

Sridhar Dash Vs. State of Orissa and ors.

Sridhar Dash Vs. State of Orissa and ors.

SooperKanoon Citation : sooperkanoon.com/533521

Court : Orissa

Decided On : Dec-06-1999

Reported in : 89(2000)CLT46; 2000(I)OLR111

Judge : P.K. Misra and ;L. Mohapatra, JJ.

Appeal No. : O.J.C. No. 8804 of 1997

Appellant : Sridhar Dash

Respondent : State of Orissa and ors.

Advocate for Def. : R.P. Mahapatra, Standing Counsel

Advocate for Pet/Ap. : J.R. Dash, Adv.

Disposition : Application allowed

Judgement :

L. Mohapatra, J.

1. In this writ application the petitioner has prayed for a direction to quash Annexure - 4 wherein the Inspector of Schools, Khurda Circle, by office order dated 5.6.97 has declined to approve the appointment of the petitioner as the 4th peon. The further prayer of the petitioner is for a direction to opposite party No. 2 to approve his appointment.

2. The case of petitioner, as stated in the writ application, is that Barapalli High School under the Khurda Education Circle is an aided educational institution. The managing committee of the School vide its Resolution No. 36 dated 9.1.91 appointed the petitioner as the 4th Peon-cum-Night Watcher as the roll strength of the school exceeded one hundred and the managing committee felt the necessity of appointing a 4th peon. The Headmaster of the school on 14.7.95 recommended the case of the petitioner along with other employees, whose services had not been approved, to the Inspector of Schools for approval. The Headmaster again in his letter dated 23.12.1995 recommended the case of the petitioner along with two other employees to the Inspector of Schools for approval. However, the case of the two other employees were considered and approved whereas, the petitioner's recommendation was ignored. Under the circumstances, the Headmaster of the School again recommended the case of the petitioner for approval by letter dated 20.2.1996. Since the Inspector of Schools did not take any action on the said recommendation, the petitioner moved this Court in OJC No. 4356 of 1996. This Court disposed of the writ application on 28.8.1996 with a direction to consider the grievance of the petitioner in the light of observations/guidelines mentioned in OJC No. 2503 of 90. After communication of the said order, the Inspector of Schools, without referring to the guidelines as stated above, rejected the recommendation for approval which is under challenge before this Court.

Opposite party No. 2 has filed a counter-affidavit stating that the school in question became eligible to receive grant-in-aid with effect from 1.6.1994 and that the roll strength of the school being below five hundred, appointment of a 4th peon, as per 1992 circular, is illegal and cannot be approved.

3. Mr. J. R. Dash, learned counsel appearing for the petitioner, has drawn the attention of the Court to the case of Narayan Dash v. State of Orissa and Ors., O.J.C. No. 5108 of 1996 (disposed, of on 15.7.1996). In the said case the appointment of 4th peon was made in the year 1988 when the roll strength was more than one hundred and recommendation for approval was made in July, 1993. The said recommendation was turned down on the ground that under 1992 Circular unless the roll strength is more than five hundred, no appointment to the post of 4th peon can be made. A Division Bench of this Court was of the view that

since the appointment was prior to 1992, the 1992 Circular cannot be made applicable and the yardstick formulated in the year 1981 is applicable.

In the present case, the petitioner was appointed as 4th peon on 9.1.1991 when the roll strength of the school was more than one hundred and the yardstick formulated in 1981 was in vogue and, therefore, the Inspector of Schools should not have taken into consideration the yardstick of 1992 while dealing with the case of the petitioner for the purpose of approval. The impugned order passed by the Inspector of Schools clearly indicates that refusal to approve the appointment was on the basis of the yardstick of 1992. Therefore, the impugned order under Annexure - 4 is liable to be quashed.

4. As a consequence, we quash the order dated 5.6.97 under Annexure - 4 and direct the Inspector of Schools, opposite party no. 2 to approve the appointment of the petitioner as 4th peon as per the recommendation of the Headmaster. The writ application is accordingly allowed and opposite party No. 2 is directed to comply with order within two months from the date of receipt of the communication. No cost.