

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 1722 of 2020

An application under Articles 226 & 227 of Constitution of India.

AFR **Gayadhar Mishra** ----- **Petitioner**

-Versus-

State of Odisha & Others **Opp. Parties**

Advocate(s) appeared in this case:-

For Petitioner : Mr. P.C. Chhinchani, Advocate.

For Opp. Parties : Mr. N.K. Praharan,
Addl. Government Advocate.

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT
1st November, 2022

SASHIKANTA MISHRA, J.

The petitioner was initially appointed as Laboratory Attendant in the Department of Zoology in D.D. College, Keonjhar vide order dated 19.10.1990 of the Principal of the said College. By order dated 21.02.1997, he was promoted to the post of Library Assistant on the recommendation of the DPC. His pay was fixed at Rs.950/- in the scale of Rs.950/- to Rs. 1500/- vide order dated 22.03.1997. While working as such, the petitioner and one Birendra Kumar Panda were directed to perform the work of

Asst Librarian in addition to the normal duties of Library Assistant due to shortage of staff caused by the retirement and death of the previous incumbents. It is stated that the petitioner has the requisite qualification for the post of Asst. Librarian. The Principal, by letter dated 19.04.2008 sought for necessary instructions from the Commissioner-cum-Secretary to Government in the Department of Higher Education regarding promotion of the petitioner to the post of Asst. Librarian. The Principal also submitted a reminder on 25.06.2008. By order dated 01.10.2008, the petitioner was promoted to the post of Asst. Librarian in the scale of pay of Rs.4750/- to Rs.7500/- on the recommendation of the DPC. Surprisingly by order dated 06.03.2009, the Principal referring to certain previous correspondence made with the Government, reverted the petitioner to his original post of Laboratory Attendant. Challenging such reversion, the petitioner approached the erstwhile Odisha Administrative Tribunal in O.A. No. 759(C) of 2009 (since transferred to this Court and registered as WPC(OAC) No. 759 of 2009). In said O.A., the petitioner sought for an interim relief of stay of the order of reversion but the same was disallowed. The

petitioner therefore, approached this Court in W.P.(C) No. 8327 of 2009 challenging the refusal of the Tribunal to grant interim relief. By order dated 08.06.2009 passed in the above writ application, this Court, while issuing notice held that the petitioner shall be allowed to continue in the post of Asst. Librarian till next listing of the case. The case was adjourned thereafter on several occasions and ultimately by order dated 08.03.2022, a Division Bench of this Court observing that since the main O.A. has been transferred to this Court being registered as a separate writ petition and is before the roster Bench of the single judge, disposed of the writ application with the direction to maintain status quo as on the said date. In the meantime, the opposite party authorities again reverted the petitioner to his original post of Laboratory Attendant by order dated 15.07.2019 (Annexure-10) basing on the Government Order dated 28.6.2019 (Annexure-9). The petitioner has therefore approached this Court yet again in the present application seeking the following relief:

“Under the above facts and circumstances, this Hon’ble Court may be graciously pleased to quash the impugned orders at Annexure-9 and Annexure-10 by declaring the same as absolutely illegal, void and unsustainable in the eye of law

And/or any other order (s) as deemed fit and proper may be passed in the interest of justice.”

2. A detailed counter affidavit has been filed on behalf of the Higher Education Department. Though the counter contains several replies to the writ petition on merits of the case relating to the correctness of the original order of reversion against the petitioner, the same need not be gone into in detail having regard to the fact that it is a matter to be decided in the pending writ application wherein the original order of reversion is under challenge. It has however been stated that though this Court passed the interim order on 08.06.2009, yet the case was not listed for adjudication for more than 10 years and the petitioner managed to continue in the post of Asst Librarian. Since the Apex Court as well as the High Court of Orissa have held that stay orders granted by High Courts in all cases would automatically lapse after six months unless extended by speaking order, the impugned orders under Annexures-9 and 10 were rightly passed. Since the orders were passed basing on the directives issued by the Apex Court as well as this Court, there was no need to issue any prior notice or of asking the petitioner to show cause.

3. Be it noted here that by order dated 21.01.2020 this Court in the present application has directed that

notwithstanding the impugned order, the petitioner shall be allowed to continue in the post of Asst. Librarian till the next date. The interim order has been continued from time to time.

4. Heard Mr. P.C. Chhinchani, learned counsel for the petitioner and Mr. N.K. Praharaj, learned Government Advocate.

5. It is argued by Mr. Chhinchani that the opposite party authorities have completely misinterpreted the directives issued by the Apex Court as well as by this Court vide Standing Order No.1 of 2019 inasmuch as the same applies only to proceedings pending before Courts and Tribunals. In case such proceedings have been stayed for more than six months by order of the High Court and the same has not been extended by speaking order, the stay is deemed to have automatically lapsed and the proceedings are required to be continued. In the case at hand there was no proceeding as such but only a direction issued to the authorities to allow the petitioner to work as Asst. Librarian during pendency of the writ application and therefore, the directives of the Apex Court and this Court cannot be made applicable.

6. Mr. Praharaj, on the other hand, has argued that the petitioner was found to have been wrongly and illegally promoted to the post of Asst. Librarian for which the Government took a decision to revert him to his parent post. In any case, the post of Laboratory Attendant is not the feeder post for promotion to the post of Asst. Librarian and therefore, the then principal of the College was found to have committed gross illegality in promoting the petitioner to such post. The Apex Court and this Court have time and again held that any stay order passed, if not extended by speaking order, must be deemed to have automatically expired. In the instant case, the interim order was passed on 08.06.2009 and therefore the same cannot be held to be in operation at this belated stage. Therefore the authorities rightly reverted the petitioner to his original post.

7. After hearing the rival contentions, it becomes evident that the only issue that arises for consideration in the present writ application is, whether it was open to the opposite party authorities to revert the petitioner to the post of Laboratory Attendant despite operation of the interim

order dated 08.09.2009 purportedly basing on Standing Order No. 1 of 2019 of this Court.

8. It would be relevant to point out at the outset that the issue relating to automatic termination/vacation of interim orders of stay passed by the High Courts emanates from the decision of the Apex Court in the case of **Asian Resurfacing of Road Agency Private Ltd and Another vs. Central Bureau of Investigation** reported in **(2018) 16 SCC 299**. In the said case it was held that in all cases where stay is granted the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. Basing on the directives issued in the aforementioned case, this Court issued Standing Order No.1 of 2019 directing that in all pending matters before the High Courts or other courts relating to P.C. Act or all other civil or criminal cases, if the stay of proceedings in a pending trial is operating, it shall automatically lapse after six months unless extended by speaking order on above parameters. What is relevant to note is, there must be an order directing stay of **proceedings** which, unless extended, would automatically lapse after six months thereof.

9. At this stage it becomes necessary to refer to a few relevant dates relating to the case:

8.9.2009- This court in W.P.(C) 8327 of 2009 directed that the petitioner shall be allowed to continue in the post of Asst. Librarian till the next date of listing of the case.

28.6.2019-Letter issued by Government in Department of Higher Education to the Director Education and Principal of the College requesting to take necessary steps for reversion of the petitioner to the original post of Laboratory Attendant immediately referring to Standing Order No. 1 of 2019 issued by this Court.

15.7.2019-Order passed by the Principal cancelling the promotion of the petitioner to the post of Asst Librarian and by reverting him to the original post of Laboratory Attendant with immediate effect.

21.1.2020-This Court in the present Writ application, i.e., W.P.(C) No. 1722 of 2020 directed that notwithstanding the order dated 15.07.2019 the

petitioner shall be allowed to continue in the post of Asst. Librarian till the next date.

8.3.2022- This Court disposed of W.P.(C) No. 8327 of 2009 directing that status quo as on today shall continue during pendency of the said writ petition (WPC(OAC) No. 759 of 2009).

10. Two things are evident from the above enumeration; first, this Court passed a specific order on 08.06.2009 that the petitioner shall be allowed to continue in the post of Asst Librarian till the next date of listing of the case. Second, such order was never vacated specifically. There was no motion by the opposite party authorities to seek vacation of such order. Therefore, as on 15.07.2019, the petitioner must be deemed to have been continuing as Asst. Librarian on the strength of the order passed by this Court. Such being the case, it is to be seen if the Standing Order No. 1 of 2019 has any application. As has already been seen, the ratio of ***Asian Resurfacing (supra)*** as reflected in the Standing Order No.1 of 2019 refers to cases/proceedings before Courts and Tribunals that have been stayed by order passed by the High Court. In the instant case, there is no

such case/proceeding before any court or tribunal nor there is any stay as such. Instead, there is a positive order passed by this Court directing the authorities to allow the petitioner to continue in the post of Asst. Librarian. Obviously, there is a sea of difference between the matters referred to in ***Asian Resurfacing (supra)*** and/or the Standing Order No. 1 of 2019 and the fact situation obtaining in the present case. To reiterate, the interim order passed on 08.06.2009 did not stay any action of the authorities as such much less any proceeding, but conferred a positive relief on the petitioner. If the authorities were aggrieved by such order, it was open to them to challenge the same before the higher forum or to seek variation/vacation thereof in the pending writ petition. So, automatic resumption of the proceeding stayed by order of the High Court as envisaged in the Standing Order No.1 of 2019 is not synonymous with taking a penal action against an employee who has been granted a positive relief by the High Court. The two situations are entirely distinct and different and hence, cannot be equated in any manner whatsoever. Therefore, reference to the Standing Order No. 1

of 2019 must be held to be entirely misconceived and fallacious.

11. It is well settled that when the Court intends a particular state of affairs to exist while it is in seisin of a lis, that state of affairs is not only required to be maintained but is presumed to exist till the court orders otherwise. The above view was taken by the Apex Court in the case of **Surjeet Singh and others vs. Harbans Singh** and others reported in **(1995) 6 SCC 50**. It was also held in the case of all **Bengal Excise Licensees Associations vs. Raghavendra Singh** reported in **(2007) 11 SCC 374** that a party to the litigation cannot be allowed to take an unfair advantage by committing breach of an interim order and escape the consequences thereof.

12. Undisputedly, the challenge to the original order of reversion of the petitioner to his parent post is pending before this Court. While entertaining the writ application filed against the refusal of the Tribunal to pass an interim order, this Court was convinced enough to direct the authorities to allow the petitioner to continue in the post of Asst. Librarian. What the authorities have done by passing the impugned

order is to frustrate the petitioner's attempt to challenge the correctness of the impugned order. As already stated, if aggrieved, the authorities could have taken recourse to the available remedies but it was entirely illegal as also unfair on their part to act contrary to the positive direction of this Court by harping upon technicalities, which incidentally has also been found to be misconceived.

13. It must also be kept in mind that the Government being a model employer cannot be seen to be taking steps to second-guess its opponent in litigation like a private litigant. In the case of ***Bhupendranath Hazarika and another vs. State of Assam and others*** reported in **(2013) 2 SCC 516**, the Apex Court held that being a model employer the state is required to act fairly giving due regard and respect to the rules framed by it. In short, the Government cannot be seen to be adopting the attitude of a private litigant setting out to frustrate its opponent's case by hook or by crook.

14. For the reasons indicated above, this Court has no hesitation in holding that the impugned orders under Annexures 9 and 10 are illegal and a nullity in the eye of law. Coming to the relief to be granted to the petitioner, this Court

is of the view that the impugned orders being held to be nullity, the natural corollary is to bring back the parties to the same position as they were before the impugned orders were issued. In other words, restoration of the status quo ante is the appropriate relief to be granted in the case.

15. For the foregoing reasons therefore, the writ petition succeeds and is, therefore, allowed. The impugned orders under Annexures-9 and 10 are hereby quashed. The opposite party authorities are directed to allow the petitioner to continue as Asst. Librarian as directed by this Court in its order dated 08.06.2009 passed in W.P.(C) No. 8327 of 2009 and order dated 21.01.2020 passed in the present Writ Application till disposal of WPC (OAC) No. 759 of 2009. It is made clear that non-compliance/violation of this order shall be viewed seriously

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 1st November, 2022/ A.K. Rana, P.A.