

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 3839 of 2003

State of Odisha and Others

....

Petitioners

Mr. D.R. Mohapatra, Senior Standing Counsel
School & Mass Education Department

-versus-

Madan Mohan Kar and others

....

Opposite Parties

None

CORAM:

THE CHIEF JUSTICE

JUSTICE R.K. PATTANAİK

Order No.

ORDER
15.03.2022

09. 1. The present writ petition challenges an order dated 21st August, 1999 passed by the State Education Tribunal, Odisha, Bhubaneswar in Appeal No.2 of 1999 filed by the Opposite Party No.1. In the said appeal filed under Section 10A of the Orissa Education Act, 1969 (OE Act), Opposite Party No.1 had challenged an order dated 18th November, 1998 terminating the services of Opposite Party No.1 from the post of Head Pandit of Prabhakar Sanskrit Bidyalaya in Jajpur District.
2. The school in question is an aided educational institution within the meaning of Section 3(b) of OE Act. Initially, Opposite Party No.2 was the Head Pandit of the School. Challenging the termination of his services Opposite Party No.2 had filed Appeal No.18 of 1996 which was allowed by the Education Tribunal by an

order dated 27th March 1997 directing his reinstatement with all service benefits. When the order of the Tribunal was not implemented, Opposite Party No.2 filed OJC No.6641 of 1997 in this Court seeking compliance of the said order. On the other hand, the Managing Committee of the school filed OJC No.9883 of 1997 in this Court seeking the quashing of the order of the Education Tribunal.

3. On 9th September, 1998 OJC No.6641 of 1997 filed by Opposite Party No.2 was allowed and a direction was issued to the present Petitioners i.e. the Department of School and Mass Education to implement the judgment dated 27th March, 1997 of the Tribunal.

4. In compliance with the order dated 9th September, 1998 passed by this Court, Opposite Party No.2 was allowed to resume duties in School as Head Pandit .

5. Since there was only one post of Head Pandit, there was a situation where both Opposite Party No.1 and Opposite Party No.2 could not have continued as such. Consequently, the order dated 19th November, 1998 terminating the services of Opposite Party No.1 had to be passed by the Managing Committee of the School.

6. The ground on which Appeal No.2 of 1999 filed by Opposite Party No.1 has been allowed by the Education Tribunal by the impugned order is that Opposite Party No.1 was not a party to the proceeding initiated by the Opposite Party No.2. Having been duly selected the services could not have been terminated without prior

approval of the authority under Section 10-A(1) of the OE Act. In the circumstances, the appeal was allowed and the order of termination of Opposite Party No.1 was set aside.

7. There was one interesting development that took place even while the present writ petition was pending. Opposite Party No.1 appears to have filed OJC No.1310 of 2000 seeking implementation of the order dated 21st August, 1999 of the Education Tribunal. The said writ petition was disposed of by this Court by an order dated 24th March, 2008 directing the school to comply with the directions of the Education Tribunal within a period of three months. Against non-compliance of the said order, Opposite Party No.1 filed contempt petition i.e. CONTC No.991 of 2009 which was disposed of on 5th February, 2010 granting four months' time to comply with the order.

8. In the meanwhile, the present petition came up for hearing before a Division Bench of this Court which on 18th March, 2011 passed an interim order staying the order dated 21st August, 1999 of the Education Tribunal. As a result, there have been two conflicting orders: one passed by a Division Bench of this Court on 24th March, 2008 directing the S & M E Department to implement the order dated 21st August, 1999 and another the interim order dated 18th March, 2011 staying the operation of the order dated 21st August, 1999 of the Education Tribunal. Clearly, in view of such conflicting orders the S & ME Department could not be expected to implement the earlier order dated 24th March, 2008.

9. Today, despite service of notice, none appears on behalf of Opposite Party No.1. In fact earlier a lawyer had entered appearance and had filed a reply to the present petition for Opposite Party No.1. In any event, he has not been able to get back in service despite the above orders in view of the developments explained hereinbefore. Learned counsel for the Petitioners informed the Court that as of date Opposite Party No.2 is continuing as Head Pandit pursuant to the above orders.

10. In view of the above status quo having continued for well over a decade and with their being full justification for the S and ME Department not to have implemented the order dated 24th March, 2008 in OJC No.1310 of 2000, the Court considers it appropriate to set aside the order dated 21st August, 1999 of the Education Tribunal.

11. In view of the earlier proceedings in this Court and the orders passed by this Court in OJC No.6641 of 1997 wherein by order dated 9th September, 1998 this Court had asked the judgment dated 27th March, 1997 of the Education Tribunal in favour of Opposite Party No.2 to be implemented, the Education Tribunal could not have, ignoring the above facts, insisted upon Opposite Party No.1 being accommodated by the order dated 21st August, 1999.

12. Since the order dated 21st August, 1999 of the Education Tribunal is hereby set aside, the order passed by this Court on 24th March, 2008 in OJC No.1310 of 2000 asking for its

implementation is incapable of being implemented and is rendered inoperative.

13. The writ petition is allowed in the above terms, but in the circumstances, with no order as to costs.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Jena/P.A.

