
(2000) 02 OHC CK 0026
In the Orissa High Court
Case No : O.J.C. No. 9427 of 1995

Purnendu Kishore Mohanty

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 14-02-2000

Acts Referred:

Citation : (2001) 1 LLJ 272 : (2000) 1 OLR 325

Hon'ble Judges : Pradipta Ray, J; L. Mohapatra, J

Bench : Division Bench

Advocate : R.K. Mohapatra and B. Routray, for the Appellant; S. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

L. Mohapatra, J.—The prayer of the petitioner is for a direction to the opposite parties 3 and 4 to reinstate him in his former post and release all service benefits, and for a direction to implement the order of the Director, Secondary Education, Orissa, which has been upheld by this Court and the Hon'ble Supreme Court.

2. The case of the petitioner is that, Buxi Jagabandhu English Medium School was established in the year 1973-74 and is a recognised institution. In response to an advertisement dated June 4, 1984 published in daily The Samaja, the petitioner along with others applied for the post of Librarian in the said school. The petitioner was selected by a selection board constituted by opposite party No. 3 and on recommendation of the selection board he was appointed as Librarian vide office order No. 106 dated August 14, 1984 in the scale of pay of Rs. 370-650/- with dearness allowance and additional dearness allowance. He joined in the post on August 16, 1984. Subsequently the petitioner was allowed to enjoy the scale of pay of Rs. 1005-1830/- and was confirmed in the post on February 1, 1990.

3. In July, 1990 the Principal of the School communicated through notice that the

second Saturday of every month would be treated as a working day, even though previously the school used to remain closed on second Saturdays. The decision of the Management, as communicated by the Principal, was protested by the employees of the school and since the management did not respond to the protest, the employees decided to take one day casual leave as a mark of protest against such decision. Pursuant to such action on the part of the employees, proceedings were started against some of the employees including the petitioner, and a letter was issued to the petitioner on March 6, 1991 allowing him subsistence allowance from December 17, 1990 to March 16, 1991. The petitioner was directed to appear in person for hearing before the Managing Committee on August 18, 1991 and on August 31, 1991 the Secretary of the Managing Committee of the School informed the petitioner that he had been found guilty of the charges and has been removed from service with effect from December 15, 1990. Annexure-3 is the removal order. The petitioner as well as some other employees who met with such fate, approached the Director, Secondary Education, Orissa, by way of filing appeals. The appeals were not disposed of by the Director, Secondary Education for which the petitioner filed OJC No. 5270 of 1992 before this Court and the same was disposed of on September 3, 1992 directing disposal of the appeal within a period of three months. After receipt of the order of this Court, the Director issued notices to the petitioner as well as the Managing Committee of the school and on hearing the parties, disposed of the appeal of the petitioner as well as five other such employees, namely, Dukhishyama Palatasingsh, P.E.T., B. Naik, Mali, Ms. Minu Mohanty, Assistant Teacher and Smt. Sasirekha Sahu, Assistant Teacher, by his order dated February 20, 1993 finding that the school is a recognised one, that the Director, Secondary Education has jurisdiction to hear the appeal, and that the termination of services of the petitioner is in violation of the principles of natural justice as well as bye-laws of the C.B.S.E. The punishment order of removal from service under Annexure-3 was quashed by the Director and the Managing Committee was directed to reinstate the petitioner with all service benefits from the date of termination. Copy of the said order passed by the Director is the subject-matter of Annexure-4. The petitioner states that, after the said order was passed, he submitted his joining report to the Principal of the school, but he was not allowed to join and perform his duties. In the meantime the Management of the School filed OJC No. 2951 of 1993 before this Court challenging the order of the Director passed under Annexure 4, wherein the petitioner was opposite party No. 4. This Court after hearing the parties, dismissed the writ application on September 7, 1993 and observed:

"In the face of overwhelming documents referred to above indicating grant of recognition, we have no hesitation to hold that the institution in question is a recognised one within the meaning of Section 2(p) of the Act. Once it is held to be recognised institution (unaided), the Director gets jurisdiction to entertain appeal against the order of termination made in respect of the employees of the institution."

A copy of the said judgment has been annexed as Annexure-3 to this writ application. After dismissal of the said writ application the Managing Committee moved the Hon''ble Supreme Court in SLP (5) No. 16010 of 1993, wherein the petitioner was a respondent, The SLP was dismissed by the Hon''ble Supreme Court on February 7, 1994. A copy of the said order has been annexed as Annexure-9. The petitioner's further case is that after dismissal of the SLP before the Hon''ble Supreme Court, he again went to the school and submitted his joining report before the Principal, but he was refused to join in the school. Since the authorities refused to accept the joining report, the petitioner sent the same through registered post and alleges that in spite of succeeding at every stage, he has not been taken back in service.

4. Opposite parties 3 and 4 have filed their counter-affidavit stating that the writ application is not maintainable and the petitioner is not entitled in law to enforce a contract of personal service after the petitioner had entered into a contract of service by agreement dated February 15, 1990. It is further submitted that the school does not receive any grant-in-aid from the State Government and the entire financial resources are generated from out of tuition fees, annual fees, awards and development charges, sale of admission forms, badges, diaries, membership fees, dividend from UTI and interest from its investments. Though the opposite parties admit that the petitioner was appointed as a Librarian, he unauthorisedly remained absent with effect from December 15, 1990 and in spite of several requests, appeal and directions of the Management he did not join his duties for which disciplinary proceeding was started against him and he was found guilty of the charges and removed from service. The opposite parties have also challenged the authority of the Director, Secondary Education, the exercise of the appellate power and entertain the appeal filed by the petitioner.

5. At the time of hearing of the writ application, the learned counsel for opposite parties 3 and 4 was fair enough to submit that in view of the Judgment of this Court as well as dismissal of the SLP filed before the Supreme Court by the Management, there is no further occasion to challenge the order of the Director. However, he submits that so far as the financial benefits are concerned, the following may be taken into consideration:

(a) The school is a private unaided recognised institution and depends upon the tuition fees collected from the students and the back wages for the entire period would be burden which the school may not be in a position to discharge.

(b) Eighteen similarly placed employees were taken back to service without any back wages.

(c) In place of the petitioner, another Librarian has been engaged since 1990 who is continuing till today and the Management has paid salary to the said Librarian against the post.

(d) The Chairman of the Managing Committee issued a letter on December 22, 1994 calling upon the petitioner to settle the dispute, but the petitioner did not

respond to the request of the Chairman.

The learned counsel relies upon a decision reported in *State of Punjab and Others Vs. Dr Harbhajan Singh Greasy*, and submits that the petitioner should not be allowed any arrear salary. In the aforesaid case the delinquent officer was charged, for being absent from duty during the emergency of attending on the flood victims and for other derelictions of duty. The Apex Court refused to grant back wages solely on the ground that the delinquent avoided responsibility as a doctor to treat the flood victims and that was the cause for suspension. The learned counsel has also cited another decision reported in *State of Haryana and another Vs. Jagdish Chander*, . In the said case the delinquent officer was a Constable and he was discharged from service due to his absence from duty. The Apex Court found that the finding of the disciplinary authority that the delinquent officer was a habitual absentee necessarily casts a stigma on his career and therefore, principles of natural justice require that he should be given an opportunity to explain the grounds on which the order of discharge was proposed. Under such circumstances their Lordships were of the view that instead of setting aside the order of discharge and directing reinstatement with consequential benefits, the appropriate course would be to direct an inquiry if such inquiry is intended to be held and give an opportunity to the officer concerned to defend himself and then pass appropriate orders.

6. In reply to the said submissions of the learned counsel appearing for opposite parties 3 and 4, the petitioner submits that he has not received any letter from the Chairman as alleged and that, he had gone repeatedly to the Principal and the Secretary of the Managing Committee requesting for acceptance of his Joining report, but the same was refused.

7. After hearing the learned counsel for both the parties, the question that remains to be decided by this Court is, as to whether the petitioner will be entitled to the financial benefits and other service benefits consequent upon the order of his reinstatement or not. We find from the records that Annexure-4, i.e. the order of the Director, Secondary Education, directing reinstatement of the petitioner in service with all service benefits from the date of termination order which was passed on February 20, 1993 and the Management carried the matter to this Court and the Hon"ble Supreme Court. Even after disposal of the SLP before the Supreme Court on February 8, 1999 the petitioner was not taken back to service and he had to file the present writ petition for the said purpose. The Management knew fully well that in view of the decision of this Court as well as the order passed by the Apex Court, they had hardly any chance of success in the present writ application, but still contested the same. We have carefully considered the decisions cited by Shri Mohanty, learned counsel appearing for opposite parties 3 and 4, and we are of the view that the facts of those decisions are completely different and not applicable to the present case. In the present case the matter was carried up to the Apex Court by the Management and even after losing before the Apex Court the petitioner was not reinstated in service.

Keeping these facts in mind as well as the difficulties pointed out by the learned counsel for opposite parties, we are of the view that justice will be met if the petitioner is allowed a lump sum amount towards financial benefits on reinstatement.

8. Learned counsel for petitioner has drawn our attention to an order passed in the case of Geeta Mukherjee Original Criminal Misc. Case No. 91 of 1992: Geeta Mukherjee v. K. Biswanathan, another similarly placed employee of the said school where this Court directed payment of the consolidated sum of rupees one lakh towards arrear dues and in case of another employee of the said school this Court also directed payment of rupees seventy five thousand towards arrear dues.

9. We, therefore, direct that the petitioner be reinstated in service and he shall be paid a consolidated sum of Rs. 1,25,000/- (rupees one lakh and twenty-five thousand only) towards his arrear dues within a period of six months. Accordingly the writ application is allowed. Parties shall bear their own costs.

Pradipta Ray, J.

10. I agree.