

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.38236 of 2020

Basudev Panda

....

Petitioner

Ms. Saswati Mohapatra, Adv.

-versus-

State of Odisha and Ors.

....

Opposite Parties

Mr. Saswat Das, AGA

CORAM:

DR. JUSTICE S.K. PANIGRAHI

Order

No.

09.

ORDER

21.12.2022

1. This matter is taken up through hybrid mode.
2. The petitioner, in this Writ Petition, assails the Order dated 22.12.2020 passed by the Opposite Party No.2 applying the judgment passed in Civil Appeal No.7295/2019 and batch of cases, suo-motu, inter-alia, cancelling the approval order. The petition calls into question the action of Opposite Party No.2 even though the Petitioner's post was approved on 19.09.2019 in terms of Order passed in O.J.C. No.6401/1902 and W.P.(C) No.3642/2010.

I. FACTS OF THE CASE

3. Shorn of unnecessary details, the substratum of matter presented before this Court is that the Petitioner was

appointed as Lecturer in Economics in D.C.C. College, Tangi, Khordha on 12.12.1988 by the then Governing Body and post was approved after multiple proceedings. It is pertinent to mention here that the Petitioner had been appointed against the vacancy which had arisen due to dismissal of Sri Gangadhar Nayak in the year 1987.

4. The Petitioner approached this Court in O.J.C. No.6461 of 1992 for release of Grant-in-aid. This Court while disposing of the Writ Petition had directed the competent authority of the Government to consider the question of approval of the Petitioner's appointment as Lecturer and communicate its decision.
5. However, Sri Gangadhar Nayak approached this Court by filing Writ Petition bearing O.J.C. No.10320/1997 after ten years of termination and this Court disposed of the petition directing the Director, Higher Education, Odisha to dispose of the appeal.
6. During pendency of the appeal, the Director handed over the case of Sri Gangadhar Nayak to Vigilance Department and the said Order was challenged by Sri Gangadhar Nayak in W.P.(C) No.19393 of 2008. This Court was pleased to stay further proceeding of the Appeal. The present Petitioner, who had been

continuing in the 1st post of Economics in the said College was not made a Party in the said Writ Petition. Therefore, the Petitioner intervened in the said Writ Petition to be impleaded as the Opposite Party. But the State Authorities took a decision not to release the Grant-in-aid in favour of the Petitioner till disposal of the Appeal.

7. The present Petitioner filed a Writ Petition bearing W.P.(C) No.3642 of 2016 after Sri Gangadhar Nayak attained his superannuation. This Court after hearing the case, directed the Vigilance Department through Government Counsel for the report. However, Sri Gangadhar Nayak died during the pendency of the appeal and the Counsel appearing for Sri Nayak in WP(C) No.19393/2008 has withdrawn the same.
8. Subsequently, this Court was pleased to dispose of the Writ Petition bearing W.P.(C) No.3642/2016 with a direction to the Director, Higher Education, Odisha to disburse the Grant-in-aid in favour of the Petitioner within reasonable time, preferably within eight weeks from the date of receipt of copy of this Order. As per direction of this Court, on 05.08.2019, the Government approved the 1st post of Lecturer-in-Economics in favour of Durga Charan Chilika College, Tangi.

9. While the matter stood thus, the Petitioner attained the age of superannuation after long legal fight on 30.06.2020. Just before retirement, the Opposite Party No.2 released additional funds towards Grant-in-aid. However, the Petitioner vide Order dated 22.12.2020 received instructions that the order of approval in favour of the Petitioner has been cancelled pursuant to decision of the Supreme Court in Civil Appeal No.7295/2019.

II. SUBMISSION ON BEHALF OF THE PETITIONER

10. It is submitted by Learned Counsel for the Petitioner that the Petitioner is not a party to *State of Odisha v. Arup Kumar Senapati*¹ and that all the Petitioners in the above-mentioned case filed their representation in the year 2011-12 whereas the Petitioner was appointed in the year 1988. Further, the Director, Higher Education has no authority to apply the ratio of above-mentioned judgement to reopen the case of the Petitioner as W.P.(C) No.3642/2016 reached its finality on 14.05.2018 even before the judgement in *Arup Kumar Senapati* (supra) was pronounced.

¹Civil Appeal No.7295/2019

III. SUBMISSION ON BEHALF OF THE OPPOSITE PARTIES

11. Per Contra, it is contended by Learned Counsel for the Opposite Parties that pursuant to the judgement dated 16.09.2019 of the Supreme Court passed in Civil Appeal No. 7295/2019 and a batch of identical matters and Government Order No. 27792/HE dated 30.11.2019, the prior concurrence/post approval of the Petitioner towards payment of Grant-in-Aid as per GIA order, 1994 as accorded vide Department Letter No. 15741/HE dated 05.08.2019 and Directorate Post approval order No. 35653 dated 19.09.2019 was cancelled vide Government order No. 42739/HE dated 22.12.2020.

IV. COURT'S ANALYSIS AND REASONINGS

12. On perusal of the above-mentioned pleadings, this Court is of the view that the Petitioner cannot be extended the benefit under the Odisha (Non-Government colleges, Junior College and Higher Secondary Schools) Grant in Aid Order, 1994 after its repeal. Moreover, the grant of benefits is also not permissible in light of the decision of the Supreme Court in *State of Odisha v. Anup Kumar Senapati* (supra) and this Court in *Secretary, Government of Odisha*,

*Department of Higher Education v. Shri Jashobanta Baral and Others*² and a batch of cases.

13. In *State of Odisha v. Anup Kumar Senapati* (supra), the Supreme Court in Paras-26 and 30 held:

“26. In the present case, it is apparent that there is no absolute right conferred under the Order of 1994. The investigation was necessary for whether grant-in-aid to be released or not. It was merely hope and expectation to obtain the release of grant in aid which does not survive after the repeal of the provisions of the Order of 1994. Given the clear provisions contained in Paragraph 4 of the Order of 2004, repealing and saving of Order of 1994, it is apparent that no such right is saved in case grant-in-aid was not being received at the time of repeal. The provisions of the Order of 1994 of applying and/or pending applications are not saved nor it is provided that by applying under the repeal of the order of 1994, its benefits can be claimed. Grant was annual based on budgetary provisions. Application to be filed timely.

30. It was lastly submitted that concerning other persons, the orders have been passed by the Tribunal, which was affirmed by the High Court and grants-in-aid has been released under the Order of 1994 as such on the ground of parity this Court should not interfere. No doubt, there had been a divergence of opinion on the aforesaid issue. Be that as it may. In our opinion, there is no concept of negative equality under Article 14 of the Constitution. In case

²W.A. No. 401 of 2021

the person has a right, he has to be treated equally, but where right is not available a person cannot claim rights to be treated equally as the right does not exist, negative equality when the right does not exist, cannot be claimed."

14. In the case of ***State of Uttar Pradesh and others v. Hirendra Pal Singh, and others***³, the Supreme Court observed:

"22. It is a settled legal proposition that whenever an Act is repealed, it must be considered as if it had never existed. The object of repeal is to obliterate the Act from the statutory books, except for certain purposes as provided under Section 6 of the General Clauses Act, 1897. Repeal is not a matter of mere form but is of substance. Therefore, on repeal, the earlier provisions stand obliterated/abrogated/wiped out wholly i.e. pro tanto repeal (vide Dagi Ram PindiLall v. Trilok Chand Jain⁴, Gajraj Singh v. STAT⁵, Property Owners' Assn. v. State of Maharashtra⁶, and Mohan Raj v. Dimbeswari Saikia⁷).

24. Thus, there is a clear distinction between repeal and suspension of the statutory provisions and the material difference between both is that repeal removes the law entirely; when suspended, it still exists and has operation in other respects except wherein it

³(2011) 5 SCC 305

⁴(1992) 2 SCC 13

⁵(1997) 1 SCC 650

⁶(2001) 4 SCC 455

⁷(2007) 15 SCC 115

has been suspended. Thus, a repeal puts an end to the law. A suspension holds it in abeyance."

15. Furthermore, it is a settled position in law that Article 14 of the Constitution does not envisage negative equality but has only a positive aspect and thus, if some other similarly situated persons had been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. In the instant case, the benefit under GIA order, 1994 cannot be granted to the Petitioner merely because some of the similarly situated persons were extended the benefit on erroneous grounds. Since, the 1994 Order has been repealed, this Court does not have the authority to grant benefits under the scheme whose operation has already been put to an end. The Constitutional Scheme of equality clause would apply only in a case where the parties are similarly situated, but no equity can be claimed on the basis of an illegality.

16. The Supreme Court in *Basawaraj v. Land Acquisition Officer*⁸, considered the issue of negative equality and held as under:

"Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an

⁸(2013) 14 SCC 81

illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible.”

17. This Court in ***Secretary, Government of Odisha, Department of Higher Education v. Shri Jashobanta Baral and Others*** (supra) and a batch of Contempt cases discussed about the applicability of GIA Order, 1994 (even after it was repealed) in great detail. This Court observed:

*“54. In view of the conflicting orders passed by the High Court and the OAT, the legal position regarding the applicability of the benefit under the GIA Order, 1994 even after its repeal was indeed not clear. On the one hand, there was the decision of this Court in *State of Odisha v. Loknath Behera*⁹ which supported the contention of the State and then there were views to the contrary by the High Court and the OAT. This conflict came to be resolved only in *Anup Kumar Senapati* (supra) where the Supreme Court categorically approved the*

⁹ 2018 (II) OLR 932

decision of this Court in Loknath Behera (supra).

57. This Court is unable to view the order dated 16th April, 2015 passed by the learned Single Judge as issuing a positive mandamus to the Government to grant benefits to the Respondents in terms of the GIA Order 1994. Therefore, this Court is of the view that by granting the benefit under the GIA Order 2004 to the two educational institutions the Appellant State did not disobey the order dated 16th April, 2015 of the learned Single Judge. Consequently, none of the orders passed by the learned Single Judge in CONTC 1378 of 2017 and CONTC Case No. 481 of 2019 are sustainable in law. Accordingly, the orders passed by the learned Single Judge on 5th February 2021, 15th April 2021 and 29th April, 2021 in the contempt petitions are hereby set aside."

18. In conspectus of the facts and guided by the precedents stated above, this Court is of the view that the Order dated 22.12.2020 passed by the Opposite Party No.2 doesn't suffer from any infirmity as the same has been made in light of the decision of the Supreme Court in *State of Odisha v. Anup Kumar Senapati* (supra). Hence, the Petitioner cannot be granted benefits under GIA Order, 1994 as Article 14 of the Constitution is not meant to perpetuate illegality or fraud, by extending the wrong decisions made in other cases.

19. In the final evaluation, the writ petition, being devoid of merits, is accordingly dismissed. There shall be no order as to costs.

(*Dr. S.K. Panigrahi*)
Judge

B.Jhankar

