

(1997) 09 GAU CK 0017
In the Gauhati High Court

Case No : Writ Appeal No. 345 of 1995 in Civil Rule No. 1752 of 1989

Surya Narayan Jha

APPELLANT

Vs

Rameswar Prasad Director of Secondary Education and
Others

RESPONDENT

Date of Decision : 23-09-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 3 GLR 305

Hon'ble Judges : V. Dutta Gyani, J;P.C. Phukan, J

Bench : Division Bench

Advocate : B.K. Das and G.P. Bhowmik, for the Appellant; M. Bhuyan, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Phukan, J.—This Writ Appeal is directed against the judgment and order dated 22.6.95 passed by the learned Single Judge in Civil Rule No. 1752/89.

2. The learned Sr. Counsel Mr. B.K. Das and learned Counsel Mr. M. Bhuyan advanced arguments for the Appellant and Respondent No. 1(a) respectively.

3. One Shri Rameswar Prasad is the Writ Petitioner in the above mentioned Civil Rule and Respondent No. 1(a) in the instant Writ Appeal. His case in brief is that he has been a teacher in Jawahar Hindi High School, Doom Dooma since its inception in 1966. The School was brought in the deficit scheme of Grant-in-aid in 1980. The Managing Committee of the School appointed him as Headmaster by a letter dated 27.5.84 (Annexure-5 to the Writ petition) with retrospective effect from 5.9.82, i.e., the date of suspension of the former Headmaster Surya Narayan Jha. Shri Jha is the Respondent No. 8 in the above mentioned Civil Rule and Appellant in the instant appeal. The Managing Committee terminated his service on 30.5.87. In the meantime the State Government provincialised the services of employees of the School with effect from 1.2.85. But the Board of

Secondary Education, Assam, by a letter dated 26.10.85 withdrew its recognition of the School as provincialised School. However, such recognition was restored by the State Government on 2.1.88, and the Inspector of Schools by his letter dated 19.2.88 released the pay and allowances to the employees from the original date of provincialisation, i.e. 1.2.85.

4. Thereafter certain new developments occurred. The Director of Secondary Education by an order dated 23.12.88 (Annexure-II to the Writ petition) reverted Respondent No. 1(a)/A Writ Petitioner to the post of Assistant teacher, and by another order of the same day (Annexure-III to the Writ petition) reinstated the Appellant Respondent No. 8 as Headmaster. The Respondent No. 1(a)/Writ Petitioner instituted Civil Rule No. 133/89 challenging those two orders, and this could be disposed of the said Civil Rule vide judgment and order dated 7.6.89 (Annexure-IV) to the Writ petition), operative portion of which reads as under-

The Director of Secondary Education is ordered to consider the subject matter de-novo and after hearing the parties pass appropriate orders... Liberty is granted to the parties for re-agitating the subject matter in this Court under Article 226 of the Constitution of India if the necessity should arise in future.

5. After receipt of the aforesaid judgment and order, the Director of Secondary Education passed the following order dated 3.10.89 (Annexure V to the Writ petition) which reads, inter-alia,-

As per direction of the Hon'ble Court dated 7.6.89, all affected parties, i.e., two Secretaries of Managing Committee of Jawahar Hindi High School, Shri S.N. Jha and Shri Rameswar Prasad were heard in persons by the Joint Director of Secondary Education, Assam and his report also perused. After careful consideration of all the facts stated above, the undersigned passed the following orders:

(1) Shri Surya Narayan Jha is allowed to resume his duties as Headmaster of Jawahar Hindi High School....

(2) Shri Rameswar Prasad is reverted to his original post as graduate Assistant teacher which post he was holding prior to suspension of Shri S.N. Jha.

6. Being aggrieved by the aforesaid order, Shri Rameswar Prasad, Respondent No. 1(a)/Writ Petitioner instituted another Civil Rule, i.e., the instant Civil Rule No. 1752 of 1989. In Para 12 of his Writ petition, it is stated, "the Director has got no jurisdiction to pass the order in the instant case when he has not heard the parties or perused the records, and the passing of the order dated 3.10.89 on the basis of an alleged report of the Joint Director is wholly illegal and in violation of the order of this Hon'ble Court and as such the order of 3.10.89 is liable to be quashed on this ground alone."

7. The learned Single Judge quashed the said order dated 3.10.89 of the Director of Secondary Education on the above ground alone vide judgment and order dated 22.6.95 in the instant Civil Rule No. 1752 of 1989, impugned in this appeal.

8. Although notices of the Instant Civil Rule were duly served upon the Respondent No. 1 Director of Secondary Education and other State Respondent Nos. 2 to 4, no affidavit-in-opposition was filed by them, and none appeared for them when the matter was finally heard by the learned Single Judge, the Respondent No. 1 Director of Secondary Education thus did not come forward to support his own order impugned in this appeal. Disposing of the earlier Civil Appeal No. 133 of the 1989 this Court directed that the Director of Secondary Education would "after hearing the parties pass the appropriate order." The Director of Secondary Education did not hear the parties as directed. Instead he passed the order on the basis of a report of Joint Director of Secondary Education, who heard the parties. What is worse, the said report of the Joint Director of Secondary Education was not annexed in his order, nor was ever produced before the learned Single Judge, who, therefore, could not know the contents thereof. Obviously, the court could not have sustained the order of the Director of Secondary Education without knowing the contents of the report of the Joint Director of Secondary Education on the basis of which the said order was passed. The question about knowing the contents of the report of Joint Director of Secondary Education would not have arisen had the Joint Director of Secondary Education himself passed the order. Thus one person (Joint Director of Secondary Education) heard and another person (Director Secondary Education) passed the order. This is not permissible, contended the learned Counsel Mr. M. Bhuyan appearing for Respondent No. 1(a)/Writ Petitioner. This contention can not be brushed aside as of no substance. Learned Counsel's main plank in this regard is a decision in Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, wherein it has been held-

The procedure prescribed by the Rules imposed a duty on the Secretary to hear and the Chief Minister to decide. This divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing...if one person hears and another decides, then personal hearing becomes an empty formality.

9. Mr. B.K. Das, learned Sr. Counsel appearing for the Appellant/Respondent No. 8 has strenuously argued that the Director of Secondary Education substantially complied with this Court's judgment and order dated 7.6.89 (Annexure-V) in the earlier Civil Rule No. 133 of 1989, and that as per the said judgment and order it was not necessary that the Director of Secondary Education himself should have heard the parties and that if no prejudice was caused to the Respondent No. 1(a)/Writ Petitioner and no principle of natural justice as violated, the court should not interfere with the order passed by the Director of Secondary Education. Shri Das has placed reliance on the decisions in State Bank of Patiala and others Vs. S.K. Sharma, , Dr Rash Lal Yadav Vs. State of Bihar and Others, , K.L. Tripathi Vs. State Bank of India and Others, , The Keshav Mills Co. Ltd. and Another Vs. Union of India (UOI) and Others, , State of Maharashtra v. Lok Sikshan Santha (1992) Supp. 1 SCC 222 (230) and I.N.U. v. B.S. Narwat AIR 1980 and 1666. In the facts and circumstances of the instant case, these decisions are clear

distinguishable and do not help the Appellant/Respondent No. 8.

10. In view of the above, the appeal fails and is dismissed. The impugned judgment and order quashing the order of Director of Secondary Education directing him to hear the matter personally and pass reasoned order is upheld.

In the facts and circumstances of the case the parties are left to bear the own costs.