

ITEM NO.54

COURT NO.6

SECTION XIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).28003-28004/2010

(From the judgement and order dated 05/03/1999 in OJC No.5157/1994 dated 07/05/2010 in CR No.37/1999 in OJC No.5157/1994 of The HIGH COURT OF ORISSA AT CUTTACK)

AKSHAYA KUMAR MOHAPATRA Petitioner(s)

VERSUS

STATE OF ORISSA & ORS. Respondent(s)

WITH SLP(C) NO. 28005 of 2010
(With office report)

Date: 12/12/2011 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

For Petitioner(s) Mrs. Chandan Ramamurthi, Adv.
Mr. Gautam K. Laha, Adv.
Mr. Yash Pal Dhingra, Adv. (Not present)

For Respondent(s) Mr. Radha Shyam Jena, Adv.

Mr. Manoranjan Mishra, Adv.
Mr. Anurag Pandey, Adv. (Not present)

Mr. Karunakar Mahalik, Adv.
Mr. Rana Ranjit Singh, Adv. (Not present)

UPON hearing counsel the Court made the following
O R D E R

These petitions are directed against orders dated 5.3.1999 and 07.05.2010 passed by the Division Bench of the Orissa High Court in O.J.C. No.5157 of 1994, Civil Review
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No.37 of 1999 and O.J.C. No.10725 of 2001, respectively.

The petitioner was appointed as temporary Lecturer in Philosophy in D.R. Nayapalli College in September, 1984. His service was terminated by the management of the College vide order dated 15.5.1993. The appeal filed by the petitioner was dismissed by Director, Higher Education, Orissa (for short, 'the Director') vide his order dated

22.3.1994, paragraphs 6 to 10 of which are extracted below:

"6. The G.B. of the College in its counter has stated that the petitioner was put in-charge of the Vice-Principal from 9.9.91 to 3.9.92 during which period he committed grave irregularities even to the extent of misappropriation of College funds.

7. In support of this charge, the G.B. has produced evidence to the effect that (a) the petitioner had collected a sum of Rs 5750/- from some students and did not deposit the amount in the college cash. When asked about it, the petitioner gave an undertaking to pay back the same to the College.

8. Further, the petitioner had collected a sum of Rs.1190/- from seven private candidates for allowing them to appear at the annual examination and here again he did not hand over the money to the College fund. When detected and asked about it, he again gave an undertaking to refund the amount to the College.

9. He had collected Rs 2000/- from some outsiders to allow them to appear at the exam from the college even through they were not enrolled as students of the college.

10. The petitioner in his written statement has admitted the charge made under Sl.7 above, in a round about way, in cross-exam on this point, he could not adduce satisfactory reply to deny the charges."

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The petitioner challenged orders dated 15.5.1993 and

23.3.1994 in OJC No. 5157/1994 mainly on the ground that

before terminating his service, the management of the College had not complied with the rules of natural justice inasmuch as no inquiry was held in respect of the allegations levelled against him and he was not given opportunity of hearing.

The Division Bench of the High Court dismissed the writ petition by observing that it was a case of termination simpliciter. The Division Bench also referred to the order of the Director and observed:

"28. It is to be noted that before the Director stand of the petitioner was that he was being victimized. In the counter affidavit filed to rebut the contentions raised, the authorities highlighted the conduct of the petitioner like misappropriation of funds, deficiency in teaching and lapses in discharge

of duties. The petitioner had never questioned innocuousness of the order. On the contrary he tried to highlight certain materials which according to him showed oblique motive of the authorities to harass him. By way of reply the materials were brought on record by the college authorities to assert that the stand of the petitioner about mala fide, oblique motive is without any basis. The Director has found that the petitioner has admitted to have collected a sum of Rs.5750/- from the students and not to have deposited the same in the account of the college and when asked about it gave an undertaking to pay back the same. Similarly he had collected a sum of Rs. 1190/- from seven private candidates for allowing them to appear at the annual examination and he again did not pay the money to the college fund. When he was detected and asked about it, he gave an undertaking to refund the amount to the college. The allegation was victimization. Challenge was that the termination was not preceded by any inquiry, and without assigning any reason. The said stand is factually and

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contextually different from what is pleaded presently, that is, the background for termination.

Stand taken before the Director during the course of hearing of the appeal as evident from the memorandum of appeal is significant. It has been stated that the Governing Body was not functioning, and was illegally constituted. It is evident from the prayer in the memorandum of appeal which reads as follows:

"Hence I pray that you will be good hand enough to grant my application by reinstating me in my service and by giving a perfect G.B. by which I as well as the whole staff will be grateful to you."

Considering these aspects, the Director held that the order of termination was in order."

The review petition filed by the petitioner was dismissed by the High Court vide order dated 5.3.1999 by observing that the petitioner has failed to make out a case for exercise of power under Order 47 Rule 1 C.P.C.

In the meanwhile, the petitioner made a representation to Director for his reinstatement. The officer, who then held the post of the Director, ignored the unequivocal verdict of the Division Bench of the High Court that the termination of the petitioner's service did not suffer from any legal infirmity and ordered his

reinstatement by observing that the action taken by the management of the collage to terminate the petitioner's service amounted to dismissal and the same was totally disproportionate to the allegations levelled against him.

Smt. Jyotiprabha Nayak, who had been appointed as

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Lecturer in Philosophy on the post vacated by the petitioner, challenged the second order of the Director in

OJC No.10725/2001.

The Division Bench of the High Court

allowed the writ petition by observing that the Director did not have the jurisdiction to entertain the review petition and order reinstatement of the petitioner in the teeth of the orders passed by the High Court.

We have heard learned counsel for the parties at length and perused the record including order dated 23.3.1994 passed by the Director, Higher Education, the relevant portions of which have been extracted herein above.

In our view the impugned orders do not call for interference under Article 136 of the Constitution. A reading of order dated 22.03.1994 passed by the Director shows that the petitioner had admitted the allegations of financial irregularities. Therefore, it is not possible to find any fault with the orders passed by the High Court and direct the management of the College to reinstate him.

We also do not find any valid ground to interfere with order dated 7.5.2010 passed by the High Court in OJC No.10725/2001 because the second order passed by the Director was illegal per se.

With the above observations, the special leave petitions are dismissed.

(Parveen Kr. Chawla)
Court Master

(Phoolan Wati Arora)
Court Master