

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No. 463 of 2013

Santilata Jena

....

Appellant

Mr. Sameer Kumar Das, Advocate

-versus-

State of Odisha and Others

...

Respondents

Mr. Ishwar Mohanty, Addl. Standing Counsel

Mr. D.N. Rath, Advocate

CORAM:

THE CHIEF JUSTICE

JUSTICE CHITTARANJAN DASH

Order No.

ORDER
24.08.2022

12. 1. This writ appeal is directed against an order dated 18th October, 2012 passed by the learned Single Judge disposing of W.P.(C) No.3378 of 2010 filed by the Respondent No.4 wherein a notification dated 1st July, 2009 issued by the Commissioner-cum-Secretary to Government, Higher Education Department treating the Appellant College as “Santilata Degree Mahavidyalaya”, Uitikiri under Section 3 of the Orissa Education Act (OE Act) was upheld and a direction was issued to the Secretary, Higher Education Department to correct the said notification in respect of the institution as “Santilata Mahavidyalaya, Uitikiri” in place of “Santilata Degree Mahavidyalaya, Uitikiri” and to release block grant to the staff whose services had been approved by the Opposite Parties (State Authorities).

2. This Court has heard the submissions of learned counsel for the parties.

3. A preliminary objection is raised by learned counsel appearing for the Respondent No.4 that the present writ appeal filed by Smt. Santilata Jena as “Secretary of the Governing Body of Santilata Degree Mahavidyala” is not maintainable since at the relevant time she was in fact not the Secretary of the said Governing Body.

4. In response to this submission, it is pointed out by Mr. Das, learned counsel for the Appellant that the learned Single Judge took note of the fact that the present Appellant had sought to intervene in the pending writ petition by filing a Misc. Case No.7369 of 2010 in an individual capacity. Para 5 of the impugned order of the learned Single Judge notes this fact as under:

“5. One Shantilata Jena filed an application numbered as Misc. Case No.7369 of 2010 with a prayer to implead her as opposite party no.4 stating therein that she has filed a Case bearing Grant-in-Aid Case No.330 of 2009 before the State Education Tribunal against the inaction of the State functionaries for not verifying the records of the staff members of the Degree College and the same is subjudice. Therefore, the intervenor-opposite party no.4 be heard in the writ petition. Accordingly, the intervenor was also heard in the matter.”

5. In that view of the matter, the preliminary objection of the Respondent No.4 to the maintainability of the present appeal is hereby rejected.

6. It is not in dispute that the impugned order of the learned Single Judge has been held to be *per incuriam* by the judgment dated 8th April, 2016 by another learned Single Judge in W.P.(C) No.22530 of 2012 (*Governing Body of Abhimanyu Samanta Singhara College v. State of Odisha*). The said order of the learned Single Judge was approved by a Division Bench of this Court by the order dated 6th March, 2017 in W.A. No. 225 of 2016 (*Governing Body of Abhimanyu Samanta Singhara College v. State of Odisha and Others*).

7. As far as the impugned judgment herein is concerned, with it already having declared *per incuriam* and such declaration having been affirmed by the Division Bench as pointed out hereinbefore, this Court has no hesitation in setting aside the impugned order of the learned Single Judge. Accordingly, the impugned judgment is set aside.

8. The writ appeal is allowed in the above terms. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge