

(2015) 01 OHC CK 0042
In the Orissa High Court
Case No : OJC No. 11445 of 1996

Gopinath Bhanja

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 20-01-2015

Acts Referred:

Orissa Education Act, 1969 — Section 3(b)

Citation : (2015) 119 CLT 1103

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

Bench : Single Bench

Advocate : P.N. Mohanty, S.C. Padhi, M.R. Nayak and P. Choudhury, for the Appellant; S. Das. Learned Addl. SC, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Dr. B.R. Sarangi, J.

1. The Petitioner, who was appointed against the 2nd post of Lecturer in Oriya in Akhandalmani College, Palasahi, in the district of Bhadrak has filed this application to quash the Order Dated 22.11.1995 passed by the Director directing the Governing Body of the College to consider his case for employment as he was not in a position to protect himself from the termination made by the Management at a time when he was rather busy to protect himself from the charge of alleged murder. The short fact of the case, in hand, is that Akhandalmani College, Palasahi in the district of Bhadrak was established in the year 1982 and got concurrence from the prescribed authority in the year 1987 and received GIA w.e.f. 01.06.1994. Therefore, it has acquired the status of an aided education institution within the meaning of Section 3(b) of the Orissa Education Act, 1969. The Petitioner was appointed against the 2nd post of Lecturer in Oriya in +2 wing of the said College on 29.10.1983 by the Governing Body of the college. He joined on the very same date and continued to discharge his duties. Because of his involvement in a criminal case, he was taken to custody and thereafter he was released on bail by the Sessions Judge, Balasore

on 07.04.1988. Because of his involvement in the criminal case, he was not allowed to discharge his duty and after release on bail, he requested the Secretary of the Governing Body of the college to allow him to discharge his duty in the College but he was not allowed on the plea that unless he is acquitted in the criminal case, the Governing Body would not take him back into service. The Petitioner made a grievance before the Director, Higher Education, Orissa. When the matter was sub-judice, the Petitioner was acquitted in the criminal case vide Judgment dated 22.11.1998 by the Sessions Judge, Balasore in S.T. Case No. 82 of 1988. On being acquitted from criminal case, again the Petitioner requested the Governing Body to take him back into service with immediate effect but the same has not been taken into consideration by the Secretary of the Governing Body. Subsequently, the Petitioner approached the Director, Higher Education ventilating his grievance which yielded no result. Thereafter, the Petitioner approached this Court by filing OJC No. 2586 of 1995 and this Court disposed of the said Writ Petition stating that there would be no bar for the Director to consider the appeal of the Petitioner. Pursuant to such observation, the Director gave notice to the parties and upon hearing passed the impugned Order Dated 22.11.1995 vide Annexure-5. Being aggrieved by that order in Annexure-5, the Petitioner approached this Court by filing the present application.

2. Mr. K.K. Swain, Learned Counsel for the Petitioner strenuously urged that the Director instead of remitting back the matter to the Governing Body for consideration should have passed the order of reinstatement. It is stated that the Governing Body terminated the service of the Petitioner because of his alleged involvement in a Criminal case. The said fact having not been taken note of, he could have directed the Governing Body to reinstate the Petitioner in service. Therefore, the impugned order remitting the matter back to the Governing Body cannot sustain in the eye of law.

3. Mr. S. Das, Learned Addl. Standing Counsel for the State submits that the Governing body being the appointing authority on consideration of the appeal, the Director passed the impugned order remitting the matter back to the appointing authority to consider the grievance of the Petitioner and pass appropriate order in conformity with the provisions of law. Therefore, there is no justifiable reason to interfere with the impugned order passed by the Director.

4. Considering the contentions, raised by the Learned Counsel for the parties and after going through the records, it appears that, the Petitioner who was appointed against 2nd post in Odia in Akhandalmani College, Palasahi, Bhadrak, he was not allowed to discharge his duty in the college by the Governing Body, who is the employer of the Petitioner due to his involvement in a criminal case and on acquittal being made by the competent Court of law, when he was not allowed to discharge his duties, he approached the Director by filing a representation/appeal. When the same was not adhered to, he approached this Court by filing a writ application bearing OJC No. 2586/95 and this Court observed that there would be no bar for the Director to consider the appeal of

the Petitioner. The Petitioner was appointed on 29.10.1983 and continued till 17.02.1988 and he remained absent from duty and subsequently explanation was called for from him for his unauthorized absence vide letter dated 22.08.1998 and he was asked by the management to show cause as to why his temporary service would not be terminated because of absence of duty by letter dated 07.03.1988. The Secretary of the Governing Body directed the Petitioner to remain present specifically in the college on 15.03.1988 for a personal hearing for his unauthorized absence but the Petitioner did not appear for personal hearing. Consequently, the Governing Body passed the resolution on 08.04.1998 terminating his service which was issued on 10.04.1988 as the Petitioner was involved in a criminal case for the charge of murder, and remained in custody from 4.4.1988 to 07.04.1988. For that reason he remained absent from the College. Subsequently, on 22.11.1988 he was acquitted from the charge of murder. After acquittal from the Criminal case, the Management did not allow the Petitioner to continue in service, and therefore, he filed an appeal before the Director. On consideration of the materials available on record, the Director passed the following order.

"In view of the discussions made, it is clear that Sri Bhanja was in the employment of the college but due to certain peculiar situations he was to be out of the employment for all these years from 1988. Hence the management may consider Sri Bhanja for an employment as he was not in a position to protect himself from the termination made by the management at a time when he was rather busy to protect himself from the charges or alleged murder."

Being the appointing authority, all the materials are posted with the Governing Body. Therefore, this Court finds that no illegality or irregularity has been committed by the Director in passing the impugned order remitting the matter back to the Governing body to reconsider the case of the Petitioner. Accordingly the writ application fails and the same is dismissed.