
(1997) 07 OHC CK 0027
In the Orissa High Court
Case No : O.J.C. No. 5026 of 1994

Sri Khirod Kumar Mohanty

APPELLANT

Vs

State Education Tribunal and Others

RESPONDENT

Date of Decision : 15-07-1997

Acts Referred:

Orissa Education Act, 1969 — Section 10A, 24A(5)

Citation : (1997) 84 CLT 365 : (1997) 2 OLR 185

Hon'ble Judges : S.N. Phukan, C.J.; P.K. Tripathy, J

Bench : Division Bench

Advocate : Bijan Ray, C. Chowdhury, S.K. Dwibedy, D. Chhotray, B.K. Bal, P.K. Bhuyan and A. Das, for the Appellant; A.K. Misra, B.P. Satpathy, S.K. Tripathy, B.C. Chowdhury, M.R. Misra and A.K. Misra for O.Ps. 5 and 7 A.K. Mohapatra and M. Misra for O.P.8 and A.G.A., for the Respondent

Judgement

S.N. Phukan, C.J.—This writ petition is directed against the judgment of the State Education Tribunal constituted u/s 24-A of the Orissa Education Act, 1969 (in short, the "Act").

2. Briefly stated, the facts are as follows :-

The opposite party No. 8 here in was appointed as Hindi teacher in the School, i.e., Adapal High School in the District of Mayurbhanj in the year 1982. Subsequently, the Secretary of the School did not allow him to sign the attendance register and also prevented him to work in the school from the month of April, 1992. The present petitioner was appointed in his place on 18.4.1992. Being aggrieved with the termination order opp. party No. 8 here in filed an appeal before the Tribunal u/s 24-A of the Act. The operative portion of the order of the Tribunal is as follows : "Hence" ordered :-- The appeal is allowed on contest. The impugned order of termination dt. 10.5.91 is hereby quashed. The appellant be re-instated in the service forthwith. But this order would not stand as a bar to terminate his service if he fails to acquire the requisite qualification as fixed by the Government, to hold the post of the Hindi teacher in High School

within. the reasonable time that would be fixed by the Managing Committee, after compliance of Section 10-A of the O.E. Act of 1969. In case of reinstatement of the appellant if respondent No. 7 would loose his job he be reinstated in any of the Schools within the control of Inspector of Schools, Mayurbhanj Circle. Parties to bear their respective costs."

3. We have heard learned counsel for the parties and learned Addl. Government Advocate.

4. There is no dispute that after put in up 10 years of service the services of opp party No. 8 were terminated in complete violation, of the principle of natural justice. That was the finding arrived at by the Tribunal. This is one of the grounds for which the termination order was set aside. The second ground on which the termination order of opp party No. 8 herein was set aside was non-observation of Section 10-A of the. Act which runs as follows :

"10-A. Service of teachers of aided institution 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 terminate without obtaining the prior approval in writing, of the;

(a) (Director)in the case of the teacher (and other members of the staff) of school.

(b) Circle inspector of school having jurisdiction, in the case of teacher(and other members of the staff)

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

We also like to refer to Clause (b) of Section 3 of the Act which defines as follows :

"aided educational institution means private educational institution which is recognised by a from the State Government and includes an educational institution covered by the list of educational institution eligible to receive aid as may be drawn by the state Government from time to time under the Scheme regulating Government grant-in-aid to educational institutions for payment of teachers salaries;"

5. On a bare reading of Section 10-A along with Clause (b) of Section 3 of the Act there cannot be any dispute that as opp. party No. 8 was working in the school which is an aided educational institution. His termination order is invalid inasmuch as prior approval in writing of the Circle Inspector of Schools was not obtained.

6. Learned counsel for the petitioner made a faint attempt to impress upon us that Section 10-A of the Act is not applicable as the post held by the petitioner was also not an approved post, but it is not pressed in view of the clear provision of law. The intention of the legislature is clear in respect of termination of service of a teacher of an aided educational institution that prior approval of the Director or the Circle Inspector of Schools, as the case may be, is necessary.

7. Our Attention has been drawn by the learned counsel for opp. party No. 8 to two decisions of this Court in the cases of Dhaneswar Nayak Vs. State of Orissa and Others, and Dhaneswar Nayak v. State of Orissa and Ors. 62 (1986) CUT 60.

In the case of Nityananda Panigrahi (supra), a Division Bench of this Court held that Section 10-A is categorical and mandatory in nature and it admits no exception. It was also held by the Bench that this section is safe-guard against the arbitrary and unjust termination of teachers and obtaining prior approval is a condition precedent.

In the case of Dhaneswar Nayak (supra), the above view was reiterated.

8. Thus we hold that there is violation of the provisions of Section 10-A of the Act. The termination of service of the opp. party No. 8 is absolutely illegal and violative of principle of natural justice.

9. Learned counsel for the petitioner canvassed the point before us by placing the fact that subsequently the Inspector of Schools was informed about the termination of services of opp. party No. 8. The law is very clear on this point that prior approval is mandatory and. therefore, even if subsequently the Inspector of Schools was informed it would not meet the requirement of Section 10-A of the Act.

10. Though on behalf of the petitioner no point was raised regarding the delay in approaching the Tribunal, learned counsel for opp. party No. 8 has rightly pointed out paragraph 10 of the impugned judgment wherein the Tribunal has rightly held that the delay was not deliberate and cannot be regarded as a ground to defeat the ends of justice. We find no reason to interfere with the Tribunal's order on this point.

11. It appears from the operative part of the direction of the Tribunal that in the event the petitioner is thrown out from the present post he be reinstated in any of the Schools within the control of opp. party No. 5, i.e.. Inspector of Schools, Mayurbhanj Circle. Learned Addl. Government Advocate while referring to The Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 has submitted that the appointment of the petitioner was not in accordance with the Rules. Hence that direction of the Tribunal cannot be implemented. It has also been contended by the learned Addl. Government Advocate that there is no approved/sanctioned post of Hindi teacher and it is for the managing committee to implement the above direction of the Tribunal.

12. In view of Sub-section (5) of Section 24-A of the Act, the aforesaid contention is devoid of merit. According to Sub-section (5), the decision of the Tribunal shall be final and binding on all parties and shall not be called in question in any court of law. The State Government of Orissa represented through its Secretary in Education Department were respondents 1 to 4 before the Tribunal and are the opp. parties 2 to 5 in this writ petition. The Inspector of Schools, Mayurbhanj Circle, i.e., respondent No. 4 - opp. party No. 5 has not challenged the aforesaid direction of the Tribunal. In other words, he has accepted the direction of the Tribunal. Thus the opp. party No. 5 is duty bound to implement the aforesaid direction of the Tribunal. Since considerable time has already passed, he should implement the same as early as possible preferably within six months hence.

13. The writ application is accordingly disposed of. Parties are to bear their respective costs.