

Managing Committee, Sayed S. High School

Vs.

State of Orissa and others

Civil Appeal No. 152 of 1992

(L. M. Sharma, S. C. Agrawal JJ).

13.01.1992

JUDGMENT

1. Special leave is granted. We have heard the learned advocates for the appellant Managing committee and the Respondents No. 4. The counsel for the respondent Nos. 1 to 3 states that he has not received any instruction.

2. After an enquiry about the alleged misconduct of the respondent No. 4, he was dismissed by the appellant Managing Committee. The order was challenged, inter alia, on the ground that the dismissal order was bad in absence of prior approval of the Inspector u/S. 10-A(1)(b) of Orissa Education Act, 1969. The High Court agreed and by the impugned judgment the writ petition of the respondent has been allowed.

3. The learned counsel for the appellant has in the first instance contended that since the present case is not of termination, but of dismissal, the provisions of S. 10-A are not attracted and the matter is covered exclusively by Rule 20(1)(i) and, therefore, the prior approval of the Inspector was not necessary. In support of this contention reliance is placed on an unreported judgment of the Orissa High Court, which has been included in the paper book. We have considered all the relevant provisions of the Act and are of the view that S. 10-A deals with all kinds of termination of service including dismissal and removal from service. The first point is accordingly rejected.

4. The next point urged on behalf of the appellant is that in view of the order of the Director Secondary Education as contained in Annexure F to the application for leave to urge additional grounds (pages 36-37 of Vol. II of the paper book), it should be held that the prior approval of the Director was available and this would be sufficient compliance of the requirement of Section 10-A. The order indicates that the Director agreed with the proposal of the Managing Committee in the matter of removal of respondent No. 4 from service and expressed the view that the allegations against him that have been found established are grave in nature and his presence is not conducive to the smooth running of the school and its healthy administration and that the services of the respondent No. 4 were therefore fit to be terminated in the interest of the institution. At the bottom of the said document, it is also mentioned that a copy of the same be forwarded to the Secretary of the School for information and necessary action. The reply of the learned counsel of respondent No. 4 is that while Section 10-A(1)(b) requires the prior approval of the Inspector, the aforesaid order was passed by the Director and not the Inspector. In our opinion, the Director being the Head of the Department and a superior officer to the Inspector, his approval must be treated to be sufficient for the purpose of the section.

5. The learned counsel for the respondent also argued that all the necessary and relevant facts were

not stated in the Special Leave Petition by the appellant and the petition was, therefore, fit to be rejected on this ground alone. We have examined the materials which have been pointed out by the learned counsel on this point and we are not in a position to agree with him.

6. In the result, the appeal is allowed, the impugned order of the High Court is set aside and the Writ Petition filed by the Respondent No. 4 before the High Court is dismissed. There will be no order as to costs. The learned counsel for the respondent has stated that in pursuance of the High Court's judgment, the respondent had been reinstated in service and was paid his salary for the duty performed. We direct that the amount already paid for the services rendered by the respondent No. 4 shall not be liable to refund. If under the rules any further amount is due to him, that will be determined and paid in accordance with the rules expeditiously. Appeal allowed.

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