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**(1994) 09 OHC CK 0018**

**In the Orissa High Court**

**Case No : Original Jurisdiction Case No. 3752 of 1992**

Smt. Namita Dhal

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

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**Date of Decision :** 16-09-1994

**Acts Referred:**

Orissa Education Act, 1969 — Section 10A

**Citation :** (1994) 78 CLT 1024 : (1994) 2 OLR 550

**Hon'ble Judges :** R.K. Patra, J;G.B. Pattnaik, J

**Bench :** Division Bench

**Advocate :** K.K. Swain, for the Appellant; B. Routray, Additional Government Advocate and D.P. Sahoo, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

G.B. Pattnaik, J.—The petitioner who was serving as a Hindi Teacher of Sinapalli High School, an aided educational institution, having been prevented by the Managing Committee to discharge her duties notwithstanding the order of the Inspector of Schools and having failed in her attempts to get the relief from the educational authority has finally approached this Court- It is alleged that she was serving, as a Hindi Teacher of Niljee High School under Kalahandi Education Circle for the period from 1-10-1931 to 16-1-1985"as per Annexure 2 and thereupon she was appointed on ad hoc basis for a spell of 89 days on 17-1-1935 in Sinapalli High School. Her ad hoc appointment on 89 days basis continued till 31-12-1989 on which date she applied for a fortnight's leave on account of her marriage. The petitioner's application for leave has been annexed as Annexure-3. While on leave she extended her leave up to 31-12-1989 as per Annexure-4. While she was about to go to the school for joining her duties, she suffered from malaria on 29-12-1989 and, therefore, she filed another application for extension of leave up to 31-1-1990, While she was still ailing she received a letter dated 16-1-1990, annexed as Annexure-6, from the Secretary of the Managing Committee intimating her that she should join her duties on

25-1-1990. Immediately the petitioner submitted a reply on 18-1-1990, annexed as Annexure-7, requesting the Secretary . to grant her leave up to 31-1-1990 as she has not recovered from illness and will not be in a position to join her duties. The petitioner after her recovery from illness went to Kalahandi and joined in the school and submitted her joining report along with the fitness certificate from the doctor on 6-2-1990 which was accepted by the Headmaster of the School. But on the very next day, she received a message from her brother that her father-in-law is critically ill having suffered from a heart attack and, therefore, the petitioner again applied for leave and left Kalahandi and came to Cuttack to attend to her ailing father-in-law, On 15-2-1990, while continuing in leave, she received an order of termination, annexed as Annexure-10, which indicates that the Managing Committee by its resolution dated 14th of February, 1990, has terminated her services on the ground of wilful absence and negligence of duty. Immediately after terminating the services of the petitioner, the Managing Committee appointed opp. party No, 5 on ad hoc basis for a period of 89 days basis. The Managing Committee after terminating the petitioner's services sought for approval of the Inspector of Schools in accordance with Sec, 10-A of the Orissa Education Act, as the school is an aided educational institution. The Inspector of Schools by his order dated 18-6-1990, annexed as Annexure-12, disapproved the order of termination and directed the Secretary of the Managing Committee to allow the petitioner to join her post. Pursuant to the order of the Inspector under Annexure-12, the petitioner again submitted her joining report, but that was not accepted either by the Headmaster or by the Secretary and, on the other hand, she was prevented to discharge her duties in the school in question. The petitioner made a representation to the Inspector of Schools and gave several reminders as per Annexure-13 series, but having failed to get redress from the educational authority has approached this Court for the relief that this Managing Committee be directed to allow the petitioner to discharge her duties and it must be held that the petitioner is deemed to be continuing in service. The petitioner has also prayed for her salary.

In course of hearing of the writ application Mr. Swain appearing for the petitioner also contended that on the admitted facts, the petitioner's service must be held to have been validated in the eye of law in view of the Orissa Aided Educational Institutions (Appointment of Teachers' Validation) Act, 9 of 1989 read with Amendment Act. Orissa Act 18 of 1989.

2. The Deputy Inspector of Schools, Kalahandi Circle, has filed an affidavit on behalf of opp. parties 1 to 3 supporting the petitioner's case in toto. It has been stated therein that as the petitioner's services were terminated without adopting due procedure, the order of termination was not approved by the Inspector and the said non- approval was communicated to the Managing Committee with a direction to the Managing Committee to allow the petitioner to discharge her duties. Since the Managing Committee did not obey the direction of the Inspector, the Inspector moved the Government and the Government Director the Director of Secondary Education to take action in accordance with law

against the Managing Committee for superseding the Managing Committee. It has also been stated that the ad hoc appointment of Mobarak Khan (opp. party No. 5) in place of the petitioner has not been approved.

3. Opposite party No. 5 has also filed an affidavit indicating therein that the petitioner was never regular in her duties and always remained on leave on some pretext of the other and as the institution was suffering, the Managing Committee terminated her services. It is his further case that the petitioner had never been appointed as a Hindi Teacher in Niljee High School as alleged and the document produced by the petitioner in support of that stand is a false and fabricated one. The said opposite party No. 5 has annexed Annexure-A 5 which is a reply of the Headmaster of Niljee High School. It is contended by opp. party No. 5 that in view of the conduct of the petitioner it was amply clear that she had no intention to serve and. therefore, the Managing Committee terminated her services in the interest of the institution.

4. In course of hearing of the writ application Mr. Sahoo appearing for opposite party No. 5 also contended that opp. party No. 5 having served the institution from 20-3-1990 is entitled to claim regular- isation of service under the Validation Act of the year 1993.

5. In the context of the rival stand of the parties, the only question that arises for consideration is whether the order of termination of the petitioner's services under Annexure-10 can be held to be a valid order of termination and remains operative notwithstanding the disapproval order of the Inspector dated 18-6-1990. annexed as Annexure- 12. The school being an aided educational institution, the provisions of the Orissa Education Act apply fully. Section 10 A of the Orissa Education Act provides that the services of a teacher of an aided educational institution shall not be terminated without obtaining the prior approval in writing of the Circle Inspector of Schools having jurisdiction. Section 10-A was brought into the statute book by Amending Act 17 of 1974 to check arbitrary and indiscriminate termination of the employees of the aided educational institutions. The provision of Section 10-A is mandatory in nature and admits no exception and it contains a safeguard against arbitrary and unjust termination of service of a teacher. Obtaining of prior approval has, therefore, been made a condition precedent under the statute itself. Therefore even in a case where a teacher remains absent without leave though his services could be terminated, but it must be subject to prior approval of the Inspector, as envisaged in Section 10-A of the Act and that approval also must be in writing. In view of the aforesaid statutory provision, and admittedly Managing Committee having passed the order of termination on 15th of February. 1990, under Annexure-10, without the prior approval of the Inspector, the same is violative of the mandatory requirement of Section 10-A of the Act and as such is null and void. Then again, the Inspector himself did not approve the said order of termination as is apparent from the Inspector's letter to the Secretary of the High School, annexed as Annexure-18. Consequently, the act and conduct on the

part of the Headmaster and the Managing Committee in not allowing the petitioner to discharge her duties are wholly unauthorised and unwarranted under law and on the other hand are in flagrant violation of the statutory provision and, therefore, the petitioner is entitled to a writ of mandamus from this Court requiring the Managing Committee to discharge its obligation by allowing the petitioner to join the post. It may be noticed at this stage that the Managing Committee had assailed the order of disapproval of the petitioner's termination from service passed by the Inspector of Schools in an independent writ application being OJC No. 3896 of 1993 and the same has been dismissed by us by order dated 5-9-1994. In the aforesaid premises, we direct that let a writ of mandamus be issued on the opposite parties 4 and 6 to allow the petitioner to join her duties as a Hindi Teacher in Sinapalli High School and to discharge her duties in that school.

6. Mr. Swain for the petitioner had raised a contention that the services of the petitioner are to be validated in view of the Validation Act of 1989. The Inspector, of Schools may examine this aspect and if the petitioner's case is covered by the Validation Act then appropriate orders may be passed by him.

7. While we allow the writ application by issuing a mandamus as above, we cannot lose sight of the fact that opp. party No. 5 was appointed as a Hindi Teacher on ad hoc basis by the Managing Committee after the petitioner's services stood terminated by order dated 20-3-1990 and has been continuing till today. The said opp. party No. 5 having rendered valuable services in the institution for more than four years and when the school was going without a Hindi Teacher, deserves sympathetic consideration. It is no doubt true that he had been appointed against a post which fell vacant on account of termination of petitioner's services and the moment the petitioner is directed to join the institution, opposite party No. 5 must give away. But taking into account the fact that he has already served the institution for four years and is otherwise qualified, it would be best and proper for us to direct the Inspector of Schools to consider the case of opposite party No. 5 for being suitably absorbed or adjusted against any other vacant post within his circle.

8. While we have held that the petitioner's services had been unlawfully terminated and she was unlawfully prevented from discharging her duties notwithstanding the direction of the Inspector, but the fact remains that for that period opp. party No. 5 had been appointed as a Teacher and has been continuing as such and, therefore, the petitioner will not be entitled to any arrear salary for the period in question and salary for the period should be paid to opp. party No 5 if that has not already been paid to him, but the petitioner will be entitled to her salary from the date of her joining.

The writ application is accordingly allowed with the aforesaid direction and observation. There will be no order as to costs.

R.K. Patra, J.

9. I agree.