

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.8092 OF 2016

(An application under Articles 226 and 227 of the Constitution of India)

Partha Sarathi Dash

... Petitioner

-versus-

State of Odisha and others

... Opposite Parties

Advocates appeared in the case through hybrid mode:

For Petitioner

: Mr.P.K.Mishra,
Advocate

-versus-

सत्यमेव जयते

For Opposite Parties

: Mr.P.K.Panda,
Addl. Standing Counsel
(S and M.E. Department)

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

21.3.2023.

Sashikanta Mishra, J. The Petitioner, in the present Writ Petition is aggrieved by non-payment of his salary for the period from 27th October, 2010 to 31st October, 2015.

2. Bereft of unnecessary details, the facts of the case are that the Petitioner was appointed as an Asst. Teacher on 31st July, 1984 in Labanya Devi Ucha Vidyapitha, Santara in the district of Jajpur. At that time he was untrained, but he acquired B.Ed. qualification on 28th May, 1990. As per the prevalent yardstick, four trained graduate teachers were required to impart education out of whom, two were to be Arts graduates and two, Science graduates. The Petitioner being a trained Arts graduate was appointed in trained graduate post by the Managing Committee. The School became eligible to receive grant-in-aid w.e.f. 1st June, 1994. Because of termination of the service of a co-employee namely, Prafulla Kumar Nayak w.e.f. 3rd November, 1992, the post held by him was held to be not eligible to receive grant-in-aid. Though the said Prafulla Kumar Nayak challenged his order of

termination before this Court (O.J.C. No.8262/1996), such order was held to be valid. There being no further challenge, the same attained finality. In spite of the same, the Petitioner's claim for sanction of grant-in-aid in his favour was not considered on the ground that the same is relatable to the case of Prafulla Kumar Nayak. Since the case of Prafulla Kumar Nayak ultimately attained finality, but the case of the Petitioner was not considered for sanction of grant-in-aid he approached this Court in OJC No.99/1999, which was disposed of on 24th January, 1997 by the following order;

xxx xxxx xxxx xxxx xxxx xxx

“O.J.C. No.99 of 1997 by Partha Sarathi Das is disposed of by quashing Item No.12 of Annexure-3 thereof and we direct the authority to consider afresh the case of Partha Sarathi Das on merit, whether he is entitled to obtain grant-in-aid, within a period of three months from communication of this order. We however, make it clear that inter-se seniority among the teachers of school will depend on the result of the enquiry against Prafulla Kumar Nayak. If it is found that appointment of Partha Sarathi Das has nothing to do with the enquiry against Prafulla Kumar Nayak, grant-in-aid will

be released. In case it is found that the enquiry is co-related to his appointment, then Paratha Sarthi's case would be considered on the basis of the result thereof."

xxx xxx xxx xxx xxx xxx xxx xxx xxx.

3. However, no action was taken in the matter for which the Petitioner filed W.P.(c) No.13458/2009 which was disposed of on 10.11.2009 by directing the authorities to dispose of the Petitioner's representation within three weeks. Since, nothing was done, he filed CONTC Nos.657/2010 and 996/2010. During pendency of the CONTC No.996/2010, the Opposite Party No.1 by order dated 24th September, 2010 (Annexure-2), held that the appointment of the Petitioner was against a non-sanctioned post beyond the yardstick during 1994 without following rules and in the mean time the post of TGT Arts had been abolished. The Petitioner therefore, approached this Court yet again in W.P.(c) No.19323/2010. By a detailed judgment passed on 11th April, 2014, this Court, inter alia, held as follows;

xxx xxx xxx xxx
"After perusing the records available, I find

that it is the admitted case of the parties that the petitioner was appointed as Assistant Teacher on 31.7.1984 when he was untrained, but he acquired the B.Ed. qualification on 28.5.1990. As per the yardstick prescribed by the Government of Orissa in Education and Youth Services Department dated 8.7.1981, four Trained Graduate Teachers are required to impart education. Out of the four Trained Graduate teachers, two must be Trained Arts Graduate and two others must be Trained Science Graduate. Admittedly, the petitioner being a Trained Arts Graduate, he was appointed against a Trained Graduate post by the Managing Committee of the School. While he was so continuing, the school in question became eligible to receive grant-in-aid with effect from 1.6.1994. In the meantime the Services of one Prafulla Kumar Nayak, who was continuing as Trained Graduate teacher, were terminated with effect from 3.11.1992. Therefore, by the time the school in question was eligible to receive grant-in-aid, the post held by Prafulla Kumar Nayak was not available to be considered for release of grant-in-aid against a Trained Graduate post. In the order passed by this Court while disposing OJC No. 8262 of 1996 filed by Prafulla Kumar Nayak the Managing Committee was directed to hold a fresh enquiry in terms of the order of the Director, Secondary Education as per Annexure-6 to the said writ 7 application. In compliance to the said order, the Managing Committee conducted the enquiry and confirmed the order of termination of Prafulla Kumar Nayak. Thereafter, the Managing Committee of the School passed a

resolution on 22.10.1998 for approval of the termination of Prafulla Kumar Nayak. Against the said order, Prafulla Kumar Nayak did not take any steps. Therefore, there was no impediment on the part of the authorities to approve the appointment of the petitioner as the steps taken against Prafulla Kumar Nayak has reached finality and more so, under clause 12 of the approval of the staff position of the school dated 10.11.1995, it is stated that the approval of appointment of Sri Partha Sarathi Das, petitioner herein, is not taken into consideration due to nonfinalization of the case of Prafulla Kumar Nayak pending in the Directorate. But in the meantime, the case of Prafulla Kumar Nayak has reached its finality. In that view of the matter, the authorities should have taken steps for approval of the appointment of the petitioner against Trained Graduate post. Instead of doing so, the authorities kept silent over the matter. The petitioner again approached this Court by filing contempt application and when the contempt application is pending for consideration, the impugned order has been passed by opposite party no.1 on the ground that the petitioner has been appointed as surplus staff against the Trained Graduate (Arts) post, which has been abolished. The reasons for abolition has not been indicated in the impugned order, rather the impugned order has been passed in haste just to wriggle out of the rigor of the contempt proceeding initiated against the authorities and to deprive the petitioner to get his legitimate claim admissible to him. If it is the case of the State-opposite parties that Prafulla Kumar Nayak 8 has been appointed against a Trained Graduate post

and his termination is valid, even after enquiry in compliance to the direction given by this Court, the said termination has been confirmed basing upon which the authorities have given approval in conformity with the provisions contained in the Orissa Education Act, there was no other impediment on the part of the authorities to approve the appointment of the petitioner against the post pursuant to the order dated 24.10.1997 passed by this Court in OJC No.99 of 1999. More so, the direction given by this Court to consider the case afresh on merits as to whether he is entitled to obtain grant-in-aid has not been combined with save and except stating in the impugned order dated 24.09.2010 that the appointment of the petitioner was against a non-sanctioned post beyond the standard yardstick during 1994 without following rules, and in the meantime the post of Trained Graduate (Arts) post of the school has been abolished, and therefore, the case of the petitioner is considered and rejected. This observation of the opposite party no.1 is absolutely baseless inasmuch as the opposite party no.1 has not applied his mind in proper perspective while considering the approval of the case of the petitioner and any subsequent action taken is contrary to the orders passed by this Court earlier because, the petitioner approached this Court by filing contempt application as he was deprived of his legitimate claim by rejection of his representation on frivolous grounds.

7. For the reasons as aforesaid, the impugned order dated 24.9.2010 passed by opposite party no.1 under Annexure-14 is hereby quashed. The petitioner be

treated as an approved staff of Labani Devi Ucha Vidyapitha as against the vacancy caused due to termination of services of Prafulla Kumar 9 Nayak and he be granted all the consequential benefits as due and admissible to him in accordance with the provisions of law within a period of three months hence. No cost.”

4. The aforesaid judgment was challenged in W.A. No.235/2015, but the same was dismissed on the ground of delay by order dated 10th November, 2015. Thus, the judgment passed by the co-ordinate bench in W.P.(c) No.19323/2010 has attained finality. Pursuant to such judgment, the Director vide order 17th February, 2016 held that the Petitioner is treated as staff of the School as against the vacancy caused due to termination of Prafulla Kumar Nayak and his appointment is approved w.e.f. 1st June, 1994 in the trained scale of pay of Rs.1400-2600/- and D.A. as admissible from time to time and to grant all consequential benefits as due and admissible in accordance with the provisions of law. Basing on such order, the Headmaster of the School by letter dated 18th February, 2016 (enclosed as Annexure-5)

informed that the Petitioner had not attended the School from 27th October, 2010 to 31st October, 2015 without any intimation and therefore, submitted his bill statement only for the period from 1st June, 1994 to 26th October, 2010. Basing on such information of the Headmaster, the District Education Officer, Jajpur by his letter dated 27th February, 2016 sought information from the Director, Secondary Education, as to whether the GIA shall be released in favour of the petitioner from 27th October, 2010 to 31st October, 2015. Being aggrieved, the Petitioner has approached this Court with the following prayer;

“It is therefore most humbly prayed that this Hon’ble Court may graciously be pleased to issue a writ/writs in the nature of a writ of mandamus commanding the opposite parties to pay the salaries of the petitioner for the period 27.10.2010 to 31.10.2025 within other consequential benefits along with 12% interest.”

5. Counter affidavit has been filed by the District Education Officer (Opposite Party No.3) reiterating the undisputed facts and by specifically stating that the petitioner was absent from duty from 27th October,

2010 till his superannuation w.e.f. 31st October, 2015 as per the information submitted by the Headmaster. As such, the dues for the period from 1st June, 1994 to 26th October, 2010 amounting to Rs.2062758/- was paid to him by cheque.

6. Heard Mr. P.K.Mishra, learned counsel appearing for the Petitioner and Mr.P.K.Panda, learned Addl. Standing Counsel for the School and Mass Education Department.

7. It is submitted by Mr. P.K.Mishra that the action of the authorities in depriving the Petitioner from the benefits of grant-in-aid at the relevant time by unnecessarily linking his case with that of the terminated employee namely, P.K.Nayak has been disapproved by this Court in its judgment passed in W.P.(c) No.19323/2010. Further, this Court has also disapproved the action of the authorities in taking the plea of abolition of the post. Further, it is the specific case of the Petitioner that he never remained away from work on his own volition but was prevented to

discharge his duties by the School authorities and hence, he cannot be deprived of his legitimate due.

8. Per contra, Mr. P.K.Panda submits that the Petitioner having admittedly not rendered any service to the Institution, cannot be paid any remuneration on the principle of no work no pay.

9. This Court finds that in Paragraph-16 of the Writ Petition, the Petitioner has stated as under;

“That it is respectfully submitted that the allegation of the O.P.No.4 that the petitioner had not attended the School is false and a product of afterthought only in order to harass the petitioner as the petitioner did not agree to fulfil his illegal demand. Facts remain that the O.P.No.4 did not allow the petitioner to sign his attendance Registrar after issuance of order dated 24.9.2010 despite the order dated 9.3.2011 passed by this Hon’ble Court that the Petitioner’s service shall not be terminated. It is extremely important to note here that since the petitioner was not allowed to perform his duty by the O.P.No.4 despite the Order dtd.9.3.2011 of this Hon’ble Court, the Petitioner is entitled for the benefits as he was prevented by the O.P.No.4 unauthorisedly. Be that as it may in view of the settled position of law and as per order of this Hon’ble Court dtd.11.4.2014 and under Annexures-4 and 6 the

petitioner is entitled to all the arrear dues till his retirement.”

10. This has not been answered much less rebutted in any manner by the Opposite Party No.3 in its counter. The Headmaster of the School (Opposite Party No.4) has not filed any counter at all. This Court by order dated 9th March, 2011 passed in W.P.(c) No.19323/2010 had specifically directed that the Petitioner's service shall not be terminated. There is otherwise nothing on record to show that the Petitioner's services were terminated. On the other hand, from the letter dated 18th February, 2016 (Annexure-5) of the Headmaster, it has been stated as follows;

“In this connection it is to inform you that Sri Partha Sarathi Dash has not attended this school from 27.10.2010 to 31.10.2015 without any intimation. As he has filed court case challenging the rejection order, no action has been taken to recall him to resume duty. As desired I submit herewith bill statement for the period from 1.6.1994 to 26.10.2010”

11. This by itself shows that the Petitioner was never terminated from service nor was allowed to work. The

plea of abolition of the post or of treating the Petitioner as a surplus staff has not found favour with this Court in the earlier Writ Petition. Law is well settled that where an employee is willing to work but is prevented by the employer to do so unlawfully, he cannot be blamed much less denied his legitimate benefits such as salary etc. by invoking the principle of no work no pay. Law is well settled that the principle of 'no work no pay' is not absolute as was held by the Apex Court in the case of **Commissioner, Karnataka Housing Board vrs. C. Muddaiah**; reported in (2007) 7 SCC 689 and also in **Union Territory of Dadra & Nagar Haveli V. Gulabhia M. Lad**; reported in (2010) 5 SCC 775. Thus, there is no way by which the Petitioner can be deprived of his legitimate dues for the period during which he was wrongfully refused employment.

12. For the foregoing reasons therefore, the Writ Petition is allowed. The Opposite Party-authorities are directed to release all admissible dues in favour of the

Petitioner for the period from 27th October, 2010 to 31st October, 2015 within a period of one month.

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Sashikanta Mishra,
Judge

Ashok Kumar Behera





