

(2008) 04 OHC CK 0001
In the Orissa High Court
Case No : O.J.C. No. 1404 of 1999

Managing Committee of Satyanarayan Sikshya Sansthan
(Primary School)

APPELLANT

Vs

Presiding Officer, State Education Tribunal, Orissa,
Bhubaneswar. State of Orissa

RESPONDENT

Date of Decision : 08-04-2008

Acts Referred:

Orissa Education Act, 1969 — Section 10(1), 10A, 10A(1)

Citation : (2008) 04 OHC CK 0001

Hon'ble Judges : Sanju Panda, J;P.K. Tripathy, J

Bench : Division Bench

Advocate : K.K. Swain, P.M. Mohanty, M.R. Nayak and B. Jena, for the Appellant; A.K. Mohapatra, K.M. Parida, M.R. Mishra, R.K. Mohanty, S.C. Sahu, M.C. Rout and A.C. Choudhury, for the Respondent

Judgement

1. Heard.
2. On consent of the parties, the writ petition is disposed of at the stage of admission.
3. Virtually the actual dispute remains confined to the Petitioner and the Opposite Party No. 6 and the rest of the Opposite Party members are State Officials.
4. Petitioner challenges the Order Dated 31.12.1997 passed by the State Education Tribunal, Orissa, Bhubaneswar in Appeal No. 14 of 1997. Opposite party No. 6 filed that appeal u/s 10-A of the Orissa Education Act, 1969 (in short "the Act") challenging the order of termination, inter alia on the ground that the order of termination in the absence of approval of the Circle Inspector of Schools, Bhadrak, is illegal and unsustainable.
5. Learned Presiding Officer of the Tribunal recorded the findings that (i) by the date of the impugned order of termination, Petitioner (present Opp. Party No. 6)

had no requisite qualification, i.e., C.T. qualification; (ii) there was instruction from the Education Department for removal of untrained hands from the schools for the purpose of providing grant-in-aid; but (iii) order of termination of the Petitioner was implemented without obtaining prior approval of the Circle Inspector of Schools and, therefore, the order of termination is illegal due to non-compliance of the mandatory provision in Section 10(1)(b) of the Act. Accordingly, the Education Tribunal set aside the order of termination and directed for reinstatement of the Petitioner with all consequential service benefits

6. Before the Tribunal, Opposite Party No. 6 relied on the case of Nityananda Panigrahi Vs. The Managing Committee, Sindol Fakir Mohan M.E. School and Others, . That ratio was accepted by the Presiding Officer on noncompliance of requirement of law regarding prior approval as provided in Section 10-A of the Act. The writ Petitioner relied on the cases of Kailash Chandra Praharaj v. State of Orissa and Ors. 84 (1994) C.L.T. 642 and U.P. Shiksha and Education Board v. Rajendra Prasad Gupta 1996 (3) Supreme 491, and learned Presiding Officer of the Education Tribunal held that on distinguishable facts ratio in those cases are not to be applied in this case.

7. In the case of Kailash (supra) the fact involved, was that Petitioner without having prescribed qualification was appointed in 1989, the school came to full grant-in-aid fold from 01.06.1994 and Petitioner alleged that from 20.01.1996 he was not permitted to sign in Attendance Register and, therefore, he preferred the appeal before the Education Tribunal against that deemed termination of service. The other fact which was placed before the Court was that Petitioner's name was not forwarded for receiving grant-in-aid and in that respect Petitioner's claim was negated by the Inspector of Schools and that the Opposite Party No. 6, who was appointed in place of the Petitioner, was accepted to grant-in-aid fold for having requisite qualification. The State Education Tribunal dismissed the appeal upholding the contention of the school that having no requisite qualification to hold the post of Classical Teacher, he cannot be permitted to serve. That finding of the Appellate Court was upheld by this Court. Notwithstanding such fact situation and the above noted decision, learned presiding Officer of the Tribunal found the cited case not applicable on the ground that,

In the case of Kailash Chandra Praharaj (supra) though the termination of the incumbent was for not having the requisite qualification for appointment and continuance in the post, yet the termination was made while the institution was unaided one. As such, the question of compliance or non-compliance of Section 10-A(1) of the Act did not arise. So, that decision is of no help."

(underlined by us to put emphasis)

8. Fact noted in the cited decision clearly indicates that Petitioner complained against the deemed termination with effect from 20.01.1996 by which date that school had already come to full grant-in-aid fold (having received the same from

01.06.1994).

9. Misreading a judgment with a view to overreach it is not only improper in accordance with the principle of following the precedents but also it speaks of judicial indiscipline and in appropriate case may result in initiation of contempt proceeding and/or proceeding for misconduct. In the case of Special Deputy Collector (L.A.) v. N. Vasudeva Rao and Ors. AIR 2008 S.C.W. 435, such conduct has been commented as not graceful and "It is clearly violative of the judicial discipline"

10. It would have been appropriate for the Presiding Officer to mention that non-compliance of Section 10-A of the Act was not considered in the cited case and therefore the ratio in that case is not followed because a specific contention has been raised in the present dispute regarding non-compliance of that mandatory statutory provision. Learned Judicial Officer, who delivered that judgment, has since retired from service and, therefore, we do not think it necessary to proceed any further in that matter.

11. Mr. K.K. Swain, Learned Counsel for the Petitioner argues that in view of the decision of this Court in the case of Kailash (supra) and similar ratio in the case of U.P. Shiksha and Education Board (supra) and the admitted fact situation involved in the case that Opposite Party No. 6 being an untrained teacher, he had no requisite qualification and the relevant findings recorded by the Education Tribunal in that behalf was sufficient to uphold the order of termination and, therefore, the contrary conclusion recorded by setting aside the termination order is not sustainable.

12. We may note here that before termination of the service of the employee, the foremost requirement is to follow the statutory rule in initiating and concluding the Disciplinary Proceeding and in the absence of a statutory rule, to follow the principle of natural justice by serving a copy of the charge and providing an opportunity of hearing to the employee. That is one part of the due process of law. In addition to that, if the statutory provision like Section 10A provides for prior approval of the public authority as a condition precedent for termination of service, then that is to be complied with to make the order of termination effective. In both the above cited decisions the implications of Section 10-A or of any paramateria provision and the consequences thereof was neither raised nor considered. Therefore, the abstract ratio in both the cases justifying the termination on the ground of having no training qualification may not be absolute reason to Justify the order of termination passed against opposite party No. 6, when Section 10-A of the Act provide different course of action. Section 10-A reads as hereunder:

10-A. Service of teachers of aided institutions not to be terminated without approval (1) The services of a teacher (and other members of the staff) of an aided Educational Institution shall not be terminated without obtaining the prior approval in writing of the

(a) (Director) in the case of a teacher (and other members of the staff) of a college;

(b) Circle Inspector of Schools having jurisdiction, in the case of a teacher (and other members of the staff) or 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 three months of the reference.

(3) Any person aggrieved by an order passed under Sub-section (1) may prefer an appeal to the Tribunal within one month from the date of receipt of the order

13. The use of the term "shall not be terminated without obtaining the prior approval" appearing in Sub-section (1) is mandatory in nature. Therefore, whether or not a charge-sheet is submitted for termination for having no requisite qualification and whether or not an opportunity was provided for hearing, the order of termination proposed by the Management has to get prior approval in writing from the Circle Inspector of Schools having the territorial jurisdiction in the case of termination of a teacher and other members of the staff of a school. Under such circumstance, notwithstanding the above noted deficiency and indiscipline in the order of the Tribunal, we accept the conclusion derived by him that the order of termination in the absence of prior approval of the concerned Inspector of Schools is illegal.

14. Mr. Swain also argues that if at all the order of termination was defective because of non-compliance of Section 10-A of the Act, then the parties should have been relegated to that position giving an opportunity to the Management to seek for approval u/s 10-A(1). In that respect he submits that an untrained person, according to the prescribed yardstick, cannot hold the post and also cannot come within the grant-in-aid fold. Opposite Party No. 6 on the other hand without disputing to the factual aspect about the lack of training qualification, supports the impugned order and argues not to disturb the same after lapse of so many years.

15. Regard being paid to the spirit of the ratio propounded in the above citations relied on by the two Petitioner, the provision of law in Section 10-A(1) of the Act and the contention of the parties, we find that the Tribunal indeed committed a mistake by asking for reinstatement of Opposite Party No. 6. He should have left the matter after declaring the order of termination as illegal on the specific ground of non-compliance of Section 10A(1). Thereby parties should have been left with the further course of action to be undertaken by them, i.e., for reinstatement in service of Opposite Party No. 6 or for seeking approval of the order of termination from the Inspector of Schools. That being the sequence which should follow in this litigation, therefore, we quash the order of the Education Tribunal in relation to issue of direction for reinstatement in service and only uphold his decision relating to the illegality in the order of termination

because of non-compliance of Sub-Section 10-A of the Act. At the same time, in furtherance of equity, we observe that in the event the order of approval is not obtained by the Petitioner from the Inspector of Schools within a period of three months, then Opposite Party No. 6, if not already reinstated, be reinstated in service for the inaction/negligence of the Petitioner so as to save him from any further undue harassment.

16. The Writ Petition is disposed of accordingly.