
(1975) 08 OHC CK 0003
In the Orissa High Court
Case No : O.J.C. No. 82 of 1974

Managing Committee, Gujidarada High School

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 08-08-1975

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 311

Orissa Education (Amendment) Act, 1974 — Section 10A, 10A(1), 10I(2), 7(2), 7(3)

Citation : (1975) 41 CLT 1120

Hon'ble Judges : G.K. Misra, C.J.; P.K. Mohanti, J

Bench : Division Bench

Advocate : R.C. Misra, for the Appellant; B.M. Patnaik, K.N. Jena and R.K. Patra, for the Respondent

Final Decision : Allowed

Judgement

G.K. Misra, C.J.—Shd Abdul Salim Khan (opposite party No. 4) was appointed temporarily as the Headmaster of Gujidarada High School in the district of Balasore on 27-9-1969. Alleging certain misconducts against him the Managing Committee by its resolution dated 6-9-1973 resolved to terminate his services and referred the case to the D.P.I. (Schools) (opposite party No. 2) for approval. Opposite party No. 4 was placed under suspension. As no order were received from opposite party No. 2, by resolution dated 14-12-1973 (Annexure-7) the service of opposite party No. 4 was terminated. On 3-11-1973 the Managing Committee appointed a new Headmaster and the fact was duly communicated to the Inspector of Schools (opposite party No. 3). Opposite party No. 2 sent two letters (Annexures 8 and 9) on 3-1-1974 whereby the resolution terminating the service of opposite party No. 4 was not approved and he was reinstated in service. The writ application has been filed under Articles 226 and 227 of the Constitution to quash Annexures 8 and 9. Counter affidavits have been filed by opposite parties 1 to 3 as well as by opposite party No. 4. The order of reinstatement is supported by them.

During the pendency of the writ application the Orissa Education (Amendment) Act, 1974 (Orissa Act 17 of 1974) (hereinafter to be referred to as the Act) came into force on 11-1-1974. The Petitioner asked for the approval of opposite party No. 2 to the removal of opposite party No. 4 on 3-12-1974 within one month from the date of the commencement of the Act. On 3-3-1975 the Joint Director of Public Instruction (Schools) rejected the prayer of the Managing Committee for approval. An appeal against this order has been filed by the Petitioner before the Tribunal on 24-5-1975 and that is pending disposal before the Tribunal.

2. The questions arise for consideration in this writ application:

- (1) Whether opposite party No. 3 had jurisdiction to direct reinstatement of opposite party No. 4 pending disposal of the appeal before the Tribunal; and
- (2) Whether opposite party No. 2 was correct in refusing approval to the removal of opposite party No. 4.

3. The second question is pending before the Tribunal. It involves questions of fact which shall have to be thoroughly gone into by the Tribunal. The Tribunal shall have to consider whether the refusal of approval by the Joint Director was within jurisdiction and whether he could ultimately exercise the powers of the D.P.I. (Schools) in refusing approval. The Tribunal shall further see that in the facts and circumstances of the case whether refusal of approval was justified even assuming that the Joint Director had authority to dispose of the application filed by the Managing Committee before the D.P.I. (Schools) for approval. These questions are to be adequately dealt with by the Tribunal being essentially questions of fact and we accordingly do not deal with these questions in this writ application. The Tribunal is directed to dispose of the appeal within three months from today.

4. The first question formulated by us, however, requires a careful consideration. This necessitates a thorough examination of the scheme of the Act to deal with the disputed question. Section 10A of the Act deals with the matter of granting or refusing approval with effect from the date the Act came into force. The section runs thus:

10 A. (1) The services of teacher of an aided educational institution shall not be terminated without obtaining the prior approval in writing of the

(a) Director of Public Instruction (Higher Education), in the case of a teacher of a College; and

(b) Circle Inspector of Schools having jurisdiction, in the case of a teacher of a school.

(2) Every order passed by the Director or Circle Inspector, as the case may be, either according approval or refusing to accord approval under Sub-section (1) shall be communicated to the parties concerned within 3 months of reference.

(3) Any person aggrieved by an order passed under subsection (1) may prefer an

appeal to the month from the date of Tribunal within one receipt of the order.

5. Section 7 deals with savings in respect of past cases. The entire section may be extracted:

(1) Notwithstanding anything in any judgment, decree or order of any Court, but subject to the provisions hereinafter contained, the termination of the services of any teacher of an aided educational institution as defined in the principal Act, made after the 3rd May, 1972 and before the date of commencement of this Act shall, if made without the approval of the Director of Public Instruction (Higher Education) in the case of a college teacher and of the Director of Public Instruction (Schools) in the case of a teacher of school, be inoperative.

(2) The Managing Committee or the governing body of the concerned institution shall refer the case of the said teacher to the Director of Public Instruction (Higher Education) or Director of Public Instruction (Schools), as the case may be, within one month from the date of commencement of this Act for obtaining his approval and thereupon the provisions of section 10A of the principal Act as amended by this Act shall, *mutatis mutandis*, apply:

Provided that where the Managing Committee or the governing body, as the case may be, fails to make a reference in accordance with the Sub-section, the order of termination of the services of the teacher shall become void and the teachers shall be deemed to have been reinstated in service with effect from the day following the date of expiry of the aforesaid period of one month.

(3) Where any such termination as is referred to in Sub-section (1) was made with the approval of the Director of Public Instruction (Higher Education) or the Director of Public Instruction (Schools) as the case may be, the concerned teacher may prefer an appeal to the Tribunal constituted under the principal Act as amended by this Act within one month from the date of constitution of the Tribunal.

(4) Where, on a reference made under Sub-section (2), the Director refuses to accord approval and no appeal is preferred to the Tribunal against the order of refusal the concerned teacher shall be reinstated with effect from the date of such order.

(5) For removal of doubt it is hereby declared that on reinstatement a teacher shall not be entitled to any emoluments for the period intervening between the date of termination of his service and the date on which he is reinstated but the said period shall be counted towards service.

6. A close scrutiny of the various provisions in Section 7 indicated that any act of removal of a teacher without the approval of the D.P.I. (Schools) in between 3-5-1972 and 11-11-1974 when the Act came into force is inoperative. This is prescribed in Sub-section (1) which, however, is subject to the provisions of Sub-sections (2) to (5).

As the provision forgetting approval was brought into the statute for the first time on 11-11-1974 by this Act, a provision was made in - Sub-section (2) giving opportunity to the Managing Committee to obtain approval within one month from the date of commencement of the Act. A proviso was added enacting that if the Managing Committee failed to make a reference as prescribed in Sub-section (2) then the termination of the service of the teacher shall be void and the teacher shall be deemed to have been reinstated in service with effect from the day following the date of expiry of the aforesaid period of one month. It would be remarkable to notice that though the teacher had been removed on a much earlier date between 3-5-1972 and 11-11-1974, that entire period is excluded from consideration while the question of reinstatement arises if no reference is made ~within one month under Sub-section (2). In other words unlike the usual order passed under Article 311 of the Constitution, the reinstatement is directed only on the expiry of the period of limitation prescribed for filing of an application for obtaining the approval of the D.P.I. within the main part of Sub-section (2). Sub-section (3) is not relevant in this case as the termination of opposite party No. 4 was not made with the approval of the D.P. I: Under Sub-section (4) where the D.P.I. refuses to accord approval on a reference made under Sub-section (2) and no appeal is preferred to the Tribunal against the order of refusal; the concerned teacher shall be reinstated with effect from the date of such order. This is in consonance with the proviso to Sub-section (2).

7. Ordinarily on reinstatement the teacher would have been deemed to have been continuing in service from the date of removal and he would have been entitled to arrears of pay. Sub-section (5), however, removes all doubts by declaring that on reinstatement the teacher shall not be entitled to any emoluments for the period intervening between the date of termination of the service and the date on which he is reinstated. The said period shall, however, count towards his service.

8. An analysis of the aforesaid provisions clearly indicated that on mere refusal to accord approval by the D.P.I. (Schools) the teacher does not automatically become reinstated into service until the appeal by the Managing Committee to the Tribunal is disposed of. The order passed by opposite party No. 3 under Annexure 8 and 9 contravenes the provisions of Section 7. They are hereby quashed. Opposite party No. 4 cannot be reinstated unless the appeal filed by the Managing Committee is dismissed by the Tribunal.

9. In the result, the writ application is allowed in part. A writ of certiorari be issued quashing Annexures 8 and 9. A writ of mandamus be issued to the Tribunal to dispose of the appeal pending before him within three months from today. In the circumstances parties will bear their own costs.

P.K. Mohanti, J.

10. I agree.