

(2007) 10 OHC CK 0018
In the Orissa High Court

Keshab Chandra Garanaik

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 29-10-2007

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2008) 105 CLT 11 : (2007) 2 OLR 89 Supp

Hon'ble Judges : R.N. Biswal, J;P.K. Tripathy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard.

2. This Writ Petition has been filed with the prayer to issue direction to the Opposite Party members to implement the direction of the State Education Tribunal passed in Appeal No. 11 of 2001 as per the Judgment dated 05.05.2003. In paragraph-7 of that Judgment it has been recorded by the Learned Presiding Officer that:

...order of the Director of Secondary Education, Orissa dtd. 18.6.2001 is still pending in the Hon"ble High Court of Orissa for adjudication O.J.C. No. 14086/2001 filed by Shri P.K. Tripathy. Therefore at this stage the order of termination cannot be set aside by this Tribunal for the simple reason that matter of termination of Shri P.K. Tripathy and the Appellant is yet to be decided by Hon"ble High Court. But the admitted position of the law is that service of the Appellant has been utilized by the Respondents. Therefore the Appellant is entitled to receive salary from 1.6.94 to 25.9.2001 from the state Government as per grant-in-aid principle as has been decided by Hon"ble Apex Court as referred earlier.

3. On the basis of the aforesaid finding, the Presiding Officer passed the consequential order for payment of the salary for the aforesaid period within a period of four months from the date of receipt of a copy of the Judgment.

Grievance of the petitioner is that the aforesaid direction of the Education Tribunal is yet to be complied with by the petitioner.

Opposite Party Nos. 11 to 3 have not filed any counter.

4. Opposite Party No. 4 has filed a counter affidavit stating therein that it has submitted the Bill for sanction of fund from the grant-in-aid fold. Learned Standing Counsel on the other hand states that, as per the instruction received by him, the stand of the Opposite Parties 1 to 3 is that the direction of the Tribunal is not in conformity with law, in as much as when two persons are claiming for the post, payment cannot be made from grant-in-aid fold until that dispute is settled. The aforesaid approach of the Opposite Parties 1 to 3 is found to be in correct in as much as none of them has been vested with the authority or jurisdiction to decide the issue on direction for payment over and above the direction under Article 227 or the u/s 24-C of the of the State Education Tribunal. On the other hand, supervisory jurisdiction under Article 227 or the Appellate jurisdiction u/s 24-C of the Orissa Education Act, 1969 is vested with the High Court. When they do not state that they have challenged the aforesaid direction of the State Education Tribunal before appropriate forum or that they applied for review of the order of the Tribunal, therefore, they do not have the jurisdiction and authority to refuse to implement the direction of the Education Tribunal. Since the reasons assigned by Learned Standing Counsel on behalf of Opposite Party Nos. 1 to 3 appears to be an illegal approach by the concerned authority, i.e., the Opposite Party members, therefore, following the ratio in the case of Shri Dillip Kumar Samal v. State of Orissa and Anr. W.P.(C) No. 9729 of 2007 of this Court, we direct the Opposite Party Nos. 1 and 2 to implement the award of the State Education Tribunal within three months from the date of receipt of a copy of this order, in the same manner as has been decided in the above noted W.P.(C) No. 9729 of 2007.

5. The Writ Petition is accordingly allowed.

Requisites by registered post with AD be filed by the petitioner by 05.11.2007 to communicate this order to the Opposite Party members.