
(2014) 05 OHC CK 0044
In the Orissa High Court
Case No : F.A.O. Nos. 313 and 314 of 2011

Harjit Kaur

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 15-05-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 323A
Orissa Education Act, 1969 — Section 24B, 24B, 3(b)

Citation : AIR 2014 Ori 198 : (2014) 118 CLT 615

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

Bench : Single Bench

Judgement

Dr. B.R. Sarangi, J.

1. The appellants in these appeals seek to quash the judgments dated 21-6-2011 and 13-6-2011 passed by the State Educational Tribunal in G.I.A. Case No. 319 of 2009 and G.I.A. Case No. 123 of 2009 respectively on the ground that instead of adjudicating the matter, the learned Tribunal has remitted the matter back to the appellate authority for consideration of the grant-in-aid matters fixing the time limit in the impugned order, which is without jurisdiction. The short fact of the case in hand, is that Municipal College, Rourkela was established with Intermediate Course in the year 1978 and got the Government concurrence and affiliation from the Sambalpur University in the year 1978-79. The college in question was established and managed by the Rourkela Educational Development Society (REDS), Rourkela in the year 1978. All the appointments were also made by the said educational agency. The college was notified to be an aided institution w.e.f. 1-6-1983 but the approval of the staff members of the college was made by the Director on 25-8-1988 pursuant to the Government Order dated 28-10-1985. Therefore, the college in question is an aided educational institution within the meaning of Section 3(b) of the Orissa Education Act and Rules framed thereunder from time to time. The college is imparting studies both in +2 and +3 Arts, Science and Commerce streams and coming within category-I Institution as defined in the Grant-in-Aid Order, 1994. Due to increase in roll

strength of the college in the science stream, the Governing body of the college decided to appoint Demonstrators in different departments and accordingly due advertisement was issued, pursuant to which candidates submitted their application and following due procedure of selection of Demonstrators, necessary appointment orders were issued by the college authority on 29-9-1989. Pursuant to such appointment order, the Demonstrator of different departments joined in different dates. But due to non-grant of grant-in-aid, they approached the learned Educational Tribunal ventilating their grievance by filing G.I.A. cases which are as follows:--

So far as G.I.A. Case No. 319 of 2009 is concerned out of which F.A.O. No. 313 of 2011 arises, the learned Tribunal disposed of the same with the following observation:

"5. In this case in the absence of any counter though there is nothing to dispute about appointment of the petitioner. But no material has been produced in support of admissibility of the post. Since admissibility of the post is a vital factor for consideration of approval of appointment and release of grant in aid, it requires verification by the appropriate authority.

6. Therefore, in the aforesaid circumstances, the matter is referred to the O.P. Nos. 1 & 2 to verify the admissibility of the post and to take necessary action in accordance with law within a reasonable period. Accordingly, the case is disposed of."

So far as G.I.A. Case No. 123 of 2009 is concerned out of which F.A.O. No. 314 of 2011 arises, the learned Tribunal disposed of the same with the following observation:

"5. In this case, the O.P. Nos. 1 and 2 in their counter admitting the eligibility of the petitioner to receive grant in aid w.e.f. 1-6-1995 have stated that since the said grant in aid order was repealed and ultimately the Grant in Aid Order, 2009 came into force, the claim of the petitioner was considered under the same. Grant in Aid Order, 2009 being a statutory order, which covers claim of persons, even if they are eligible for grant in aid as per Grant in Aid Order 1994 or 2004, this Tribunal has no jurisdiction to consider the claim of the petitioner for release of grant in aid w.e.f. 1-6-1995.

6. In view of my above discussion, the O.P. Nos. 1 and 2 are directed to dispose of the grant in aid matters of the petitioner within a period of three months from the date of communication of this order. Accordingly, this case is disposed of."

2. Mr. S.K. Das, learned counsel appearing for the appellants assails the judgments passed by the learned Tribunal in G.I.A. Case Nos. 319 and 123 of 2009 on the ground that the Presiding Officer, State Educational Tribunal instead of deciding the matter in conformity with the provisions contained in Section 24-B of the Orissa Education Act could not have referred the matter to the opposite party Nos. 1 and 2, namely, the State of Orissa represented through

Commissioner-cum-Secretary, Higher Education, Odisha and the Director, Higher Education, Odisha directing them to dispose of the grant-in-aid matter within three months from the date of communication of the order. He vehemently urged that without adjudicating the disputes, the learned Presiding Officer, State Educational Tribunal has no jurisdiction to remit the matter back to the authority for consideration and law does not permit the Tribunal to remit the matter back to the authority for consideration without adjudicating the same. He also alleges bias against the Presiding Officer, State Educational Tribunal while adjudicating the dispute on the question that similarly situated person, namely, Manoj Kumar Tripathy, who has approached the learned Educational Tribunal by filing G.I.A. Case No. 107 of 2009, the Tribunal directed the opposite parties 1 and 2 therein to verify the justification of the 2nd post of Demonstrator in Physics and to consider the claim of the petitioner regarding his approval of appointment and release of grant-in-aid in accordance with the law within a period of six months from the date of receipt of the order, basing upon which he has received the said benefits from the Government vide letter No. HE/FE-IV(A)-CASE-0680/2012-25810/HE, dated 19-10-2012 though the date of appointment of Sri Manoj Kumar Tripathy vis-?-vis the appellants is the same and as such, concurrence of approval has been made by the authority in respect of the posts held by them. Hence, the learned Tribunal could not have made any discrimination, rather should have adjudicated the same by extending the benefits as admissible to the appellants at par with the case of Manoj Kumar Tripathy.

3. Mr. A.K. Mishra, learned Addl. Govt. Advocate supports the order passed by the learned tribunal and states that by due application of mind the impugned order have been passed, therefore this Court may not interfere with the same and seeks for dismissal of the appeals.

4. After hearing the learned counsel for the parties and on going through the records, it appears that the Municipal College, Rourkela was established in the year 1978 and got Government concurrence and affiliation from Sambalpur University in the year 1978-79 and the college was notified to be an aided institution w.e.f. 1-6-1983. The staff members of the college have been approved by the Director, Higher Education pursuant to the Government Order dated 25-8-1988 and 28-10-1985 and pursuant to the advertisement issued by the Management, the appellants have been appointed by the Governing body by following due procedure of selection as Demonstrators in various departments of the science streams on one date i.e. 29-9-1989, pursuant to which they submitted their joining report as per their own convenience. So far as the present appellants are concerned, they joined on 14-12-1989 and 2-12-1989 respectively. As per the Grant-in-Aid Order, 1994, they are eligible to receive grant-in-aid in respect of the post they hold, but due to non-payment of the same as per the provisions of Section 24B of the Orissa Education Act, they moved the learned Education Tribunal by filing G.I.A. Cases, basing upon which notice was issued and opposite parties-respondents entered appearance and filed

their objection. After considering such objection, the learned Tribunal disposed of the G.I.A. Cases directing the State as well as the Director, Higher Education to dispose of the grant-in-aid matter of the appellants within a stipulated time as ordered in the G.I.A. Cases.

5. The very nomenclature of Section 24-B of the Orissa Education Act, indicates "Adjudication by Tribunal". The said provision has been considered by this Court in *Jitendra Kishore Baghasingh and Others Vs. State of Orissa and Others*, , wherein this Court observed as follows:--

"Matter relating to or connected with -

(i) Eligibility

(ii) Entitlement

(iii) Payment

(iv) Non-payment of grant-in-aid, and

(v) The dispute thereof

(a) Between the Managing Committee/Governing Body of private educational institution versus teachers or employees of such institution, or

(b) Between Managing Committee/Governing Body of private educational institution versus the State Govt. or any officer or authority of the said Government,

shall be within the competency of Orissa State Education Tribunal to consider the dispute."

and considering the said provision, it was held by this Court that adjudication of disputes relating to grant-in-aid being within the competency of State Education Tribunal, it is not proper to decide the same even in extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

6. This Court while considering the provisions of Administrative Tribunals Act, 1985 in *Dr. Prafulla Kumar Sahoo Vs. State of Orissa and Others*, held as follows:--

"It is due to failure on the part of the Administrative Authority to give justice to such claim of persons, who were in Govt. service, the legislatures thought it proper to enact the Administrative Tribunal Act, and the Administrative Tribunals were created and another reason for the same is to reduce the burden of the High Court which was flooded with cases relating to service matters. From the action of the Tribunal in sending back the matter to the Government, it appears that the Administrative Tribunal is acting like a Post Office and not adjudicating the case as the statute demands."

7. Similar view has also been taken by the Apex Court in *State of West Bengal*

Vs. Subhas Kumar Chatterjee and Others, , wherein it is held as follows:--

"Whether the Administrative Tribunal can delegate its power to judicial review and confer the same upon a Chief Engineer? The Tribunals cannot travel beyond the power conferred on them and delegate their essential function and duty to decide service related disputes. Such delegation is ab initio void. It is too elementary to re-state that no judicial tribunal can delegate its responsibilities except where it is authorized to do so expressly. The power conferred upon the Administrative Tribunals under the provisions of the said Act flows from Article 323-A of the Constitution. Such power can never be delegated except under a valid law made by parliament. The Tribunals by their own act cannot delegate the power to decide any dispute which in law is required to be decided exclusively by such Tribunals.""

8. In view of such position, if the statute vests a power with the Tribunal to adjudicate the disputes with regard to eligibility of grant-in-aid, it could not have divested the said power by passing the impugned orders. It is well settled principle of law laid down by the Privy Council in AIR 1936 253 (Privy Council) and subsequently followed by the Apex Court in Municipal Corporation of Delhi Vs. Jagdish Lal and Another, ; Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, and Babu Verghese and Others Vs. Bar Council of Kerala and Others, and various Courts that if the statute prescribes a thing to be done in a particular manner, the same should be done in the same manner or not at all.

9. In that view of the matter, the learned tribunal has committed a gross error apparent on the face of the record in remitting the matter back to the authorities without adjudicating the same. In addition to the same in a similarly situated case, i.e. the case of Manoj Kumar Tripathy, who was appointed along with the appellants in the same institution on the same date and approached in learned Tribunal by filing G.I.A. Case No. 107 of 2009 the Tribunal after due adjudication has allowed the benefit of granting G.I.A. in his favour at the rate of 1/3rd, 2/3rd and Full from 1-6-1995, 1-6-1997 and 1-6-1999 respectively and the appellants having stood on the same footing, should not have been discriminated. While adjudicating the cases of the appellants, the learned Tribunal has not applied its mind and without going through the same passed the impugned judgments remitting the matter back to the State Government though all the materials which have been placed in the case Manoj Kumar Tripathy have also been referred to in the case of the present appellants but the same have not been taken into consideration.

10. For the reasons as aforesaid, this Court is of the considered opinion that the impugned judgments passed by the learned Tribunal cannot be sustained. Therefore, the judgments dated 21-6-2011 passed by the learned Tribunal in G.I.A. Case No. 319 of 2009 arising out of which FAO No. 313 of 2011 arises and dated 13-6-2011 passed in G.I.A. Case No. 123 of 2009 out of which FAO No. 314 of 2011 arises, are hereby quashed. The matters are remitted back to the

learned Tribunal to re-hear the GIA Case Nos. 319 and 123 of 2009 and dispose of the same after giving due opportunity to the parties. With the above observation and direction, the appeals have been allowed.