

Garuda Adabar Vs. State of Orissa and ors.

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Court : Orissa

Decided On : Jan-31-1996

Reported in : 1997(II)OLR521

Judge : A. Pasayat and ;D. Misra, JJ.

Acts : [Constitution of India](#) - Articles 226 and 227

Appeal No. : O. J. C. No. 364 of 1996

Appellant : Garuda Adabar

Respondent : State of Orissa and ors.

Advocate for Def. : Addl. Govt. Adv. for opp. parties 1 to 3

Advocate for Pet/Ap. : K.K. Swain, P.N. Mohanty, M.R. Nayak and P. Choudhury

Judgement :

A. Pasayat, J.

1. Petitioner was appointed as a teacher of Bankighiridi High School in the district of Sonapur in place of one Rabindranath Das whose services were terminated by the Managing Committee of the said school which is an aided educational institution. Aforesaid Rabindranath Das preferred an appeal before the Director of Secondary Education, Orissa who by his impugned order (Annexure -13) held that

terminated of Rabindranath Das was bad and directed his reinstatement. Petitioner calls in question legality of the order passed by the Director, primarily on the ground that he was not a party in the appeal in the appeal filed by the said Rabindranath Das and therefore, the order was passed in violation of the principles of natural justice. This plea has foundation on the fact that on reinstatement of Rabindranath, petitioner's service comes to an end. It is further submitted that order passed by the Director is not tenable in law.

2. So far as first stand of petitioner is concerned, he contends that without hearing him the Director ought not to have passed order setting out termination order and directing reinstatement as he was a necessary party in the proceeding. We find no substance in this plea because question in appeal was correctness of order of termination passed by the Managing Committee. The petitioner who came in the vacancy occasioned on account of termination of Rabindranath Das, had no role to play in the dispute. Merely because he has been required to vacate on the order of termination being set aside, that cannot confer any right on him for participation in the appeal filed by Rabindranath Das questioning correctness of his order of termination.

3. Two tests for determining the question who is a necessary party to a proceeding are firstly, there must be a right to some relief against such party in respect of the matter involved in the proceeding in question and secondly, it should not be possible to make an effective adjudication in the absence of such a party. 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 and will have to be added. 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 proceeding. (See *Udit Narayan Singh Malpaharia v. Additional Member, Board of Revenue, Bihar* AIR 1963 786). A party seeking impleadment as a party or questioning correctness of a decision on the plea of non-joinder will have to prima facie establish that he has interest in the subject-matter of the litigation and as such should be before the Court. The simple test in such controversy would be as to whether the presence of

such a party is appropriate in view of the subject-matter in adjudication. If the answer is in the affirmation, joinder is necessary and non-joinder would be vitiativ. The subject-matter of appeal was validity of termination of Rabindranath Das. Petitioner had no direct interest in or nexus to such dispute. He was therefore neither a necessary nor proper party. Similar view was expressed by apex Court in several akin cases. (See *State of H.P.v. Kailash Chand Mahajan* : AIR 1992 SC 1277, *A. Janardhana v. Union of India*, AIR 1983 SC 769) and this Court in *Chintamani Panda and Anr. v. Paradeep Port and Ors.* OJC No. 3034 of 1992, disposed of on 20.10.1992).

4. The principles of natural justice cannot be encompassed within any strait-jacket formula. They are easy to proclaim, but their precise extent is far less easy to define, as observed by Lord Evershed M.R. in *Abbot, v. Sullivan* (1952) 1 KB 189. Essential characteristic of the principle is put by Romans in two maxims (1) *Nemo judex in causa sua* and (2) *audi alterant partem*, which respectively mean (i) no man can be a judge of his own cause and (ii) hear both sides. Petitioner founds his case on the second. As indicated above, petitioner had no direct interest in or nexus with the subject-matter of adjudication. So his case is not covered by the second essential.

5. So far as question of correctness of Director's order is concerned, petitioner's stand is that factually the Director was not justified in holding that without proper enquiry and grant of opportunity, termination of Rabindranath Das had been made. Again petitioner has no-locus standi to raise that question. That is a matter which could have been raised by the Managing Committee, had it disputed the order of the Director. We find no substance in this writ application which is not entertained. However, it goes without saying that petitioner had been appointed and has rendered service for some period. The Inspector of Schools, Bolangir Education Circle (opp. party No. 3) would explore possibilities of absorbing petitioner in some institution in his Education Circle. Let necessary action be taken expeditiously.

The writ application is disposed of accordingly.

D. Misra, J.

6. I agree.

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