
(2012) 07 SC CK 0084

In the Supreme Court Of India

Case No : Civil Appeal No. 5670 of 2012 (Arising out of SLP (C) No. 32029 of 2010)

Jayanti Kumari Nayak

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 31-07-2012

Acts Referred:

Citation : (2012) 134 FLR 1068 : (2012) 7 JT 1 : (2012) 7 SCALE 34 : (2012) 11 SCC 793 : (2012) 3 SLJ 302

Hon'ble Judges : Ranjana Prakash Desai, J;Aftab Alam, J

Bench : Division Bench

Advocate : Biswajit Das and B. Jha for Asha Gopalan Nair, for the Appellant; Ashok Panigrahi, Surajit Bhaduri, Satya Mitra Garg, Vinay P. Tripathi and Uday B. Dube, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—Leave granted.

2. Respondent No. 4, Rajeswar Panda filed an appeal before the Director, Higher Education, Orissa, Bhubaneswar, stating that he was appointed as a lecturer in History in Sushree Devi Women's College, Aul, Kendrapara after due selection but he was not allowed to discharge his duties because the Governing Body of the College tried to accommodate the Appellant in his place. The appeal was disposed of by the Director by an ex parte order vide office order No. 2A-9-07-III: 30092 dated July 23, 2008 holding that the action of the General Body in prohibiting the applicant (respondent No. 4 in the present appeal) from discharging his duties was invalid and illegal and requested the Secretary of the Governing Body to forthwith allow Respondent No. 4 to perform his duties as a lecturer in the college.

3. The Governing Body filed Writ Petition (Civil) No. 12317 of 2008 challenging the order passed by the Director before the Orissa High Court. On behalf of the

Governing Body, it was stated that the intimation regarding the date of hearing was received by them a day after the hearing was scheduled and it was for that reason that no representative of the Governing Body was able to appear before the Director to present its case. The High Court, however, found that the notice of hearing was given to the Governing Body by means of a telegram and the Secretary of the Governing Body had made the endorsement on the telegram "College closed and Secretary absent on 4.6.2008 and 5.6.2008." The High Court, thus, found that the explanation given on behalf of the Governing Body for non-appearance before the Director was incorrect. The High Court, therefore, declined to entertain the Writ Petition but in the concluding part of the order made the following observation:

However, it is open to the Petitioner to file an application before the Director, Higher Education to review the impugned order dated 23.7.2008. If such an application is filed by the Petitioner, the Director is at liberty to deal with the same in accordance with law."

4. In pursuance of the order passed by the High Court, the Governing Body filed an application before the Director for setting aside the ex parte order dated July 23, 2008. On this application, the Director heard both sides and passed an order on June 29, 2009 recalling his ex parte order dated July 23, 2008 and holding that Respondent No. 4 had never worked in the College and the appointment order produced by him was not a genuine document.

5. Respondent No. 4 challenged the order of the Director dated June 29, 2009 before the High Court in Writ Petition (Civil) No. 10446/2009. The High Court allowed the writ petition by order dated July 20, 2010. The High Court noticed the earlier proceedings between the parties and further that in the previous writ petition filed by the Governing Body of the College, the Court had left it open to the Governing Body to file an application before the Director for review of his earlier order of July 23, 2008. It, nevertheless, held that the Director had no power to review and its earlier order of July 23, 2008 had become final and it could not be altered or changed by him on the basis of a petition for recall of that order. The High Court pronounced that the order of the Director dated July 23, 2008 was final. It, accordingly, allowed the writ petition.

6. Against the order of the High Court dated July 23, 2008, the Appellant has come in appeal to this Court.

7. On hearing counsel for the parties, we find that the two orders passed by the High Court in this matter have resulted into an anomalous situation. In the first round when the Governing Body challenged the ex parte order passed by the Director, the High Court refused to entertain the application observing that the Governing Body had received due notice of the date of hearing. Had the High Court simply rejected the writ petition, the Governing Body could have sought its remedies by preferring an appeal before this Court. But, the High Court while refusing to entertain the writ petition left it open to the Governing Body to file a

petition for review of the order dated July 23, 2008 before the Director. Acting in pursuance of the liberty granted by the High Court, the Governing Body made an application for recall of the ex parte order. This petition was allowed and the Director found that Respondent No. 4 had approached him on the basis of a document that was apparently not genuine. But, this order was set aside by the High Court holding in the second round that the Director had no power to review.

8. We are of the view that the matter has not been satisfactorily dealt with and at the same time there are materials to suggest that Respondent No. 4 was able to obtain the ex parte order from the Director on the basis of a document, the genuineness of which is doubtful. We, therefore, deem it just and proper to set aside all the previous orders passed both by the High Court and the Director and remit the case to the Director to consider the matter afresh after hearing Respondent No. 4, the Governing Body of the College and the Appellant and pass a fresh order on his appeal in accordance with law. Needless to say that any party aggrieved by the order of the Director may seek his/her remedy in accordance with law.

9. The Director shall give prior notice of the date of hearing to all the three sides, as indicated above and after hearing them on the date so fixed dispose of the matter in accordance with law.

10. We are informed that different proceedings/cases arising from the earlier orders passed by the Director are pending before the High Court and/or in other courts. As we have set aside all the earlier orders, any proceedings arising therefrom pending before any court shall also stand abated.

11. In the result, the appeal is allowed to the extent indicated above but with no order as to costs.