in question became an aided educational institution within the meaning of Section 3(b) of the Act from the date of notification, i.e., 06.06.1995. The appellant along with Sri Shrihari Pradhan and Sri Parthasarati Patra filed a writ application bearing O.J.C No. 11466 of 2000 before this Court for approval of their appointment and for release of grant-in-aid. The Inspector of Schools, Balasore Circle, in his order dated 16.02.2002 stated that the appellant has been appointed as a Classical Teacher on 10.04.1995 on removal of respondent No. 5 vide Managing Committee Resolution dated 13.01.1995. The respondent No. 5 approached this Court by filing a writ application seeking for release of grant-in-aid in her favour and this Court in OJC No. 5788 of 1998 directed that the respondent No. 5 may approach the learned Education Tribunal under Section 24-B of the Act ventilating her grievance with regard to approval of her appointment and release of grant-in-aid as a Classical Teacher of the School in question. Subsequently, the respondent No. 5 filed GIA Case No. 113 of 2007 before the State Education Tribunal seeking for a declaration that her termination is illegal and further seeking for declaration that she is deemed to continue in service and is entitled to get all service benefits. On consideration of the GIA application filed by respondent No. 5, the learned Education Tribunal passed the impugned order on 28.03.2011 holding that the termination of respondent No. 5 is illegal and declaring that respondent No. 5 is deemed to be continuing in the service and is entitled to all service benefits. Hence this appeal.

3. Mr. K.K. Swain, learned counsel for the appellant raised a preliminary objection with regard to the jurisdiction of the Tribunal to adjudicate the matter declaring the termination of respondent No. 5 as illegal and further declaration that she is deemed to be continuing in service and is entitled to all service benefits. It is urged that respondent No. 5 having been terminated from service w.e.f. 13.01.1995, i.e., prior to the notification dated 06.06.1995 notifying the said School to receive grant-in-aid, the State Education Tribunal lacks jurisdiction to declare the termination of respondent No. 5 as illegal as the termination was made by the managing committee during the unaided period. Therefore, appeal lies before the Director, Secondary Education, Orissa in terms of the Government instruction dated 27.03.1983. Instead of approaching the appropriate forum, the respondent No. 5 approached learned Education Tribunal. He further submits that the learned Tribunal having no jurisdiction, adjudicated the matter without application of mind and therefore, the impugned order should be set aside and the appointment of the appellant be approved and GIA admissible to the post held by her should be released in her favour. To substantiate his contention, he

has relied upon the judgment of *Jalada Dalang Uchha Bidyapith Vs. State of Orissa and Others*, , *Laxmidhar Pati and Others Vs. State of Orissa and Others*, , *Nityananda Lenka and Others Vs. State of Orissa and Others*, , *Arjun Charan Jena Vs. Director of Secondary Education and Others*, , *Govinda Chandra Rout Vs. Managing Committee of Chitrotpala High School and Others*, , *Krishnadevi Malchand Kamathia and Others Vs. Bombay Environmental Action Group and Others*, , *Orissa Bridge and Construction Corporation Ltd. Vs. Surendra Chandra Das and Others*, .

4. Mr. A.K. Pandey, learned Standing Counsel for School and Mass Education Department submits that the School has been notified as an aided educational institution vide Notification No. 8799/S and ME dated 22.03.1995 w.e.f. 01.06.1994 and also admitted the factum that the respondent No. 5 was appointed as a Classical Teacher by the Managing Committee of the School w.e.f. 11.12.1989. Since the Secretary of the School did not produce the records, no steps could be taken for approval of the service of the staffs of the institution. Being aggrieved by such situation, some of the staff approached this Court and State Education Tribunal seeking for approval of their Services. Pursuant to the order passed by this Court, one departmental inquiry was conducted, basing upon which on the recommendation of the Director, Secondary Education, Orissa, approval was accorded in favour of the staff, but the case of the respondent No. 5 was left out because of the litigation pending against the said post. Subsequently, the Managing Committee appointed the appellant on 10.04.1995. The appellant along with two others filed O.J.C No. 11466 of 2000 before this Court and this Court disposed of the writ application on 23.11.2000 with a direction to the Inspector of School to consider the proposal for approval of appointment of the appellant after examination of the record.

5. Mr. A.K. Mohanty-A, learned counsel for respondent No. 5 urged before this Court refuting the contentions raised by the appellant that the respondent No. 5 having been appointed as a Classical Teacher, her services have to be approved and consequential benefit as due and admissible has to be extended to her in consonance with the GIA principle applicable to the institution. Therefore, it is urged that after due adjudication, the learned Education Tribunal is justified in its action extending the benefit to respondent No. 5 which she is entitled to get in accordance with law. Therefore this Court should not interfere with the impugned order. In order to substantiate his case, he has relied upon the judgment in *Governing Body of Kaptipada College, Kaptipada v. State of Orissa and others*, 2012(2) ILR 78 and *State of Punjab Vs. Amar Singh Harika*, .

6. In view of the facts pleaded above, it is to be considered

(i) Whether, the Education Tribunal has jurisdiction to entertain the GIA Case at a belated stage?

(ii) Whether the Education Tribunal is justified in action extending the benefits of the respondent No. 5?

7. Issue No. (i)

The undisputed fact is that respondent No. 5 was appointed as a Classical Teacher on 07.12.1985 in Sri Jagannath Girls' High School, Barabatia in the district of Balasore, pursuant to which she joined on 11.12.1989. She remained absent unauthorizedly for a long period. Subsequently, a show cause notice was issued on 05.01.1994 calling upon her to submit her explanation. But she did not respond to the same. Again another notice of show cause was issued on 02.03.1994 to which also she did not respond. Therefore, the Managing Committee, being the appointing authority, passed a resolution on 08.10.1994 deciding to conduct an inquiry against respondent No. 5 for her misconduct. On the basis of such inquiry report, the Managing Committee decided to terminate respondent No. 5 from service by passing a resolution on 13.01.1995. Accordingly the termination order was issued on 15.01.1995. Much reliance has been placed on the documents filed in Annexure-5 at page 52 of the brief where the application for recognition of the School was filed before the Board of Secondary Education, Orissa and in page 54 of the brief, under the heading "particulars of the staff working in the school", though the name of respondent No. 5 is appearing but the said document does not contain the signature of the President and Secretary of the institution. Similarly, in Annexure-6 also there is no signature of the President and Secretary of the Governing Body of the School. Therefore, these documents cannot be construed to be valid, on which no reliance can be placed with regard to continuance of the respondent No. 5 in the School. Except Annexures 5 and 6 no other documents have been brought to notice of the Court by respondent No. 5 with regard to her continuance of service. After termination of service of respondent No. 5 w.e.f. 15.01.1995, the Government of Orissa issued notification vide Annexure-3 dated 06.06.1995 declaring the School in question to receive Grant-in-Aid w.e.f. 01.06.1994. By the time notification came into force on 06.06.1995, respondent No. 5 had already been terminated from service w.e.f. 15.01.1995. Therefore, the termination of respondent No. 5 was during the period the school was recognized but unaided high school. Referring to the law laid down in Arjun Chandra Jena(supra) in paragraph-5, it is held that if termination took place during the unaided period, appeal lies before the Director in view of the Government instruction dated 27.03.1983. Since the termination of the respondent No. 5 was done during unaided period then she could have preferred an appeal before the Director, Secondary Education, Orissa in terms of the Government instruction dated 27.03.1983 within a period of 30 days from the date of termination. But in the present case, respondent No. 5 instead of preferring an appeal before the Director, Secondary Education, Orissa, moved an application before the Education Tribunal under Section 24-B of the Act challenging his termination and seeking for a declaration that the termination is illegal and claimed for other consequential benefits. Section 24-B of the Act reads as follows.

"24-B. Adjudication by Tribunal - (1) The Tribunal shall have jurisdiction, power and authority to adjudicate all disputes and differences, between the Managing

Committee or, as the case may be, the Governing body of any private educational institution and any teacher or employee of such institution or the State Government or any officer or authority of the said Government, relating to or connected with the eligibility, entitlement, payment or non-payment of grant-in-aid.

(2) Any person, aggrieved by an order pertaining to any matter within jurisdiction of the Tribunal, may make an application to the Tribunal for the redressal of his grievance.

(3) On receipt of an application under Sub-section (2), the Tribunal shall, if satisfied after such inquiry as it may deem necessary that the application is a fit case for adjudication by it, admit such application, but where the Tribunal is not so satisfied, it may summarily reject the application after recording its reasons:

Provided that no application before the Tribunal seeking a claim of grant-in-aid against State Government or any Officer or authority of the said Government shall be admitted, unless the applicant has served a notice on the State Government or concerned officer or authority furnishing the details of the claim and a period of two months has expired from the date of receipt of the said notice by the State Government or, as the case may be, the concerned officer or authority. (4) The Tribunal shall not admit an application under Sub-section (2), unless it is made within one year from the date of expiry of the period of two months referred to in Sub-section (3).

(5) The Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to any rules made by the Government, shall have power to regulate its own procedure.

(6) All the proceedings before the Tribunal shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code, 1860."

On perusal of the above mentioned provisions, it is seen that, the Tribunal has got jurisdiction to adjudicate the dispute relating to or connected with the eligibility, entitlement, payment or non-payment of grant-in-aid. As the termination of respondent No. 5 has been done much prior to the notification issued declaring the institution as aided institution, the learned Tribunal could not have entertained the application filed by respondent No. 5 as it lacked jurisdiction, more particularly, the Tribunal is to adjudicate the dispute of an existing employee not of a terminated employee. Even though the respondent No. 5 was terminated from service w.e.f. 15.01.1995, but she approached the Orissa Education Tribunal by filing GIA case No. 113 of 2007, after long lapse of more than 12 years. But no valid justifiable reasons have been assigned in the impugned order by the learned Tribunal as to how he could entertain the application filed by respondent No. 5 at a belated stage. In absence of any conjoint reason to entertain the application at a belated stage, when the forum

has no jurisdiction to entertain the application, this Court is of the considered view that the learned Tribunal having lacked jurisdiction, could not have entertained such GIA Case and passed the impugned order.

8. Issue No. (ii)

As it appears, respondent No. 5 has not assailed her termination order dated 15.01.1995 at the relevant point of time, thereby she accepted the position. But subsequently, she tried to make out a different case in the G.I.A. application before the learned Tribunal stating that she was not going to School since 30.03.1998. However, on her own admission, since the respondent No. 5 was not going to School w.e.f. 30.03.1998, the learned Tribunal could not have entertained the application in 2007 and ultimately, extended the benefit referring to Govinda Rout (Supra) holding that the termination of the respondent No. 5 made on 15.01.1995 is illegal. But the ratio of the said case is not applicable to the present context as it relates to an aided School as the cause of action arose in that case during aided period. Therefore, the learned Tribunal without any application of mind, erroneously applying the ratio of Govinda Rout (supra) to the present case, condoned the delay of more than 12 years and passed the impugned judgment. The apex Court in Krishnadevi Malchand Kamathia and Ors. (supra) in paragraphs 17 and 21 held as follows:

"17. It is settled legal proposition that even if an order is void, it requires to be so declared by a competent forum and it is not permissible for any person to ignore the same merely because in his opinion the order is void.

21. Thus, from the above it emerges that even if the order/notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it. It has to approach the court for seeking such declaration. The order may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the petitioner or on the ground of delay or on the doctrine of waiver or any other legal reason. The order may be void for one purpose or for one person, it may not be so for another purpose or another person."

The order of termination dated 15.01.1995 has not been challenged by respondent No. 5 in due time. The learned Tribunal could not have declared the said termination as illegal. Accepting the case of the respondent No. 5 that she was continuing in the School till 30.03.1995, then in that case also applying the ratio of the case of Orissa Bridge and Construction Corporation Ltd. (Supra), absence from duty in the beginning may be misconduct but when absence is for a very long period, it may amount to voluntary abandonment of service and in that eventuality, the terms of service came to an end automatically without requiring any order to be passed by any employer. Though this Court by order dated 23.11.2000 passed in O.J.C. Case No. 11466 of 2000 directed the authorities to consider the approval of her appointment against the post of

Classical Teacher and release of grant-in-aid, the Inspector of Schools did not approve the appointment of the appellant only on the ground that she was appointed after 01.06.1994 as per the executive instruction issued by the State Government. Since subsequently, the Government clarified the position in the circular letter dated 30.07.2008 that those who have been appointed before notification of the School and after 01.06.1994, their appointments would be approved. So, on the basis of the Government circular dated 30.07.2008 the appointment of Sri Srihari Pradhan which was also rejected by virtue of the said order dated 16.02.2002 under Annexure-4, was approved subsequently vide order dated 27.07.2012. Applying the same to the present context, even though the appointment of the appellant has been done after 01.06.1994 in view of the Government notification dated 30.07.2008, the appellant's appointment should have been approved and he should be extended with the benefit of grant-in-aid as due and admissible to her as she had been appointed by following due procedure of selection by Managing Committee of the School in question. But the learned Tribunal, who lacks jurisdiction to entertain the application filed by respondent No. 5 without considering the fact and law, passed the impugned the judgment dated 28.03.2011 in Annexure-8, which cannot be sustained in the eye of law. Accordingly the same is quashed.

9. In view of the aforesaid facts and circumstances, the impugned judgment dated 28.03.2011 passed by the learned State Education Tribunal in G.I.A Case No. 113 of 2007 in Annexure-8 having been quashed, the appeal is hereby allowed. No order as to costs.