
(2014) 09 OHC CK 0102
In the Orissa High Court
Case No : W.P. (C). No. 18041 of 2011

Gandharba Charan Parida

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 02-09-2014

Acts Referred:

Citation : (2015) LabIC 37

Hon'ble Judges : Biswanath Rath, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Biswanath Rath, J.—In The petitioner has approached this Court by filing the above writ petition with the following prayer:

"Under the above circumstances, it is therefore humbly prayed that this Hon''ble Court be graciously pleased to quash the order dated 30.11.2010 of the State Government under Annexure-8 and direct the opp. Parties to release the arrear salary components of the petitioner from 7.01.2005 to 31.7.2009 in different revised scale of pay rules and further the Hon''ble Court be pleased to direct the opp. parties to pay the pension or pensionary dues to the petitioner as per his last pay drawn on 31.07.2009,

And further the Hon''ble Court be pleased to direct the opp. parties to calculate the arrears and pay the same to the petitioner with its accrued interest @ 9% per annum within a stipulated period as deems fit and proper."

2. It is the admitted position in the case that the petitioner was continuing as Head Pandit of Adarsa Ayurved Bidyalaya, Town Hall Road, Cuttack. In a development taken place, pursuant to the order dated 27.04.2002 (Annexure-3) passed by the Inspector of Schools, Cuttack Circle, Cuttack four of the teachers of the Adarsa Ayurved Bidyalaya, Town Hall Road, Cuttack were deputed from the particular school to different schools mentioned therein and in the very same letter, at the bottom thereof, a direction was given to the Head Pandit of the

School to submit the absentee statement of the concerned employees at the time for preparation of bills. The record further discloses that by issuing a letter dated 02.05.2012 (Annexure-5) even though the particular school was derecognized by virtue of letter no. 7837/SME, dated 07.04.2005, in second para of the letter, the petitioner who was then functioning as a Head Pandit and managing the establishment, was directed to remain as the custodian of the assets of the School. The said letter also discloses a request to the Director to release the salary of the staff till they are absorbed in other school and this letter makes it clear that the petitioner remained as the only staff of the said school. In a subsequent development, in issuing a telegraph vide memo no. 321, dated 31.07.2009 indicating therein that the petitioner who was Head Pandit of the said school and to retire on 31.07.2009 the Inspector of School, Cuttack was requested to take over the charge from the petitioner as appearing at Annexure-10. A counter is filed by the opposite party no. 3 on 12th August, 2011 and in the counter affidavit in paragraphs 6 & 7, it is submitted that the school was derecognized from a particular date on account of having no required students strength in the school. Similarly in the counter filed by the opposite party no. 4 in Para-6, it is submitted by the parties that in view of the derecognition of the school the salary component of the teachers of the institution is deemed to have been seized with effect from 07.01.2005 and since the claim of the petitioner relates to the period from 2005 and onwards, can not be considered and the counsel for the School and Mass Education Department even went to submit that since the petitioner remained as custodian of the assets, he can at best be treated as a watchman and entitled to the salary of a watchman and not as Head Pundit.

3. It is further contended by the opposite party no. 4 by making averment in paragraph-13 that the indication in the last portion as made in Annexure-10 on 31.7.2009, is under mistaken facts and the same needs to be ignored.

4. The facts reveal that the order dated 27.4.2002 passed by the Inspector of Schools vide Annexure-3, by virtue of which four of the staffs of the very same institution, were transferred to discharge their duty in other school mentioned therein, the petitioner alone was allowed to continue to run the school. Further as appearing from Annexure-5 there is a specific direction in favour of the petitioner directing the petitioner to remain as the custodian of the assets of the school. In spite of issuing a letter of derecognition of the particular school, the position of the petitioner in the particular school remained undisturbed. Petitioner was merely an employee. No steps ever was taken by the competent authority to take him to a running institution. At this stage, learned counsel for the opposite parties submits that a school can not be permitted unless there is requisite number of students as specified under Rule-6-B(d) of the Orissa Education Act read with Section 11 thereof. In spite of being aware of the facts that the school is not having the required strength, the petitioner was allowed to continue as Head Pundit. On the other hand the petitioner was allowed to remain in charge of the School till a direction was given vide Annexure-10 that too on the date of his

retirement to take over charge from him. This matter was also heard by this Hon''ble Court on several occasions. On 12.4.2013 a Bench of this court directed the Additional Standing Counsel for the School and Mass Education Department to clarify the position on the issue indicated therein. This matter was next taken up on 03.05.2013, on which date while keeping this matter as part heard, the Bench directed the opposite parties for taking steps to release the arrear salary of the petitioner, if there is no other impediment. The matter was taken up next on 18.06.2013. Learned Standing Counsel for School and Mass Education Department volunteered to submit that opposite parties are taking steps to release the arrear salary of the petitioner and some time may be granted to complete the same. Considering such request of the learned Standing Counsel, the matter was next taken up on 19.07.2013, on which date a submission was made by learned Counsel for the School and Mass Education Department that the bill has already been submitted to the appropriate Department for sanction of the amount and the amount will be disbursed after getting the approval. Strangely enough, at this stage, the opposite parties including the Superintendent remained busy in filing counter after counter and affidavit and affidavit justifying their action in not releasing the arrear salary of the petitioner who was retired since 2009.

5. Be that as it may, the decision as reflected herein above, makes it clear that in spite of transfer of four of the teachers, to other establishments the petitioner was allowed to continue in the institution. Even after the institution is derecognized, the fate of the petitioner remained undecided. On the other hand, there has been correspondences establishing that the petitioner was allowed to continue in the school until a telegram is issued on 31.7.2009 (Annexure-10) asking the Inspector of the Schools, to take over the charges from Sri Gandharb Charan Parida, the petitioner. Though affidavits are filed in 2013, no steps were ever taken bringing out a corrigendum making necessary corrections to the said telegram. This appears to be a development purposefully made by the O.Ps. to prevent the petitioner from getting all his arrears and overreach the repeated directions of this Hon''ble Court pointed out herein above. There is ample material to establish that the petitioner was allowed to continue in his post till he is superannuated on 31.07.2009 and it is an admitted fact that the petitioner was continuing as a Head Pundit.

6. Under the above circumstances, the petitioner is entitled to all his emoluments in the post of Head Pundit of Adarsa Ayurved Bidyalaya, Town Hall Road, Cuttack till he is superannuated on 31.07.2009.

7. From the submissions of the opposite parties, it appears that a bill was already prepared calculating the arrear of the petitioner and which appears to have been submitted to the government for release of funds for facilitating payment of the petitioner.

8. Under the circumstances, while allowing the writ petition by setting side the impugned order vide Annexure-8, I direct the opposite party nos. 1 and 2 to look

into the matter immediately and pass necessary orders approving sanction of the grant-in-aid matching the arrear salary of the petitioner within a period of four weeks from today.

9. From the conduct of the opposite parties, I have a feeling that the opposite parties 3 & 4 have joined together to harass the petitioner in not getting his entitlement in due time and for this, I feel it proper to award cost of Rs. 10,000/- (rupees ten thousand) towards mental harassment of the petitioner and to be paid by the opposite parties. Since I have allowed the writ petition holding that the petitioner is entitled to all his emoluments till he was superannuated, his pension also be calculated properly and the arrear salary as well as pension be released within a period of one month from the date of communication of the order. I further direct that since there is inordinate delay in releasing the arrear salary of a retired person and he is unjustifiedly prevented from getting his pension, the petitioner is entitled to interest on the above amount at the rate of 8% per annum, which be calculated and released in favour of the petitioner within a period of one month from the date of communication of the order.

10. The writ petition succeeds with cost awarded herein above.