2024 INSC 954

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.14132 OF 2024
(Arising out of SLP (C) No. 27549 of 2024)

STATE OF ODISHA & ORS. ...APPELLANTS

VERSUS

DILIP KUMAR MOHAPATRA ...RESPONDENT

J U D G M E N T

MANOJ MISRA, J.

1. Leave granted.

2. By an office order dated 23.04.2001 issued by the Director of Teacher Education & SCERT, Bhubaneswar, Orissa[1], the first respondent was engaged as Computer Technician at the College of Teacher Education, Balasore[2]. The terms of his engagement were as follows:

[1] The Director
[2] The College

> ".....is engaged as Computer Technician at College of Teacher Education, Balasore in the scale of Rs. 5500-9000 with usual DA/ADA as admissible from time to time for a period of one year or till the post is filled up on a regular basis, whichever is earlier, with effect from the date he joins his assignment.
>
> This is purely temporary assignment to help operate the computer system available to the college under UGC Development grant."

3. Pursuant to the order of engagement, the first respondent joined the office of the Principal of the College on 01.05.2001. Later, his services were dispensed with by the Director *vide* office order dated 22.01.2002 which reads thus:

> "As the services of Sri Dilip Kumar Mohapatra, working as Computer Technician in the CTE, Balasore, no more required is hereby terminated with effect from 22.01.2002 (A.N.)"

4. Aggrieved by the disengagement order, the first respondent filed O.A. No. 828 (C) of 2002 before Orissa Administrative Tribunal Cuttack Bench, Cuttack[3], *inter alia*, on the following grounds:

(a) the order violates the principles of natural justice; and

(b) the order is bereft of reasons.

[3] The Tribunal

5. The appellant (i.e., the State of Odisha) contested the proceedings before the Tribunal, *inter-alia*, on the following grounds:

> (a) the engagement of the first respondent was purely temporary and for a fixed term just to meet the exigencies of establishment i.e. training programme and pre-service training programme and since December 2002 the pressure of work had lessened, the first respondent was disengaged; and
>
> (b) the engagement was not pursuant to any recruitment exercise therefore the first respondent had no right to the post.

6. During the course of proceedings before the Tribunal, the first respondent placed reliance on two orders passed by the Tribunal in O.A. Nos. 2242 of 2002 and 481 of 2008 wherein, according to the first respondent, similarly situated persons like the first respondent were given the benefit of reinstatement and pursuant thereto, they were offered regular appointments.

7. The Tribunal took the view that since the first respondent was not appointed by following any procedure known to law for appointment to a public post, and the engagement was for a fixed term, the only relief which could be granted to him is pay and allowances from the date of his disengagement (i.e. 22.01.2002) till expiry of his original term of engagement (i.e. 30.04.2002).

8. Aggrieved by the order of the Tribunal, the first respondent invoked jurisdiction of the Orissa High Court at Cuttack[4] under Articles 226 and 227 of the Constitution of India.[5]

9. By the impugned judgment and order dated 15.12.2022, the High Court allowed the writ petition, quashed the order of the Tribunal and directed reinstatement of the first respondent in service with all service and financial benefits as due and admissible to the post. While directing so, the High Court reasoned thus:

> "7.This Court after going through the materials available on record finds that the Petitioner was appointed as a Computer Technician vide Office order dated 23.04.2001

[4] The High Court
[5] The Constitution

under Annexure-1. The said order was issued with a condition that the Petitioner will continue for a period of one year or till the post is filled up on regular basis. But prior to completion of the said period of one year and prior to taking any step to fill up the post on regular basis, the Petitioner was abruptly terminated from his service vide order under Annexure-3. From the pleadings available on the record, it is quite evident that prior to issuing such order of termination under Annexure-3 on 22.01.2002 the Petitioner was neither show caused nor any opportunity of hearing was given to him. The impugned order of termination was also passed without assigning any reason whatsoever. It is also not the case of the Opposite Parties that the Petitioner prior to being terminated was ever show caused and given an opportunity of hearing. It is also not the case of the Opposite Parties that the order of termination was issued because of the fact that the post will be filled up on regular basis. This Court however finds that persons similarly situated and disengaged along with the Petitioner were re-engaged and subsequently regularized in their service in terms of the order passed by the Tribunal in O.A. No.2242 of 2002 and O.A. No.481 of 2008.

Since the Tribunal while entertaining similar applications allowed the claim by interfering with the order of termination and pursuant to the order so passed, the applicants in O.A. No.481 of 2008 and O.A. No.2242 of 2002 were not only re-engaged in their services, but also have been regularized in the meantime, as per the considered view of this Court, the Petitioner is entitled to get similar benefit. The Tribunal as per the considered view of this Court never take into account the benefit extended in favour of the applicants in O.A. No.2242 of 2002 and O.A. No.481 of 2008 in its proper perspective though the said fact was brought to the notice of the Tribunal and discussed under Para-8 of the order.

> 8. In view of such admitted position and placing reliance on the decisions as cited (supra), this Court finds that the impugned order of termination has been issued in violation of the principle of natural justice as well as without assigning any reason. The Tribunal also failed to extend similar relief as has been extended in O.A. No.2242 of 2002 and O.A. No.481 of 2008. Therefore, this Court is inclined to quash the order dated 23.09.2010 passed by the Tribunal in O.A. No.828 (C) of 2002 under Annexure-5 as well as the order dated 22.01.2002 passed by the Opposite Party No.2 under Annexure-3. While quashing both the orders, this Court held that the Petitioner is also entitled for his re-engagement with all service and financial benefits as due and admissible."

10. Aggrieved by the order of the High Court, the State is in appeal before us.

11. We have heard learned counsel for the parties and have perused the material on record.

SUBMISSIONS ON BEHALF OF THE APPELLANT

12. Learned counsel for the appellant submitted:

(i) It is an admitted position that the first respondent was engaged for a period of one year or till regular selection is made, whichever is earlier. The order of engagement also specified that it was purely temporary in nature. In such

circumstances, as the order of disengagement was non stigmatic, there was no violation of the principles of nature justice.

(ii) Assuming that pursuant to an order of the Tribunal, passed in a separate proceeding, two similarly situated persons were reinstated, the same could not have been a ground to allow the writ petition of the first respondent, particularly, when the order of the Tribunal suffered from no illegality/perversity.

(iii) Once the findings of the Tribunal that appointment of the first respondent was without following any procedure known to law remained undisturbed, and no material was placed by the first respondent to satisfy the conscience of the Court that he was appointed by following the prescribed recruitment procedure, there was no justification for the High Court to interfere.

(iv) Even if it is assumed that dis-engagement prior to expiry of the term was illegal, the

appropriate relief would have been to award compensation as awarded by the Tribunal.

SUBMISSIONS ON BEHALF OF THE FIRST RESPONDENT

13. Per contra, the learned counsel for the first respondent submitted:

(i) The disengagement was without assigning any reason and as such was arbitrary. Moreover, it was in violation of the principles of natural justice.

(ii) The stand taken by the appellant-State that due to less work, the services of the first respondent were dispensed with has no basis, in as much as similarly situated persons, whose services were dispensed with in a similar manner, were given the benefit of reinstatement.

(iii) State being the employer cannot discriminate between similarly situated employees. Hence, the High Court was justified in directing reinstatement of the first respondent.

ANALYSIS

14. We have considered the rival submissions and have perused the materials on record. At the outset, we may observe that there is no dispute as regards the engagement of the first respondent being purely temporary to help in operation of computer system made available to the College under UGC Development Grant and that too for a fixed term of one year or till regular selection is made, whichever was earlier. Further, there is no material to demonstrate that the first respondent was engaged/ appointed against a pre-existing or freshly created substantive vacancy and that his engagement/ appointment was made by following a procedure prescribed by statutory rules or executive instructions.

15. In **Secretary, State of Karnataka and Ors. Vs. Umadevi and Ors.,**[6] this Court had cautioned Constitutional Courts against issuance of directions for regularization/absorption or continuance of temporary, contractual, casual, daily-wage or ad hoc employees

[6] (2006) 4 SCC 1

unless the recruitment itself was made regularly and in terms of the constitutional scheme.

16. Importantly, in this case, the Tribunal had returned a finding that there was nothing on record to demonstrate that appointment was made by following any known procedure for appointment to a public post.

17. Admittedly, the engagement of the first respondent was for a fixed term for providing help in running computer system made available under UGC Development Grant. Further, the stand of the appellant before the Tribunal was that for shortage of work available, such persons were disengaged. In these circumstances, even if it is assumed that in absence of any allegation of misconduct, they ought not to have been disengaged prior to completion of their term, direction to reinstate / re-engage them, particularly after the term period was over, was not justified. In our view, therefore, the Tribunal was justified in only granting compensation to the first respondent for the remaining period of his term.

18. The High Court, however, granted relief of reinstatement/re-engagement to the first respondent because in its view the State had reinstated similarly disengaged persons pursuant to Tribunal's orders passed in separate proceedings instituted by such of those persons. This, in our view, was not legally correct because the High Court ought to have examined Tribunal's order *qua* first respondent on its own merit, particularly when the High Court was not bound by Tribunal's order. Besides that, the State cannot be forced to suffer an order which is not sound in law.

19. In **State of Odisha v. Anup Kumar Senapati**[7], after noticing a series of decisions, a three-Judge Bench of this Court rejected an argument that petitioners must get the benefit of parity even if they are not otherwise entitled to the relief. It was held:

> "In our opinion, there is no concept of negative equality under Article 14 of the Constitution. In case 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."

[7] (2019) 19 SCC 626

20. In **State of U.P. & Ors. v. Rajkumar Sharma & Ors.**[8], this Court held that even if in some cases appointments have been made by mistake, or wrongly, that does not confer any right on another person. It was also held that Article 14 of the Constitution does not envisage negative equality, and if the State committed the mistake, it cannot be forced to perpetuate the same mistake.

21. In the light of the discussion above, we are of the view that the direction of the High Court to reinstate / re-engage the first respondent, particularly after lapse of the term of his engagement, is not legally sustainable and, therefore, it deserves to be set aside.

22. The question which now arises is as to what relief the first respondent be provided at this stage. Admittedly, the direction of the High Court to reinstate/ re-engage was not implemented on account of stay on contempt proceedings, therefore equities have not been created in

[8] (2006) 3 SCC 330

favour of the first respondent by dint of length of his continuation in service. In such circumstances, the first respondent can be compensated with monetary compensation. In ordinary circumstances, the relief of compensation as was awarded by the Tribunal would have been sufficient. But here the State is held to have treated similarly situated persons differently which has resulted in unwarranted expectation and prolonged litigation. No doubt, an attempt is there on part of the State to distinguish the case of the first respondent with those in whose favour Tribunal's order was there, but details of those distinguishing features have not been brought to our notice during the course of hearing. Under these circumstances, we deem it appropriate to award a lump sum compensation of Rs. 5 lacs to the first respondent as full and final settlement of all claims against the appellant.

23. Accordingly, the appeal is allowed. Order of the High Court is set aside. The appellant shall, within three months from today, pay Rs.5 lacs to the first respondent.

The said amount shall be full and final settlement of all claims of the first respondent *qua* the appellant.

24. Pending application(s), if any, stand(s) disposed of.

.....**J.**
(Pamidighantam Sri Narasimha)

.....**J.**
(Manoj Misra)

New Delhi;
December 10, 2024