

Non-Reportable

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL No.8425 of 2018

(Arising out of Special Leave Petition (Civil) No.32405 of 2015)

Swapna Mohanty

.... Appellant

Versus

The State of Odisha & Ors.

....Respondent(s)

J U D G M E N T

L. NAGESWARA RAO, J.

Leave granted.

The controversy in this case pertains to the competing claim of the Appellant and Respondent No.4 to the 1st post of Lecturer, English in Indira Gandhi (Junior) Mahavidyalaya, Nimapara in Odisha. The decision by the State Education Tribunal, Odisha, in favour of the Appellant was reversed by the High Court. Hence, the Appeal.

(I)

1. The Appellant was appointed as a Lecturer in English against the 2nd post in the Indira Gandhi (Junior) Mahavidyalaya, Nimapara (hereinafter referred to as “the College”). On 24th November, 1991, the Appellant was elevated to the 1st post of Lecturer in English due to the resignation of Chaudhury Ramakanta Dash. Respondent No.4 was appointed against the 2nd post which was held by the Appellant prior to her being appointed to the 1st post of Lecturer. The services of the Appellant were terminated on 29th July, 2001 by the Special Officer of the College. Thereafter, Respondent No.4 was appointed to the 1st post of Lecturer in English on 14th October, 2001. On 3rd August, 2002, the Appellant filed an appeal challenging the order of termination of her service. The College was admitted to grant-in-aid *w.e.f.* 1st January, 2004. By a letter dated 7th July, 2005, the Appellant requested the Director, Higher Education to expedite the hearing of her Appeal dated 3rd August, 2002. The Director, Higher Education *vide*

order dated 21st February, 2006 allowed the appeal and set aside the order dated 29th July, 2001 by which the Appellant's services were terminated. The Appellant was reinstated as Lecturer in English in the 1st post on 28th February, 2006.

2. The Appellant approached the State Education Tribunal, Odisha by filing GIA Case No.120 of 2006 under Section 24-B of the Odisha Education Act, 1969 seeking a direction to the Government of Odisha and the Director, Higher Education to approve her appointment against the 1st post of Lecturer in English in the College and to release grant-in-aid *w.e.f.* 1st January, 2004. The State Education Tribunal by its judgment dated 3rd December, 2008 allowed GIA Case No.120 of 2006 by granting the relief prayed for. Aggrieved by the non-implementation of the directions issued by the State Education Tribunal, the Appellant filed a Writ Petition in the High Court of Odisha which was allowed by a judgment dated 25th November, 2009. The State Government was directed to implement the judgment of the State Education

Tribunal in GIA Case No. 120 of 2006 within a period of six months.

3. Respondent No.4 filed GIA Case No. 36 of 2010 in the State Education Tribunal seeking approval of his appointment in the 1st post of Lecturer in English in the College. During the pendency of the said appeal, the State Government approved the appointment of the Appellant in the 1st post of Lecturer in English by an order dated 13th January, 2011 and released the grant-in-aid in favour of the Appellant. It is relevant to note that the appeal filed by the State Government against the order dated 3rd December, 2008 of the State Education Tribunal was rejected by the High Court. The Tribunal dismissed GIA Case No. 36 of 2010 filed by Respondent No.4. Respondent No.4 challenged the judgment of the State Education Tribunal in the High Court. The High Court allowed the appeal filed by Respondent No.4. Respondent No.4 was declared to be entitled to receive the grant-in-aid against the 1st post of Lecturer in English.

(II)

4. While dismissing the GIA Case No.36 of 2010 filed by Respondent No.4, the State Education Tribunal held that the Appellant is admittedly senior to Respondent No.4.

It was further held that the Appellant was entitled for release of grant-in-aid in respect of the 1st post of Lecturer in English as a natural consequence of the order of termination of her services being set aside. The High Court reversed the order passed by the State Education Tribunal on the ground that the order passed in favour of the Appellant by the State Education Tribunal on 3rd December, 2008 was in violation of principles of natural justice and thus, void. The High Court held that Respondent No.4 ought to have been impleaded by the Appellant in the case filed by her before the Tribunal. Another ground which found favour with the High Court is that the Director, Higher Education had no jurisdiction to decide the appeal filed by the Appellant against the order of termination of her service.

(III)

5. The High Court proceeded on the basis that the appeal preferred by the Appellant to the Director,

Higher Education was filed on 7th July, 2005. The High Court found fault with the Appellant for filing an appeal after a delay of four years from the date of the order of termination of her service on 29th July, 2001. As the College was admitted to grant-in-aid on 20th February, 2004, the High Court held that Director, Higher Education did not have jurisdiction to entertain the appeal.

6. The counsel for the Appellant referred to the letter dated 7th July, 2005 addressed to the Director, Higher Education which was only a reminder with a request to dispose of the appeal that was filed earlier on 3rd August, 2002. To satisfy ourselves about the correctness of the claim of the Appellant, we directed the counsel appearing for the State of Odisha to produce the records pertaining to the Appeal. Mr. Sibor Sankar Mishra, learned counsel for the State of Odisha informed us that the Appeal dated 3rd August, 2002 is missing from the records. He submitted that the letter dated 7th July, 2005 is available which would indicate that an Appeal was indeed filed on 3rd August,

2002. If the High Court was aware of the Appeal being filed on 3rd August, 2002, it would not have concluded that there was a delay of four years in filing the Appeal and that the Director, Higher Education did not have jurisdiction to entertain the Appeal. The College was admitted to grant-in-aid on 20th February, 2004 *w.e.f.* 1st January, 2004 and undisputedly, the Director, Higher Education was the competent authority to entertain appeals till then. The State Education Tribunal gets jurisdiction to decide the appeals in respect of colleges only from the date on which they are admitted to *grant-in-aid*. The High Court concluded that the Director, Higher Education did not have jurisdiction to entertain the Appeal which was filed on 7th July, 2005 *i.e.* after the College was admitted to grant-in-aid which is factually incorrect. The Appeal was filed on 3rd August, 2002 itself when the Director, Higher Education was competent to entertain the Appeal. We have also examined the point pertaining to the competence of the Director, Higher Education to hear the Appeal after the College

was admitted to grant-in-aid. In other words, even if the Appeal could be entertained by the Director, Higher Education when it was filed on 3rd August, 2002, the point to be examined is whether the Director, Higher Education could have decided the Appeal after the College was admitted to grant-in-aid. The Appeal was allowed by the Director, Higher Education on 21st February, 2006 which was, admittedly, after the College came into the fold of grant-in-aid. We are of the opinion that the Director, Higher Education continued to have jurisdiction to decide the Appeal that was filed before him prior to the admission of the College to grant-in-aid as there is no provision in the Odisha Education Act providing for a change-over of proceedings to the Tribunal. In a similar fact situation, this Court in ***Commissioner of Income Tax, Orissa***

v. ***Dhadi Sahu***¹ held as follows:

“18. It may be stated at the outset that the general principle is that a law which brings about a change in the forum does not affect pending actions unless intention to the contrary is clearly shown. One of the modes by which such an intention is shown is by making a provision for change-over of proceedings, from the court or the tribunal where they are

¹ 1994 Supp (1) SCC 257

pending to the court or the tribunal which under the new law gets jurisdiction to try them.”

(IV)

7. The other point which was found in favour of Respondent No.4 by the High Court is that there is violation of principles of natural justice which resulted in the order dated 3rd December, 2008 in GIA Case No. 120 of 2006 being void. This is for the reason that the Appellant did not implead Respondent No.4 in the said case. The subject matter of GIA Case No.120 of 2006 filed by the Appellant was approval of her appointment against the 1st post of Lecturer in English in the College. There is no doubt about the order of termination of the services of the Appellant being set aside. The said order became final when the Appeal filed by the Government was rejected by the High Court. There is no dispute that the Appellant was holding the 1st post of Lecturer in English in the College on the date of termination of her services. It was only after the termination of the services of the Appellant, Respondent No.4 was appointed to the 1st post of

Lecturer in English in the resultant vacancy. The natural consequence of the order of termination being set aside is that the Appellant has to be appointed to the 1st post of Lecturer in English in the College. There is no doubt that only one post of Lecturer in English out of the two occupied by the Appellant and Respondent No.4 is admitted to grant-in-aid. The request of the Appellant was consequential to the order dated 21st February, 2006 by which she was directed to be reinstated in the 1st post of Lecturer in English. Respondent No.4 is not a necessary party either to proceedings pertaining to the termination of services of the Appellant or the consequential proceedings arising therefrom. A person whose presence before a forum may be necessary in order to enable it effectually and completely to adjudicate upon and settle all the questions involved in the dispute is a necessary party. A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made, but whose presence is necessary for

complete and final decision on the question involved in the proceedings. **[See:- Udit Narain Singh Malpaharia v. Additional Member Board of Revenue, Bihar & Anr.²]**

8. As GIA Case No. 120 of 2006 emanates from a dispute pertaining to the termination of services of the Appellant and the only dispute before the Tribunal being the grant of consequential benefits, we are of the considered opinion that Respondent No.4 was not a necessary party. We are aware of the fact that as a consequence of appointment of the Appellant in the 1st post of Lecturer in English, Respondent No.4 has to be relegated back to his original post *i.e.* 2nd post of English. But, as stated earlier, that is a natural consequence of the order of termination of the services of the Appellant being set aside.

9. The counsel appearing for Respondent No.4 has submitted that there was delay of more than a year in the filing of an Appeal against the order of termination dated 3rd August, 2002 and there was no application filed for condoning the said delay. He further

² AIR 1963 SC 786

contended that both the Appellant and Respondent No.4 did not have requisite qualifications to hold the post of Lecturer in English in the College at the time of their initial appointment. Respondent No.4 acquired the necessary qualifications prior to the Appellant and so, he should be treated as senior to the Appellant which would entitle him to be appointed in the 1st post of Lecturer in English. It is not necessary for us to adjudicate on the points which were not raised and considered by either the Tribunal or the High Court. The High Court is not right in finding the Appellant to have played fraud on the Court by filing an Appeal before the Director, Higher Education who did not have jurisdiction or by not impleading Respondent No.4 as a party before the Tribunal.

10. For the aforementioned reasons, the judgment of the High Court is set aside and the Appeal is allowed.

.....J.
[S.A. BOBDE]

.....J.
[L. NAGESWARA RAO]

**New Delhi,
August 21, 2018.**