

(1986) 09 OHC CK 0008
In the Orissa High Court
Case No : O.J.C. No. 1327 of 1979

The Managing Committee, Atibadi Jagannath Das Vidyapitha	APPELLANT
Vs	
The State Education Tribunal and Others	RESPONDENT

Date of Decision : 25-09-1986

Acts Referred:

Orissa Education Act, 1962 — Section 10A, 10A(1), 10A(2)

Citation : (1986) 62 CLT 588

Hon'ble Judges : H.L. Agrawal, C.J.; B.K. Behera, J

Bench : Division Bench

Advocate : S.C. Dash, S.K. Acharya and B.K. Patnaik, for the Appellant; R.K. Patra, Additional Govt. Advocate for Opp. Parties Nos. 1 and 2 and B.S. Misra and A.K. Misra for Opp. Party No. 3, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Behera, J.—The Managing Committee of Atibadi Jagannath Das Vidyapitha, Kapileswarpur, represented by its Secretary calls in question the order as per Annexure-16 passed by the State Education Tribunal in Appeal No. 11 of 1979 dated June 27, 1979, allowing the appeal preferred by the opposite party No. 3 whose services had been terminated by the Petitioner in pursuance of a resolution passed as per Annexure-3 dated June 25, 1977 in a disciplinary proceeding without the approval of the Inspector of Schools as required u/s 10-A(1) of the Orissa Education Act, 1962 (for short, "the Act").

2. While Dr. Dash has contended for the Petitioner that the appeal preferred by the opposite party No. 3 had been barred by time and the impugned order was illegal and unfounded, Mr. B.S. Misra appearing for the opposite party No. 3 has contended that there is no ground for interference.

3. The opposite party No. 3 had been serving as a teacher in the school having been appointed in July, 1974. The Petitioner proceeded against the opposite party No. 3 in a disciplinary proceeding in respect of three charges and removed

him from service in pursuance of a resolution passed by it, copy of which was submitted to the Inspector of Schools for approval as per Annexure-3 under aforesaid provision of the Act. The Inspector of Schools (opposite party No. 2) was required to take a decision either way and communicate it within a period of three months as provided in Section 10-A(2) of the Act, but after a long time, he did not approve the action of the Petitioner, directed reinstatement of the opposite party No. 3 and advised the Petitioner to adopt the proper procedure in the disciplinary proceeding.

4. A fresh notice to show-cause was issued to the opposite party No. 3 with an additional charge framed against him that he had outraged the modesty of a girl student of Class IX, as per Annexure 6 and C/3. Enquiry proceeded and the opposite party No. 3 was informed about the decision taken on November, 17, 1971 that his services would be terminated with effect from December 1, 1978. The opposite party No. 3 had been taking steps for getting his dues and in March, 1979, preferred an appeal before the State Educational Tribunal against the order of removal passed in June, 1977. The appeal was allowed. This appellate order is impugned in this writ application.

5. The Inspector of Schools figuring as the opposite party No. 2 has supported the stand of the opposite party No. (sic) and according to him, the decision taken by the Tribunal is legal and well founded and the writ application by the Petitioner is not competent. It is not necessary to go into the question of competence of the Managing Committee while making the writ application in September, 1979 as even without this question being considered and answered, the writ application is found to be de void of merits, for the reasons to follow.

6. The impugned order in the appeal before the Tribunal was passed in June, 1977 by the Petitioner-Managing Committee without the approval of the Inspector of Schools (opposite party No. 2). Section 10-A of the Act reads:

10-A(1) Service of teachers of aided institutions not to be terminated without approval-Services of a teacher of an aided educational institution shall not be terminated without obtaining the prior approval in writing of

(a) Director in the case of a teacher of a college, and

(b) Circle Inspector of Schools having jurisdiction in the case of a teacher of a school.

xx xx xx

This statutory provision is mandatory in nature and admits of no exception. It provides for a safeguard against arbitrary, malicious or capricious action on the part of a Managing Committee in terminating the service of a teacher. Obtaining prior approval in such a case has been made a condition precedent and this cannot be done post facto.

7. The action of the Managing Committee had been disapproved by the opposite

party No. 2 although it had not been done within three months. No action can be taken by the Managing Committee in flagrant violation of Section 10-A(1) of the Act. In this connection, reference may be made to two recent decisions of this Court reported in *Nityananda Panigrahi v. The Managing Committee, Sindol Fakir Mohan M.E. School and Ors.* 62 (1986) C.L.T. 30, and *Dhaneswar Nayak Vs. State of Orissa and Others*, .

8. As the order terminating the services of the opposite party No. 3 had been passed by the Managing Committee in violation of a mandatory provision, the Tribunal was justified in quashing it by accepting the appeal of the opposite party No. 3 and it rejected the plea raised by the Petitioner, who had figured as a Respondent in that appeal, that the appeal was barred by the law of limitation, for the reasons stated in the impugned order.

9. It has been submitted on behalf of the Petitioner that in case the impugned order is maintained because of the violation of Section 10-A(1) of the Act, the opposite party No. 3, in view of his past conduct, should not be reinstated in service and even if he be reinstated, he should not be granted his back wages and it would be open to the Petitioner to continue the enquiry. The attention of this Court has been invited in this regard to the cases reported in *The Managing Director, Uttar Pradesh Warehousing Corporation and Anr. v. Shri Vinay Narayan Vajpayee* 1980 (1) S.L.R. 497 (S.C.), *Shree Saheo Shankar Singh v. The State of Bihar and Ors.* 1978 (1) S.L.R. 360 (Pat.), *Atam Sugnomal Pohani v. The Gujarat Electricity Board, Baroda and Anr.* 1978 (2) S.L.R. 709 (Guj), and *Managing Committee, Gujdarada High School v. State of Orissa and Ors.* 41 (1975) C.L.T. 1120. This matter is essentially one of exercise of sound judicial discretion by the Court or Tribunal taking into consideration the facts and circumstances of the case. In the instant case, the order of termination of the services of the opposite party No. 3 had been passed by the Petitioner illegally and without the approval of the appropriate authority. Benefits which would normally accrue to the opposite party No. 3 have not been denied to him by the Tribunal because of his conduct for which disciplinary action had been initiated. No material has been placed at the Bar that after the removal the opposite party No. 3 had been employed elsewhere. For the reasons recorded by the Tribunal, it is of the view that the Appellant should be reinstated in service and would be entitled to all statutory benefits. In the facts and circumstances of the case, there is no justification to take different view.

10. In the result the writ application fails and is dismissed leaving the parties to bear their own costs of this proceeding. The dismissal of the writ application would not, however, preclude the Petitioner to continue and complete the enquiry which was going on against the opposite party No. 3 at the time of pendency of the appeal before the Tribunal as indicated in the impugned order, if still pending and if so advised, in accordance with law.

H.L. Agrawal, C.J.

11. I agree.