

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 6897-6900 OF 2008

State of Orissa & Ors.

... Appellants

Versus

Saswati Swain & Anr.

... Respondents

O R D E R

Heard Mr. Mishra learned counsel for the appellants and Mr. Bharat Sangal learned counsel for the respondents.

Assailing the impugned order dated 29.02.08 passed by the High Court of Orissa at Cuttack, Mr. Mishra learned counsel for the appellants has contended that such an order could not have been passed in a Miscellaneous Case No. 836 in W.P. (C) No. 8637 of 2004. Learned counsel has drawn out attention to the initial order passed in the writ petition. The relevant part of the order reads as follows:

"The grievance being simple, I depose of the writ application directing the petitioner to file a representation before the Inspector of Schools, opposite party No. 3 highlighting all her grievances. If such a representation is filed, opposite party No. 3 is directed to scrutinize the same. On scrutiny, if it is found that any of the amount is payable to the petitioner, pass necessary orders for disbursement of the same in consonance with law. It is further directed that if the petitioner is, in fact, discharging her duties regularly and she is otherwise legally entitled to receive, the authorities shall also take steps for disbursement of the current salary. The entire exercise shall be completed within a period of three months from the date of filing of the representation."

We have been apprised at the bar that after the aforesaid order came to be passed, the concerned authority of the State Government enter into intra-departmental communications but no order was passed with the time stipulated by the High Court. The said inaction on the part of the competent authority could have made the concerned officer liable for contempt, if any, but definitely the affected parties could not have filed the Miscellaneous Case and the High Court, in our view, should not have adverted to number of facets and pass an order. We have no iota of doubt in our mind that adoption of such a discursive method to issue directions in a Miscellaneous Case in a disposed of writ petition is not permissible.

Presently we think the best course is to set aside the order passed in the Miscellaneous Case No.836/2008 and direct the Registry of the High Court to register the same as a separate writ petition and request the High Court to deal with the same in accordance with law. Liberty is granted to the parties to incorporate additional pleadings by way of amendment to the petition, file counter affidavit and the affidavit in rejoinder. Needless to emphasise, all the issues pertaining to facts and law are kept open.

At this juncture, we are obliged to state that when the matter was listed on 23.07.2014, the following order was passed:

"Heard Mr. Kaartiar, learned senior counsel, Mr. Mishra, learned counsel for the appellant and Mr. Bharat Sangal, learned counsel for the respondents in part.

Having heard the appellants at some length, as advised at present, we are inclined to direct the State of Orissa to pay the salary to the respondent-teachers in praesenti, commencing 07.07.2014.

Needless to say that the aforesaid payment shall be without any prejudice to the contentions raised in these appeals.

Let the matters be listed for further hearing on 23.09.2014."

Mr. Mishra submitted that pursuant to the aforesaid order, the teachers are being paid the current salary. Mr. Sangal States that he does not have proper instructions in the matter. As we are finally disposing of the matter, we only direct that the State shall pay the current salary without prejudice to the contentions to be raised before the High Court and, of course, it should be subject to the outcome of the writ petition.

The civil appeals are allowed to the extent indicated above without any order as to costs.

.....J.
[Dipak Misra]

.....J.
[Vikramajit Sen]

New Delhi;
September 24, 2014.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 4071-4073 OF 2013

State of Orissa & Ors. Etc.Etc. .. Appellant(s)

Versus

Smt. Sove Das Etc. Etc. .. Respondent(s)

O R D E R

The respondents, three in number, were appointed as Assistant Teachers in various subjects in Police High School Baripada. Initially, the letters of appointment were issued by the Committee of the High School and thereafter the Inspector of School vide order dated 06.09.1995 passed the following order:

"No.147/10/ In pursuance of Directorate letter No.22345/17.7.95, the appointment of following persons made by the Managing Committee of the Police High School, Baripada in proceeding No.22/18.2.92 against the section posts noted each is hereby copy approved with effect from 7.6.1994 i.e. from the date of approval of post by Government, as per G.O.No.12631/29.4.95.

The person concerned will draw the salary in the scale noted against each from the date of approval.

The continuity of service of teachers concerned are subject to continuity section against which they are working.

Date of the teacher appointed against section of qualification	Section post against which approved	Date of approval	Scale allowed
1	2	3	4
1. Sova Das B.Sc.. B.Ed.	VII I-B	7.6 .94	1400-2600/-
2. Meena Kur Patra B.A. B.Ed.	IX- B	7.6 .94	1400-2600
3. Santanu Hota B.A. B.Ed.	X- B	7.6 .94	1400-2600/-

**Sd/- N. Mohanty,
INSPECTOR OF SCHOOLS
MAYURBHANJ**

On the basis of the said approval the respondents received their salary and everything was smoothly functional. As the facts would unfurl, the Department of School and Mass Education vide letter dated 17.03.2007 intimated the Inspector of Schools for scrutiny of the pay bills. The said letter constrained the Inspector of Schools not to accept the pay bills submitted by the Headmaster of the Schools and eventually the Inspector of Schools by letter dated 20,11,2007 intimated the Secretary of the Managing Committee of the said School that approval of appointment of the teachers as Additional Section Teachers accorded on 6.11.95 stood revoked.

The said order was assailed before the High Court in three writ petitions © No.9205/2007, 9206/2007 and 9207/2007. The High Court by a common order took note of the chronology of events and came to hold that the teachers were appointed in three different subjects by the Managing Committee; that the genuineness of the approval order passed by the Inspector was not doubted; that they have continuously received the benefit of salary after the posts were sanctioned and approved; that the plea relating to opening of sections without permission, did not commend acceptance inasmuch as it was within the knowledge of the Inspector of Schools, Circle Cuttack that the Managing Committee of the Police High School Baripada had Additional Sections and appointed three teacher as Assistant Teachers to impart education on the said posts; that recommendation was made by the Inspector for their approval and eventually the same was approved by the concerned Director of Education; that the teachers, the respondents herein came under the direct payment scheme and at the time of appointment no objection was raised from any quarters; that there was no justification for revocation of the letter of approval after the expiry of long period; and that the stand put forth by the State Government that they had not verified at the relevant time deserved to be repelled. Being of this view, the High Court set aside the order dated 20.11.07 whereby the order of approval was revoked and the salary was directed to be paid.

Mr. Mishra learned counsel for the appellant submitted that initial sanction and the approval are absolutely vulnerable and, therefore, the order passed by the Government cannot be found fault with. It is urged by him that the candidates should have been appointed under the specific rules with the approval of the Director and not the procedure adopted by the Management. It is submitted that the order passed by the High Court deserves to be axed as the High Court has failed to appreciate the controversy in proper prospective.

Mr. Bharat Sangal appearing for the respondents has drawn inspiration from the counter affidavit filed by the State Government in its earlier writ petition wherein the State had admitted to the effect that the respondent teachers were continuing as Additional School Teachers in the concerned school and their services had been approved and they had got the benefit of salary. He has drawn our attention to the assertion made by the competent authority that from the date of approval, they have been paid the salary and the Government is not obliged to pay for the period prior to the institution becoming an aided one.

Having heard the learned counsel for the parties, we are of the considered opinion that when the Inspector as the officer in the field had recommended for sanction and approval of the posts in question and the Director, in his turn, had

sanctioned and approved and the salary had been paid for more than 11 years there was no justification to put the clock back. The respondent teachers who were appointed by the Managing Committee of the school in 1992 had gained experience of 15 years at the time of revocation of the order of approval. It is not a case where an error has occurred in granting approval and is immediately or within a reasonable period is rectified. When we say reasonable period it means a logically acceptable reasonable period where a mistake get revealed. It is not a case where excess amount is paid and it is found out at the time of audit. It is really a conferment of status on the teachers and certain enquiries must have been carried out by the concerned Inspector. The Inspector had recommended and the Director accepted. When such hierarchy of officers are involved and the teachers who had been working from 1992 on a monthly fixed salary of Rs.200/-, till their appointments were approved the officers of the State cannot pave the path of tersgivrnsation or take a somersault as per their whim and fancy. Such an action according to us, is not to be countenanced. Such reflection of attitude is not appreciable on the part of a welfare of a State. Therefore, the reasons given by the High Court appeal to us and we treat

them as sound.

Consequently, the appeals, being devoid of merit, are dismissed without any order as to costs.

.....J.
[DIPAK MISRA]

.....J.
[VIKRAMAJIT SEN]

NEW DELHI,
SEPTEMBER 24, 2014.

ITEM NO.102

COURT NO.8

SECTION XIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 6897-6900/2008

STATE OF ORISSA & ORS.

Appellant(s)

VERSUS

SASWATI SWAIN & ANR.

Respondent(s)

(with appln.for permission to file lengthy list of dates)

WITH

C.A. No. 4071-4073/2013

(With Office Report)

Date : 24/09/2014 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA

HON'BLE MR. JUSTICE VIKRAMAJIT SEN

For Appellant(s)

Mr. Sibho Sankar Mishra,Adv.

For Respondent(s)

Mr. Ashok Kumar Gupta I,Adv.

Mr. Bharat Sangal,Adv.

Ms. Sanjana Lama, Adv.

Ms. I. Abenla Aier, Adv.

Ms. Daggur Malhotra, Adv.

Mr. Kedar Nath Tripathy,Adv.

UPON hearing the counsel the Court made the following

O R D E R

Civil Appeal No(s). 6897-6900/2008

The appeals are allowed in terms of the signed order.

C.A. No. 4071-4073/2013

The appeals are dismissed in terms of the signed order.

(NAVEN KUMAR)
COURT MASTER

(RENUKA SADANA)
COURT MASTER

(Signed orders are placed on the file)