
(2014) 11 OHC CK 0044

In the Orissa High Court

Case No : Writ Petition (Civil) No. 19341 of 2014

Jyotshna Rani Mohanty

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 29-11-2014

Acts Referred:

Citation : (2014) 11 OHC CK 0044

Hon'ble Judges : P. Mohanty, J; Biswajit Mohanty, J

Bench : Division Bench

Judgement

1. In this writ application, the petitioner has prayed for quashing of order dated 25.9.2014 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 3015(C) of 2014 under Annexure-9 and order dated 20.9.2014 passed by the Director, Secondary Education, Odisha under Annexure-8.

2. Heard Mr. K.P. Mishra, learned counsel for the petitioner and Mr. Samal, learned Standing Counsel for the School Mass Education Department-opposite party Nos. 1 to 3.

3. The short facts in the present case are as follows:

"On recommendations of DPC held on 17.01.2014, in accordance with Rule 18 of the Orissa Sub-ordinate Education (Method of Recruitment and Conditions of Services), 1993, the petitioner along with others was provisionally promoted and posted in the High Schools noted against each in the rank of Senior SES Headmasters. The petitioner was posted at Raghunath Bidyapitha, Soro vide Annexure-3 in the rank of Senior SES Headmasters. A perusal of Annexure-4 shows that opposite party No. 4 joined as Headmaster at Hadibandhu Ucha Vidyapitha, Cuttack on 26.6.2014. Vide order dated 20.9.2014 passed under Annexure-8, the order passed under Annexure-3 was modified and the petitioner was posted at Bentakar High School, Cuttack."

4. It transpires from the record that challenging the same, the petitioner filed

O.A. No. 3015(C) of 2014 before the Odisha Administrative Tribunal, Cuttack Bench, Cuttack.

The learned Tribunal after hearing the petitioner in person, disposed of the Original Application on 25.9.2014 directing respondent Nos. 2 and 3, who are opposite party Nos. 2 and 3 to the writ petition to treat the copies of the paper book of the Original Application as representation and to consider and dispose of the same within a period of one month from the date of receipt of its order. Learned Tribunal also directed that no coercive action should be taken against the petitioner till her representation was considered and disposed of. Learned Tribunal further made it clear that it had expressed no opinion regarding the merits of the claim of the petitioner and opposite party Nos. 2 and 3 were at liberty to pass appropriate order independently as per existing rules and executive instruction. This order dated 25.9.2014 passed by the learned Tribunal has been filed as Annexure-9. Challenging the same, the petitioner has filed the instant writ application.

5. Mr. Mishra, learned counsel for the petitioner submitted that the learned Tribunal had erred in law in directing opposite party Nos. 2 and 3 to dispose of the representation against whom allegations of malafide were made. Secondly, he submitted that the petitioner suffered from a host of diseases. To that effect a number of medical documents under Annexures-7 & 10 have been filed. Accordingly, Mr. Mishra contended that the petitioner should be allowed to continue at Hadibandhu Ucha Vidyapitha, Cuttack in order to facilitate her treatment. In the alternative, he submitted that she could be adjusted either at Marwari High School, Balu Bazar or Gorakabar High School, Tulasipur or Raghunath Jew High School within Cuttack Municipal Corporation; where vacancies are available. 6. Mr. Samal, learned Standing Counsel for the School & Mass Education Department on the contrary submitted that a perusal of Annexure-9 would show that the learned Tribunal disposed of the matter with a direction to opposite party Nos. 2 and 3 to treat the copies of the paper book as a representation of the petitioner and to consider and dispose of the same, relying on the submission made by the petitioner. The petitioner appeared before learned Tribunal in person and submitted that she would be satisfied if the copy of the paper book was sent to the above noted opposite parties treating the same as her representation and they be directed to consider and dispose the same within the time to be stipulated by the learned Tribunal. Therefore, the order under Annexure-9 was passed in tune with the submission made by the petitioner before the learned Tribunal. Mr. Samal further submitted that there existed no pleading in the writ application disputing such submission being made before the learned Tribunal. Therefore, Mr. Samal contended that the petitioner was estopped from saying that by passing the impugned order under Annexure-9, the learned Tribunal had committed an error of law. Secondly, he submitted that the authorities have already implemented the order of the learned Tribunal passed under Annexure-9 and have rejected her prayer vide order dated 22.10.2014 passed under Annexure-A/2. Thus, with passing of the order

Annexure-A/2, a fresh cause of action has arisen and in such background, nothing remains to be decided in the writ application, which has become infructuous.

6. We have given our anxious considerations to the submissions made at the Bar on behalf of the petitioner as well as on behalf of opposite party Nos. 1 to 3. We have also perused the records.

7. Coming to the first contention of Mr. Mishra, learned counsel for the petitioner that the learned Tribunal has erred in law in passing the impugned order under Annexure-9, we can only say that perusal of record clearly shows that the impugned order under Annexure-9 was passed at the request of the petitioner herself, who appeared there in person. Accordingly, no exception can be taken to the order dated 25.9.2014 passed by the learned Tribunal under Annexure-9. Law is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. [see State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another,]. Secondly, as rightly stated by Mr. Samal, learned Standing Counsel for opposite party Nos. 1 to 3 that since in the meantime, the order of the learned Tribunal has been implemented and the prayer of the petitioner has been rejected by the authorities on dated 22.10.2014 under Annexure-A/2 (which is same as Annexure-11), a fresh cause of action has arisen and the petitioner can challenge the same before the appropriate forum, if so advised.

8. In this view of the matter, we are not inclined to entertain this writ application. However, since a fresh cause of action has arisen on account of passing of the order under Annexure-1/2 (which is same as Annexure-11), the petitioner if so advised may approach the Odisha Administrative Tribunal, Cuttack Bench, Cuttack for redressal of her grievances.

The writ application is accordingly disposed of.