

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No.21156 of 2017

State of Orissa and others

.....

Petitioners

Mr.S.Jena, SC,S & ME Deptt.

Vs.

Pravat Kumar Nayak and another

.....

Opposite Parties

Mr. S.K.Das, Adv.(O.P.1)

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

09.05.2022

Order No.

05.

This matter is taken up through hybrid mode.

2. Heard Mr. S.Jena, learned Standing Counsel for the School and Mass Education Department, appearing for the State-petitioners and Mr. S.K.Das, learned counsel appearing for opp. party No.1.

3. The State and its functionaries have filed this writ petition challenging the orders dated 18.07.2017 and 11.09.2017 passed by the Orissa Administrative Tribunal, Bhubaneswar in C.P. No.125 of 2012 arising out of O.A. No.430 of 2009, by which the tribunal has directed bailable warrant against the contemnors, i.e., petitioner Nos.1 and 2 of Rs.5000/- and directed the Commissioner or Police, Bhubaneswar to execute the bailable warrant for production of petitioner Nos. 1 and 2 on 18.08.2017 and consequential order passed on 11.09.2017 calling upon the petitioner Nos.1 and 2 to show cause why bailable warrant shall not be executed against them.

4. Mr. S.Jena, learned Standing Counsel for School and Mass Education Department submits that opp. party No.1 was engaged as a Physical Education Instructor initially on adhoc basis and was later allowed to continue on regular basis as per the order of petitioner No.3 (Principal, DIET, Tikabali) dated 21.11.2001 and thereafter he was terminated from service. Consequentially, he filed a representation, which was also rejected on 21.01.2006. Being aggrieved with the same, opp. party No.1 approached the tribunal by filing O.A. No.430 of 2009. Vide

order dated 09.02.2012, the tribunal came to the following conclusion:

“We endorse the prayer of the applicant to allow him to work as Physical Education Instructor in DIET Tikabali. This will be effective from the date he reports for duty. The respondents are directed to allow the applicant to work as Physical Education Instructor from the date he reports for duty. The applicant will be entitled to pay and allowances (with revisions, if any) due to him at the time of his disengagement. Respondent No.1 is directed to reconsider the representations of the applicant dated 20.12.2002 and 11.4.2003 afresh after verification of facts with reference to documents which are relevant and pass a speaking order as early as possible. If the decision of Respondent No.1 goes in favour of the applicant, he will be entitled to all consequential service and financial benefits except back wages for the period when he was not on duty.”

5. Against the said order of tribunal, the State preferred a writ petition bearing W.P. (C) No.11785 of 2013 and this Court vide order dated 24.09.2013 observed as follows:

“We do not find any reason to take a different view in the present case. We, therefore, while upholding the impugned order of the Tribunal as at Annexure-1, quash the portion of the order, where the tribunal directed the respondent no.1, i.e., the State, to reconsider the representations dated 20.12.2002 and 11.4.2003 of the opp. party-applicant afresh after verification of facts with reference to documents which are relevant and pass a speaking order as early as possible. Hence, the State will not be required to deal with the aforesaid representation of the petitioners. However, the order with regard to setting aside the order of termination from service and direction to allow the opp. party-applicant to work as Physical Education Instructor from the date when he reports on duty stands confirmed and his entitlement to get the pay and allowance (with revisions, if any), due to him at the time of disengagement stands confirmed.”

6. On the allegation of non-compliance of the order passed by the tribunal dated 09.02.2012, the petitioner filed C.P.No.125 of 2012 before the tribunal, in which the compliance affidavit was filed by the State petitioners enclosing the order of the Directorate of Teacher Education and SCERT dated 13.03.2014, which reads as follows:-

“No.CC-81/2013 1961/TE & SCERT. In pursuant of the order dated 09.02.2012 of the Hon'ble Odisha Administrative Tribunal, Bhubaneswar passed in OA No.430/2009 and Order No.2 dated 24.09.2013 of the Hon'ble High Court, Orissa passed in W.P. (C) No.11785/2013 and Government letter No.5293/SME dated 13.03.2014, Shri Pravat Kumar Nayak is allowed to work as Physical Education Instructor in DIET,

Kandhamal at Tikabali from the date he reports for duty.”

7. Subsequently, on 5.2.2015 after joining of opp. party No.1 as Physical Education Instructor, the Deputy Director, Admn., TE and SCERT, Odisha has passed the following order:

“In inviting a reference to the letter and subject cited above, I am directed to furnish here with the Pay fixation statement and Original Service Book of Sri Pravat Kumar Nayak, Physical Education Instructor who has joined on 15.03.2014 by virtue of order dated 09.02.2012 of the Hon’ble OAT, Bhubaneswar after duly checked and corrected by this Directorate.

Sri Pravat Kujmar Nayak is allowed to draw pay of Rs.16190/- with GP of Rs.4200/- in the pay band of Rs.9300-34800+GP 4200/- w.e.f. 15.03.2014 as per his date of joining and his subsequent periodical increment is hereby sanctioned from 01.06.2014 with pay of Rs.16810 +GP 4200/-.

The Receipt of Original Service Book of Sri Nayak may please be acknowledged.”

By this process, the order of tribunal dated 09.02.2012, which was modified by this Court vide order dated 24.09.13, has been complied with.

8. Mr. S.Jena, learned Standing Counsel for school and Mass Education Department contended that in the meantime after abolition of tribunal, the original C.P. case No.125 of 2012 was transferred to this Court and vide order dated 28.02.2022, the said C.P. Case No.125 of 2012, which was renumbered as CONTC (CP) No.125 of 2012, has already been disposed of. Thereby, it is contended that since against the interim order passed by the tribunal in the contempt petition, the State has preferred this writ petition and in the meantime the main case has also been disposed of, and as such, the interim order passed by the tribunal merges with the final order, which has already been disposed of.

9. Mr. S.K.Das, learned counsel for opp. party No.1 contended that since he has not appeared in the main C.P. case which has been transferred from the tribunal to this Court, he has no knowledge about the same, therefore, he seeks time to get instruction.

10. However, since the order of the tribunal has already been complied with, as mentioned above, we do not find any justification to keep the

matter pending. That apart since the order of tribunal, as has been modified by this court, has already been complied with, nothing more remains to be adjudicated in the present writ petition.

11. In view of the above the writ petition stands disposed of in terms of the office orders dated 13.03.2014 and 05.02.2015 under Annexure-A/2 and Annexure-D/2 to the compliance affidavit filed by opp. party No.2 in C.P. No. 125 of 2012 arising out of O.A. No.430 of 2009.

12. Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

Arun/Bichi

(SAVITRI RATHO)
JUDGE