

Banchhanidhi Rath

Vs

The State of Orissa and Others

Civil Appeal No. 127 of 1971

(K.S. Hegde, A.N. Grover, A.N. Ray JJ)

09.12.1971

JUDGMENT

RAY, J. -

1. This is an appeal by special leave against the judgment dated April 15, 1970 of the High Court of Orissa dismissing the writ petition of the appellant.
2. The appellant in the writ petition asked for a writ of mandamus for quashing the order dated May 19, 1969 passed by the Inspector of Schools, Cuttack Circle. The order stated that the date of birth of the appellant as recorded in service registers was January 1, 1908 and since the appellant exceeded the age of 58 years he was requested to hand over charge of his duties by May 24, 1969 to Madhusudan Das, the senior-most trained graduate assistant teacher of Sadhu Charan Bidhyapitha Nanpur, Cuttack.
3. The appellant's case was as follows. The appellant was appointed Head Master of Sadhu Charan Bidhyapitha in the year 1949. By a letter dated May 19, 1969 the appellant was retired from service. The Inspector of Schools and the other respondents, namely, the State of Orissa and the Director of Public Instruction had no authority to superannuate the appellant at the age of 58 years inasmuch as there was no privity of contract between the appellant and the respondents. It has been the uniform usage and implied term of office of all teachers in private schools in Orissa that irrespective of age limit teachers will be in service as long as they are physically fit and mentally alert.
4. In the year 1951 the Government of Orissa recognised Sadhu Charan Bidhyapitha as an institution in accordance with the terms of Education Code. During the years 1954 to 1957 the Government of Orissa gave grant-in-aid to the institution at the rate of Rs. 75 per month. In the month of January, 1958 the Government of Orissa addressed letters to Secretaries of private High Schools stating that the Government was contemplating to sanction full net deficit as grants-in-aid to a number of aided High Schools in the State. One of the condition for such grants-in-aid was that the Managing Committee of the Schools concerned by resolution of the Committee should ask the Government to take over the management and control of the schools. In the month of March, 1958 the Government of Orissa framed special Rules, for Government-managed full deficit aided High Schools.' The Special Rules inter alia were these. First, that every schools shall be under the control of the Inspector of Schools of the circle or the Inspectors of Schools as the case may be who will be responsible for the maintenance of the institution on behalf of the Government and who will exercise all the powers in respect of Government-managed institution. Second, a local Advisory Committee would be set up with the approval of the Director of Public Instruction for efficient management management of the institution. Third, the appointments would be made by the

Inspector or Inspectors of Schools as the case may be. Provisions were also made for transfer, leave and service conditions of the employees. In the month of September, 1959 the Director of Public Instruction wrote to Sadhu Charan Bidhyapitha enquiring whether the Managing Committee of the School agreed to transfer the management of the Schools and if the answers were in the affirmative the School was asked to send a unanimous resolution of the Management Committee to that effect. On September 20, 1959 the Managing Committee of Sadhu Charan Bidhyapitha unanimously decided to hand over management of the School to the Government of Orissa.

5. On April 6, 1962 the Secretary of Sadhu Bidhyapitha made over charge of the management of the School to the Inspector of School, Cuttack Circle along with the properties. The appellant, the then Head-master of Sadhu Charan Bidhyapitha, took over charge from the Secretary under the direction of the Inspector of Schools, Cuttack Circle. The Inspector of Schools on June 19, 1962 came to the Institution and assumed control.

6. In the year 1964 the Government of Orissa asked the views of the Advisory Committee of Schools as to whether the local people would be prepared to form the managing committee and take back the management of the School from the Government. This enquiry was made by the Government of Orissa inasmuch as the view gained currency that the management of some schools was not satisfactory. Sadhu Charan Bidhyapitha passed resolution on September 20, 1964 requesting the Government to transfer the management back to the public. On July 14, 1968, the Bidhyapitha passed a similar resolution to expedite the transfer of the management of the School to the public. The Government however after careful consideration decided that "142 full-deficit 'taken over' High Schools in the State should be converted to full-fledged Government High Schools with effect from March 1, 1969." The Director of public Instruction on February 27, 1969 wrote to the schools and asked for particulars in the prescribed pro forma enclosed to implement the scheme of conversion of the "full-deficit taken over High Schools to Government High Schools". The Government thereafter on May 14, 1969 wrote to the Director of Public Instruction that the Government had decided to retire Headmasters on attaining the age of 58 years. The Director of Public Instruction on May 14, 1969 wrote to the Inspector of Schools communicating the decision of the Government that teachers including the Headmasters of the 'taken over' schools who attained 58 years of age on March 1, 1969 should write to the appellant to hand over charge as he had exceeded the age of 58 years.

7. It is manifest that the appellant could not enforce a contract of employment in an application under Article 226 of the Constitution. The appellant did not rely on any rule of the management of the institution that the appellant would continue in service as long as the appellant was physically fit and mentally alert. The appellant alleged a custom to that effect in the petition. Custom of such a nature cannot be enforced in an application under Article 226.

8. The management of the school was by resolution passed over to the Government. The Government was giving grant-in-aid to the school. The Government therefore managed the School. The Government made uniform policy that teachers should be retired on attaining the age of 58 years. There is no right to remain in service. If a right is claimed in terms of a contract such a right cannot be enforced in a writ petition.

9. The High Court was justified in dismissing the application. The appeal is dismissed. Each party will pay and bear its own costs.

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