

IN THE HIGH COURT OF ORISSA AT CUTTACK

F.A.O. No.489 of 2016

State of Orissa and others .. Appellants

-versus-

Puspalata Mishra and another .. Respondents

For Appellants : Mr. Sangram Jena, Standing
Counsel School and Mass
Education Department

For Respondents : Mr. D.N. Rath, Advocate
Respondent No.1

CORAM:

JUSTICE A.K. MOHAPATRA

Date of hearing : 05.01.2022 | Date of Judgment: 11.01.2022

A.K. Mohapatra, J. :

1. Heard Mr. Sangram Jena, learned Standing Counsel for School & Mass Education Department and Mr.D.N.Rath, learned counsel for the Respondents.

2. In the present appeal, the State of Odisha represented through its Commissioner-cum-Secretary, School & Mass Education Department, Odisha has assailed the judgment dated 3rd January, 2014 passed in G.I.A.Case No.206 of 2011 by the learned Education Tribunal, Orissa, Bhubaneswar.

3. The Respondent No.1 as the applicant had filed GIA Case No.206 of 2011 before the learned Education Tribunal,

Odisha, Bhubaneswar challenging the order dated 29th March, 2011 passed by the Government of Odisha in the department of School & Mass Education thereby rejecting approval of Respondent no.1-Petitioner without following the due procedure of law and without having authority to do so. A further prayer was made in the GIA case by Respondent No.1 to approve her appointment as an Assistant Teacher TGT(CBZ) and to release the grant-in-aid as due and admissible with effect from 5th October, 2005 within a reasonable time to be stipulated by the learned Tribunal.

4. The background facts of the case as pleaded by Respondent No.1 before the learned Tribunal is that Ananta Majhi High School, Sanabarisingh, P.O. Ragaripada under Baramba Police Station in the district of Cuttack was established as High School in the year 1990 and was being managed by a private management. In the year 1992, the School got permission from the Government and thereafter the said School entered into the grant-in-aid fold in the year 2004 under the Orissa Education Act (Payment of Grant-in-Aid to High Schools, Upper Primary Schools etc.) Order, 2004.

5. It was further submitted by Respondent No.1-Petitioner that as per the aforesaid Order, 2004 the School authorities have to submit a statement of teaching and non-teaching employees including their qualifications, addresses and date of birth and the posts against which they were appointed and dates of their appointment before the competent authority in order to

verify as to whether the aforesaid appointment made by the private Managing Committee of the High School is required to be notified to receive grant-in-aid as per the prescribed yardstick.

6. After the aforesaid High School was notified to receive grant-in-aid, the staff position along with qualifications, addresses and date of birth and the post against which they were appointed and the dates of their appointment was submitted before the Inspector of Schools, Cuttack, who was the competent authority. After necessary verification by the competent authority, the services of six numbers of staff were approved against the teaching post, one against the post of P.E.T., one against the post of Junior Clerk and one against the post of Peon vide Order dated 8th September, 2004.

7. After the School was notified to receive grant-in-aid in the shape of Block Grant as per the Order, 2004 and after the services of the staffs appointed were approved, one Arnapurna Dei whose service was approved against the post of TGT (CBZ) resigned from service with effect from 25th April, 2005 and after her resignation, the vacancy could only be filled up by a candidate sponsored by the Selection Board constituted under Section 10(2) of the Orissa Education Act. However, the Managing Committee of the School filled up the aforesaid vacancy which arose due to the resignation of the abovenamed teacher in the said aided educational institution on 5th October, 2005.

8. It is submitted by Mr.Sangram Jena, learned Standing Counsel for School & Mass Education department that filling up the vacancy on 5th October, 2005 by the Managing Committee of the aided High School is completely illegal and erroneous as the same should have been filled up by a candidate selected by the Selection Board constituted under the Orissa Education Act. As such the main plank of the appellant's argument is that the appointment of Respondent No.1 was without following due procedure of law and without any authority or any sanction of law. Therefore, the claim of Respondent No.1 for approval was rejected by Order dated 29th March, 2011 by the Government of Odisha in the Department of School & Mass Education.

9. The aforesaid order dated 29th March, 2011 was assailed by the present Respondent No.1 before the learned Education Tribunal, Odisha, Bhubaneswar on various grounds and a further relief was sought for to approve the appointment of the present Respondent No.1 as Assistant Teacher TGT (CBZ) and to release grant-in-aid as due and admissible with effect from 5th October, 2005 in favour of Respondent No.1.

10. The learned Education Tribunal, Odisha, Bhubaneswar disposed of the GIA Case No.206 of 2011 vide its judgment dated 3rd January, 2014 with the following direction :

“On considering the same, therefore, I deem it fit to concede to the prayers of the applicant in the line of the observation of the Hon’ble High Court discussed as above, and allow the application in

favour of the applicant by directing opposite parties to allow her to continue in her post, for approval of the same in her favour post facto to be continued till the joining of any Selection Board Candidate in her place. That apart, she will be entitled further to all the financial benefits, as may be admissible under law, for continuous service in her post, while all the arrears that may be due in her favour, shall also be released in her favour, from the date the same stands due in her favour, as within a period of four months from the date of communication of this order.”

11. The aforesaid order dated 3rd January, 2014 passed by the learned Education Tribunal, Orissa, Bhubaneswar has been assailed by the Government of Odisha by filing an appeal bearing F.A.O.No.489 of 2016 under the provisions of Orissa Education Act. The said appeal was listed before this Court on 25th January, 2017 for admission and vide order dated 25th January, 2017 this Court dismissed the appeal on the ground of delay.

12. Challenging the order dated 25th January, 2017 passed in F.A.O. No.489 of 2016 by this Court, the Government of Odisha approached the Hon’ble Supreme Court of India by filing SLP(Civil) No.10553-10554 of 2018. By order dated 13th April, 2018 the Hon’ble Supreme Court of India remitted the matter to the High Court for rehearing of the matter on merits after setting aside the order dated 25th January, 2017.

13. After disposal of the aforesaid SLP another Interlocutory Application bearing I.A.No.139655 of 2018 was

filed before the Hon'ble Supreme Court of India for a direction/clarification. Vide order dated 7th October, 2021 while disposing of the Interlocutory Application the Hon'ble supreme Court of India has observed that "let a fresh application be filed by the applicant(s) before the High Court and we expect that the same shall be heard as early as possible/expeditiously."

14. The matter was listed today for final haring. Heard Mr.Sangram Jena, learned Standing Counsel for School & Mass Education Department and Sri D.N.Rath, learned counsel appearing for Respondent No.1.

15. In course of hearing, it was pointed out by Shri Rath that an identical issue was involved in the matter of ***Balaji Sahu-vrs.-State of Odisha and others reported in 2018(II) OLR 761***. This Court while finally deciding the appeal has held that in view of repeal of Rule 5(8) and (9) with effect from 1st October, 1992, the Petitioner's appointment cannot be said to be per se illegal. Therefore, the impugned judgment passed by the learned Education Tribunal rejecting the claim of the applicant was set aside by this Court in the judgment (supra). Further, a direction was given to the State Government to approve the appointment of the Petitioner with effect from the date of his joining with his entitlement to all the admissible financial and other benefits and so as to continue as such till he is replaced by posting of the Selection Board candidate in place of the appellatant in the aforesaid judgment.

16. The judgment delivered in Balaji Sahu's case (supra) has attained finality as the same has not been challenged further and moreover, the decision has already been given effect to.

17. On perusal of records and the pleadings, it is found that the facts of the present case are identical to the facts of Balaji Sahu's case (supra). Therefore, the decision of a coordinate Bench in Balaji Sahu's case (supra) is binding.

18. Mr. Sangram Jena, learned Standing Counsel for School & Mass Education Department does not dispute the aforesaid proposition of law.

19. Having heard learned counsel for both sides and after going through the pleadings and the abovenoted decision rendered in Balaji Sahu's case (supra), this Court is of the considered view that the appeal filed by the State Government is devoid of any merit and the same is liable to be dismissed. Accordingly, the same is hereby dismissed. In the facts and circumstances there shall be no order as to cost.

(A.K. Mohapatra)
Judge

R.K.S.