

BANOLATA MOHAPATRA
v.
STATE OF ORISSA AND ORS.

MAY 11, 1999

[S. RAJENDRA BABU AND S.N. PHUKAN. JJ.]

Service Law—Seniority—Two persons appointed on the same date to the post of lecturer—Appellant improved her marks earlier to respondent and qualified for getting grant-in-aid—Two posts of lecturer sanctioned—deficiency in qualification of respondent condoned by the University and the Government before appointment to posts—Respondent given seniority over appellant—Held : Governing Body correctly fixed seniority of respondent over appellant after conducting an enquiry—State Government being final authority to grant sanction for appointment, cannot be questioned unless there is arbitrariness or illegality in the decision.

Appellant and Respondent No. 4 were appointed as lecturers on the same day. For being eligible for grant-in-aid it was necessary to obtain first class marks. Appellant improved her marks and became eligible. Two posts of lecturer were sanctioned. Disqualification of respondent was however condoned by the University and State Government. Appointment to the posts was made after condonation. Respondent was found to be senior to appellant by the Governing Body after an enquiry. This was challenged before the High Court which dismissed it. Hence this appeal.

Dismissing the appeal, the Court

HELD : 1. The High Court called for the relevant file and on perusing the record it was found that Minister of Education accepted the resolution of the Governing Body holding respondent No. 4 was senior to the appellant. The Court also noted that the enquiry report of the Director, which was available on record, also indicated the same position. It is found from the said report, that not only the appellant and respondent No. 4 were present at the time of enquiry but also the Dy. Director who submitted the earlier report. The Director after considering all aspects gave a clear finding that respondent No. 4 was senior to the appellant and this report of the Director has been accepted by the High Court. In view of the above report, the report of the Dy. Director has to be ignored, as he was subordinate officer to the Director and

A he was also present when Director conducted the enquiry. [460-B-C; E-F]

B 2. Till the deficiency was condoned the services of the parties were not approved by the State Government for the post of lecturer for grant-in-aid. The State Government is the final authority to accord sanction for giving grant-in-aid for the post of lecturer in the college in question; therefore the decision of the State Government is binding on the parties and also on the college unless it is arbitrary or contrary to any rule. In the instant case no fault could be found in the order of the Government. [460-H; 461-A]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3472 of 1998
Etc.

From the Judgment and Order dated 25.3.96 of the Orissa High Court in O.J.C. No. 1874 of 1996.

D M.N. Krishnamani, S.K. Patri, Rajiv Roy, P. Mullic and R.S. Jena for the Appellant.

S.K. Dholakia, P.H. Parekh and L.S. Chauhan for the Respondent.

E P.N. Misra, J.K. Das, S. Misra, R.M. Patnaik, A. Mohapatra, N.K. Sahoo, Ms. Sunita Sharma, Aruneshwar Gupta, Manoj K. Das and S.N. Rath for the State of Orissa.

F The Judgment of the Court was delivered by

G S.N. PHUKAN, J. Respondent No. 4 filed a writ petition before the High Court regarding her seniority vis-a-vis the seniority of the present appellant. The writ petition was allowed by judgment dated 01.03.1995 passed in O.J.C. No. 867 of 1990. Thereafter review petition no. 76/95 was filed which was dismissed by order dated 02.02.1996. One civil appeal has been filed before this Court against the above two orders. Another separate writ petition was filed by the appellant before the High Court which was registered as O.J.C. No. 1874 of 1996. By order dated 02.05.96 the said writ petition was dismissed. Against the said order of dismissal the another appeal has been filed. Both the appeals are being disposed of by this judgment.

To appreciate the contentions of the parties we may briefly state the facts of the case.

H The appellant and respondent No. 4 joined the post of lecturer in economics in the college namely Kamla Nehru Women's College, Bhubaneswar

on the same day i.e. 27.07.1979. The college became eligible to receive grant-in-aid from the Government in the year 1982-83 under relevant rules. As the appellant and respondent No. 4 were not qualified as they did not have the requisite percentage of marks in M.A., grant-in-aid for the post of lecturer in economics was not released. The appellant improved the marks and secured first class and, therefore, she was qualified to get grant-in-aid for the post. It may be stated that second post of lecturer in economics was also sanctioned by the Government in the year 1987. On 8.7.87 the University condoned the deficiency of qualification of respondent No.4 and the State Government did the same on 27.11.1986. The Governing Body of the College passed the resolution fixing the seniority between the appellant and respondent No.4 and treated respondent No.4 to be senior and an enquiry was also conducted by the Director of higher education who found respondent No. 4 to be senior. The Minister of Education of the Government accepted the resolution of the Governing Body and ordered respondent No.4 to be senior to the appellant vide order dated 19.01.89. As grant-in-aid was not released, respondent No. 4 approached the High Court by filing first writ petition namely O.J.C. No. 867 of 1990. The Division Bench of the High Court *inter alia* held that respondent No.4 must be appointed against the first post of lecturer in the College and thereafter she would be entitled to receive grant-in-aid. The direction was issued to the concerned authority to release the grant-in-aid.

Heard the learned counsel for the parties.

It may be stated that before this Court the appellant has filed number of documents which were not produced before the High Court and as such we ignore all these documents.

It has been urged that though both appellant and respondent No.4 joined on the same day but the appellant joined in forenoon and respondent No.4 in afternoon and further the letter of appointment to the appellant was sent earlier. We are of the opinion that these are not at all relevant for the purpose of examining the question of seniority.

The appellant placed reliance on a copy of the resolution of the Governing Body dated 15.12.1979 vide annexure-A to the petition. In the said resolution the name of the appellant had been shown against the first post in economics in the college and the name of respondent No. 4 against the second post. In the counter filed on behalf of the College namely respondent Nos. 3 and 4, a copy of the resolution has been annexed as Annexure-2 and from the said resolution we find that the appellant was shown against the

A second post and the respondent No. 4 against the first post of lecturer. As resolutions of the Governing Body are kept by the College and the above resolution has been duly produced by the college, it has to be accepted and not the copy of the resolution annexed by the appellant. We find from the judgment of the High Court in O.J.C No. 867/90 that the Court called for relevant file and on perusing the record it was found that Minister of Education accepted the resolution of the Governing Body holding that respondent No. 4 was senior to the appellant. The Court also noted that the enquiry report of the Director, which was available on record, also indicated the same position. The Court also perused the resolution of the Governing Body and came to the finding that Governing Body also decided the seniority as claimed by respondent No. 4. In view of the above finding of the High Court we are not at all inclined to accept the submission made on behalf of the appellant that as per resolution of the Governing Body appellant was shown senior to respondent No. 4.

D Reliance was placed on the report of the Dy. Director of Education in which appellant was shown senior to respondent No. 4. As recorded by the High Court the Director of the Education also examined this question as per direction of the State Government and after hearing the parties submitted a report which has been annexed as Annexure-I to the counter filed by respondent Nos. 3 and 4. We find from the said report that not only the appellant and respondent No. 4 were present at the time of enquiry but also the Dy. Director who submitted the earlier report. The Director after considering all aspects gave a clear finding that respondent No. 4 was senior to the appellant and this report of the Director had been accepted by the High Court. In view of the above report we have to ignore the report of the Dy. Director on which reliance was placed by the appellant, as he was subordinate officer to the Director and he was also present when Director conducted the enquiry.

G The next point urged is that as respondent No. 4 was not qualified she had no right to claim the benefit of grant-in-aid and further as the deficiency of the qualification was condoned by the University as well as the State Government subsequently she had no right to claim grant-in-aid under the first post. We find no force in the submission as till the deficiency was condoned the services of the parties were not approved by the State Government for the first post of lecturer for grant-in-aid.

H The State Government is a final authority to accord sanction for giving grant-in-aid for the post of lecturer in the college in question, therefore, the

decision of the State Government is binding on the parties and also on the college unless it is arbitrary or contrary to any rule. We do not find any fault in the order of the Government. Therefore, we hold that the High Court decided the question rightly and no interference is called for. However, the appellant may be entitled to get benefit for the second post provided she is otherwise qualified.

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In the result both the appeals are dismissed. Parties are to bear their own costs.

I.M.A.

Appeals dismissed.

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