

(2015) 09 OHC CK 0020
In the Orissa High Court
Case No : Writ Petition (C) No. 2752 of 2013

State of Orissa

APPELLANT

Vs

Minaksnhi Manjari Jena

RESPONDENT

Date of Decision : 09-09-2015

Acts Referred:

Citation : (2015) 09 OHC CK 0020

Hon'ble Judges : D.H. Waghela, C.J; Biswanath Rath, J

Bench : Division Bench

Advocate : S.C. Dalei, Addl. Standing Counsel for and M.S. Sahu, Addl. Government Advocate, for the Appellant; K.K. Swain, B. Jena, P.K. Mohanty and P.K. Mohapatra, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Biswanath Rath, J—By filing the afore noted Writ petition, the State of Orissa, School & Mass Education Department, has sought to challenge the order dated 04.11.2010 passed by the Orissa Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 2118(C) of 2000.

2. The present Opposite party being applicant had filed O.A. No. 2118(C) of 2000 seeking the following reliefs:

"(a). The impugned order dated 02.3.2000 passed by the Director of Elementary Education, Orissa, Bhubaneswar under Annexure-7 may be quashed/set aside. The Original Application be allowed.

(b). Necessary direction be made to the respondents to accord approval of the applicant's appointment against Sectional post of Class-VI-B in the School in question and thereafter her monthly salary may be released immediately.

(c). Necessary direction be made to the respondents to sponsor the name of the applicant for undergoing C.T. training as an in service candidate.

(d). Any other order /orders or direction/ directions be issued so as to give

complete relief to the applicant."

3. On its appearance, the respondents therein filed their counter opposing the move of the applicant therein solely on the ground that the applicant was appointed by the Secretary of the Managing Committee without approval of the Sectional Post by the competent authority and the Managing Committee had no authority to make such appointment. For the above reasons, there is no illegality in the order under Annexure-7 passed by the competent authority.

4. The Original Application was concluded upon hearing the parties vide impugned judgment dated 04.11.2010 declaring the order of rejection at Annexure-7 as not sustainable and thereby quashing the same. At the same time, the Tribunal also directed the respondents therein to approve the appointment of the applicant against the Sectional Teacher of Class-VI-B of the concerned school from the date on which the appointment of Smt. Kabita Mishra has been approved and further the applicant be paid the consequential monetary and other benefits accrued from the date of approval. The Tribunal further directed the respondents therein to complete the exercise within a period of three months from the date of communication of the said order.

5. Being aggrieved by the aforesaid direction of the Tribunal, the State of Odisha in the Department of School and Mass Education Department filed the present writ petition.

During course of argument Mr. M.S. Sahoo, learned Additional Government Advocate appearing for the State of Odisha apart from raising other objections already raised before the Tribunal draws our attention referring to the provisions contained in Rule-5, Sub-rule-8 & 9 of the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 and referring to certain decisions of this Court as well as Hon"ble Apex Court, submitted that the Tribunal failed in taking into consideration the Statutory Provisions compulsorily required for the purpose of just decision of the dispute. Further the Tribunal also did not consider the relevant judgments stand contra in the case of Dasarathi Khamari v. State of Orissa and others in O.A. No. 3474(c)/1997.

6. Similarly opposing the submission of learned State Counsel, Sri Swain, learned Counsel appearing for the opposite party submitted that Rule-5, Sub-rule-8 & 9 of the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 is not applicable to the present case. Further, referring to a Division Bench Decision of this Court as reported in 1993 (2) CLT 249 in between Raghunath Prasad Harichandan & Ors. v. State of Orissa & Ors. submitted that the case of the private opposite party squarely covers by the judgment of this High Court and contended that the Tribunal did no wrong in taking the decision in favour of the applicant (present Opposite party).

7. From the submissions made by the respective parties, this Court observes that

the contentions raised by both the sides are the contentions wholly outside the purview of the consideration of the State Administrative Tribunal. On perusal of the impugned judgment, this Court also finds that in disposing the Original Application the Tribunal even did not take in to consideration the Statutory Provisions available in relation to the particular dispute available under Rule-5, Sub-rule-8 & 9 of the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 and the decision of the State Administrative Tribunal is solely on the basis of the decision taken in some cases which as per the submission of the learned counsel appearing for the School & Mass Education Department no longer stands.

8. On scrutiny of the impugned judgment and considering the submissions made by the respective counsel appearing for the parties before this Court, it appears that there has been no proper consideration of the case and the counter case in disposal of the Original Application and this Court feels that the dispute involved in the matter needs proper consideration taking into account the Statutory Provisions as well as the decisions rendered by this Court as well as Hon''ble Apex Court as referred to by the respective parties and a fresh decision be taken in the Original Application.

9. Under these circumstances, while setting aside the impugned order vide Annexure-2, we remit the matter back to the Odisha Administrative Tribunal for reconsideration of the entire aspects including the provisions of law. It is also open for the parties to raise their respective objections before the Tribunal. Considering the issue is pending since long, we direct the Tribunal to dispose of the matter as expeditiously as possible within a period of three months from the date of receipt of this order but giving opportunity of hearing to both the sides.

10. The writ petition stands disposed of with the above observation.