

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8206 OF 2012

(Arising out of SLP (C) No. 29267 of 2011)

Sri Debendranath Nanda

.... Appellant(s)

Versus

Shri Chandra Shekhar Kumar

.... Respondent(s)

J U D G M E N T

P. Sathasivam, J.

- 1) Leave granted.
- 2) This appeal is filed against the final judgment and order dated 21.07.2011 passed by the High Court of Orissa at Cuttack in CONTC No. 923 of 2010 whereby the Division Bench dropped the contempt proceeding filed by the appellant herein against the Respondent herein.

3) **Brief Facts:**

- a) On 03.02.1976, Sri Debendranath Nanda - the appellant herein was originally appointed as Sanskrit Pandit (Shastri Pandit) in Adarsa Ayurveda Vidyalaya, Cuttack, a Government

Aided Institution. The appellant herein got promoted to the rank of Acharya Pandit w.e.f. 31.01.1987 in order to teach students of Acharya classes. His promotion to the post of Acharya Pandit was approved by the State Government vide Order dated 06.12.1994 w.e.f. 31.01.1987.

b) In the year 1984, the State Government took a policy decision to introduce 10+2+3 pattern of education in Sanskrit Institutions functioning in the State of Orissa. Accordingly, Upa-shastri (+2 standard) was introduced in Acharya Institutions.

c) In the year 1987, the State Government introduced Shastri courses (+3 degree course) in the Sanskrit Institutions in the State of Orissa and it was also decided that the Acharya Courses which is equivalent to M.A. Degree will be taught only in the Departments of Sanskrit University and the said decision was to be implemented w.e.f. Academic Session 1987-1988. In pursuance of the same, the State Government, vide order dated 19.10.1987, decided that the institutions where Acharya Courses were taught up to the Academic Session 1986-87 and the teachers having Acharya qualification which

is equivalent to M.A. Degree will be adjusted against the post of Lecturers which will be created for Upa-Shastri and Shastri courses in those institutions according to the staffing pattern prescribed by the Government.

d) In the year 1988, Sri Jagannath Sanskrit Vishwa Vidyalaya (Sanskrit University) took a decision to abolish Acharya Courses from the Sanskrit Institutions and it was decided that the same will be taught at the University level only. In pursuance of the said decision, Acharya Courses were abolished from Sanskrit Institutions in the State of Orissa w.e.f. 1991. Consequently, the State Government took a decision to adjust surplus Acharya Pandits teaching Acharya Courses as Sanskrit Lecturers in Upa-Shastri and Shastri Institutions run by the State Government or in the Aided Institutions imparting 10+2+3 education in Sanskrit. Since the appellant herein was found to be surplus in the Adarsa Ayurveda Vidyalaya, Cuttack, the State Government, vide order dated 16.03.1995, adjusted him against the existing vacancy of Head Pandit in Government Sanskrit Institution, Baripada.

e) The appellant herein represented before the State Government for his adjustment against the existing vacant post of Lecturer in Sanskrit Sahitya. Vide communication dated 29.09.1995, Addl. Secretary to Government of Orissa recommended his case to the Director, Secondary Education, Orissa for adjustment in the light of the order dated 19.10.1987 against the said vacancy. During the pendency of the said representation, vide Order dated 06.06.1996, the State Government cancelled the order dated 16.03.1995 and the appellant was directed to join his former place of posting at Adarsa Ayurveda Vidyalaya, Cuttack and the arrear dues payable on account of salary for the intervening period from 04.05.1995 to the date of joining in Government Sanskrit Institution, Baripada to the date of joining in Adarsa Ayurveda Vidyalaya, Cuttack had to be paid by the latter from out of the provisions of grant-in-aid and also that the above period will be treated as service spent on duty in Adarsha Ayurveda Vidyalaya, Cuttack.

f) Aggrieved by such cancellation and non-payment of salary for the abovesaid period, the appellant herein filed

Original Application No. 1604 of 1996 before the Orissa Administrative Tribunal, Bhubaneshwar. The Tribunal, vide order dated 10.07.1996, admitted the O.A. and stayed the cancellation order dated 06.06.1996 and directed the appellant herein to continue in the Government Sanskrit Institution, Baripada. In pursuance of the said interim order, the State Government, vide order dated 21.11.1996, withdrew the departmental letter dated 06.06.1996 and requested the Director, Secondary Education, Bhubneshwar to hand over the charge of the office of the Head Pandit, Government Sanskrit Institution, Baripada to the appellant herein immediately. The Tribunal, vide final order dated 21.05.1997, dismissed OA No. 1604 of 1996 holding that a teacher of the Aided Educational Institutions cannot be promoted to the post in Government Educational Institutions even though the State Government is paying salary of a teacher under direct scheme and cancelled the promotion of the appellant herein.

g) Being aggrieved by the said order, the appellant herein filed a petition being OJC No. 8397 of 1997 before the High Court. By order dated 21.07.1999, the High Court disposed

off the petition directing the State Government to consider the case of the appellant herein following the judgment rendered in a similar case, viz., **Smt. Kabita Manjari Kar vs. State of Orissa & Ors. (O.J.C. No. 1667 of 1992 disposed of on 27.04.1995)** of the same High Court.

h) After several rounds of litigation including filing of various applications before the High Court for the implementation of its order dated 21.07.1997, various communication with the State Government, Department of School and Mass Education, filing of contempt proceedings before the High Court and lastly, the High Court, in CONTC No. 923 of 2010, by impugned order dated 21.07.2011, dropped the contempt proceeding against the respondent herein on the ground that the appellant herein has completed 58 years of age and the dispute as to whether the appellant herein has retired from service or has to continue beyond 58 years cannot be decided in a contempt proceeding.

i) Aggrieved by the said decision, the appellant herein has preferred this appeal by way of special leave petition before this Court.

4) Heard Ms. Ambika Das, learned counsel for the appellant and Mr. Radha Shyam Jena, learned counsel for the respondent.

5) The only point for consideration in this appeal is whether the appellant has made out a case for any relief pursuant to the earlier orders of the High Court and decision at the level of the Government? Apart from this, we have to consider whether the High Court was justified in dropping the contempt proceeding filed by the appellant?

6) According to the appellant, though the State Government approved him in the post of Acharya Pandit, due to policy decision, he was found surplus and by order dated 16.03.1995, he was adjusted as Lecturer in Government Sanskrit Institution, Baripada (A Degree College) but the said order was cancelled by a subsequent order dated 06.06.1996. Challenging the same, the appellant filed an application being OA No. 1604 of 1996 before the State Administrative Tribunal, Bhubaneswar. The Tribunal, vide order dated 21.05.1997, dismissed the application filed by the appellant herein. When this order was challenged by the appellant before the High

Court by filing a writ petition bearing O.J.C. No. 8397 of 1997, the same was disposed of by order dated 21.07.1997 directing the State Government to consider the case of the appellant following the judgment rendered in a similar case, viz., **Smt. Kabita Manjari Kar (supra)**. It is the grievance of the appellant that in spite of such direction and subsequent orders reiterating the same as well as the decision of the State Government (Minister concerned), School & Mass Education, who considered his case and directed to give him a post equivalent to that he was holding at Government Sanskrit Institution, Baripada, he was neither given necessary posting nor paid any salary for the same which necessitated him for filing contempt petition bearing CONTC No. 923 of 2010 before the High Court. By impugned order dated 21.07.2011, the High Court disposed of the contempt petition by passing the following order:

“ 21.07.2011

Heard learned counsel for the petitioner and learned counsel for the State.

The dispute now arose as to whether the petitioner has retired from service or he has to continue beyond 58 years cannot be decided in a contempt proceeding.

The contempt proceeding is according dropped.

Sd/- B.P. Das,J.
Sd/- SK Mishra,J.”

Questioning the same, the appellant has approached this Court. Inasmuch as in the earlier part of our order, we have narrated the grievance of the appellant, various orders, directions etc., there is no need to repeat the same once again.

7) The claim of the appellant is mainly on the basis of the order dated 21.07.1999 passed by the High Court in OJC No. 8397 of 1997 filed by him which reads as under:

“IN THE HIGH COURT OF ORISSA: CUTTACK
ORDER SHEET
O.J.C. NO. 8397 OF 1997

Debendranath Nanda

.....Petitioner

Versus

State of Orissa & Ors.

.....Respondents

ORDER

21.07.1999

Heard learned counsel for petitioner and the learned counsel for State.

We dispose of the writ application with a direction to opposite party nos. 1 and 2 to consider the petitioner's case in the light of decision of this Court in Smt. Kabitamanjari Kar vs. State of Orissa and Others (OJC No. 1667 of 1992

disposed of on 27.4.1995) after considering its applicability to the facts of petitioner's case. Let the exercise be undertaken within three months from the date of receipt of our order. The question of entitlement of the petitioner shall be decided while adjudicating his case in the light of Smt. Kabita Manjari Kar's case referred to above.

Requisites along with copy of the judgment referred to above shall be filed for communication of our order to opp. Party nos. 1 and 2 by Monday.

Sd/-
A. Pasayat, A.C.J.
Sd/-
B.P.Das,J.”

It is further seen that even after prolonged correspondence with the concerned Educational authorities, the said direction was not complied with and the appellant again mentioned the matter before the High Court. On 19.07.2005, in the same petition, the High Court passed the following order:

“IN THE HIGH COURT OF ORISSA: CUTTACK
ORDER SHEET

O.J.C. NO. 8397 OF 1997

Debendranath NandaPetitioner

Versus

State of Orissa & Ors.Respondents

ORDER

19.07.2005

O.J.C. NO. 8397 OF 1997

Heard Mr. B. Routray, learned counsel for the petitioner and Mr. Rath, learned Addl. Standing counsel for the School & Mass Education Department.

Considering the submissions made by both the parties, this Court directs the learned Addl. Standing counsel to file an affidavit in compliance of the order passed by this Court on 21.7.1999 within ten days.

List this case on 2nd August, 2005.

Sd/- I.M. Quddusi,J.

Sd/- Pradip Mohanty,J.”

Pursuant to the direction of the High Court, Sri Gagan Kumar Dhal, Commissioner-cum-Secretary to Government of Orissa, School and Mass Education Department, Orissa, Bhubaneswar, Dist. Khurda filed an affidavit dated 01.08.2005 stating that the order of the High Court dated 21.07.1999 has been complied with. Since according to the appellant, he was not given proper relief as directed by the High Court, particularly, in the light of **Smt. Kabita Manjari Kar (supra)**, he made a representation to the State Government, School & Mass Education Department. The State Government directed the concerned educational authorities to pass appropriate orders as directed by the High Court in **Smt. Kabita Manjari Kar's case** expeditiously.

Even after several years, in spite of the decision at the level of the Minister, School & Mass Education, according to the appellant, he was not given proper posting and arrears of salary.

8) It is also brought to our notice that the matter pertaining to the appellant was also placed before the High Court Level Permanent and Continuous Lok Adalat on 19.12.2009 and on the assurance of the learned counsel appeared on behalf of the School and Mass Education Department that the order, if not complied with, will be complied by the end of May, 2010, the contempt proceedings were dropped, which reads as under:

“ORDER
19.12.2009

This matter is placed before the High Court Level Permanent and Continuous Lok Adalat.

It is undertaken by the learned counsel appearing for the School and Mass Education Department that the order alleged to have been violated, if not complied with as yet, shall be complied with by the end of May, 2010 failing which it shall be construed to be contempt of this Court.

A copy of this order shall be furnished to the office of the learned Advocate General.

Accordingly, the contempt proceeding is dropped.

Urgent certified copy of this order be granted on proper application.”

The appellant has also brought to our notice an affidavit filed by one Sri Madhusudan Padhi, Commissioner-cum-Secretary, Higher Education Department, Government of Orissa dated 20.07.2010 before the High Court. The following information in paragraph 6 of that affidavit is relevant which reads as under:

“6. That, it is most humbly submitted that after the said orders were passed by the Hon’ble Court, this deponent took sincere steps in the matter and necessary Govt. order has been obtained in posting the petitioner as Lecturer in Sanskrit in Sri Jaganath Veda Karmakand Mohavidyalaya, Puri. Relevant Govt. orders issued in favour of the petitioner in posting him as Lecturer in Sanskrit is appended as Annexure A/1 for kind perusal of the Hon’ble Court.”

By explaining the same as mentioned above, the officer tendered unconditional apology for the delay in complying with the order of the High Court.

9) Apart from placing various communications/orders of the concerned Department, according to the appellant, he could not get any favourable order from the Department concerned. In such circumstance, as a last resort, the appellant moved the High Court by filing Contempt Petition being CONTC. No. 923 of 2010. The order dated 21.07.2011, passed by the High

Court in the contempt case dropping the contempt proceeding has already been extracted in the earlier part of our order.

10) We have heard learned counsel appearing for the State and also perused the reply filed on behalf of the respondent. The copy supplied by the appellant relating to various orders issued by the Minister, School and Mass Education Department to the officer concerned shows that at the Government level the grievance of the appellant was properly taken care of and it is only at the Department level, the appellant was dragged from here and there by one reason or the other without giving him the posting at the appropriate place as directed by the Government. Since we have already highlighted all the details in the earlier part of our order, there is no need to traverse the same once again and we are fully satisfied that for one reason or the other, the appellant was dragged for nearly 14 years and by efflux of time, now he has reached the age of 60 years, hence, as on date, there cannot be any positive direction for posting him at the appropriate place. However, taking note of all the earlier orders of the High Court, undertaking given by the standing counsel,

affidavit filed by the Commissioner-cum-Secretary to Government and the decision of the Minister, School and Mass Education Department, we are satisfied that the appellant is entitled for equivalent monetary benefits as rightly observed by the State Government (Minister concerned) about the appellant's entitlement, posting and other benefits at par with the case of **Smt. Kabita Manjari Kar (supra)** and we hold that the interpretation of the Department is unacceptable.

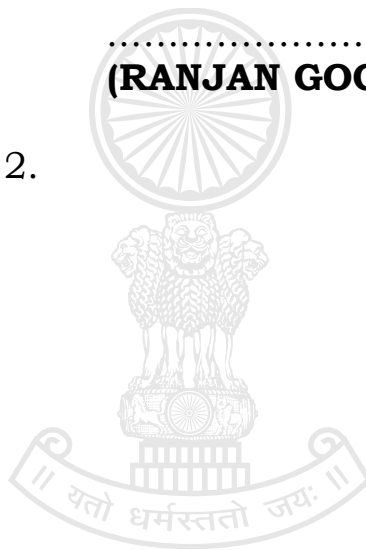
11) In view of the above discussion, though the appellant has made out a case for contempt, we feel that no purpose will be served by taking action against the erring officials, instead the appellant can be adequately compensated by way of monetary benefits. Accordingly, we direct the Commissioner-cum-Secretary, Higher Education Department, Bhubaneswar, to assign suitable post to the appellant and corresponding monetary benefits from the date on which the Department was asked to consider, i.e., 21.07.1999 and settle the same within a period of 3 months from the date of receipt of the copy of this judgment.

12) The appeal is allowed to the extent mentioned above.
The appellant is entitled to cost of Rs.25,000/- payable by the
Education Department.

.....J.
(P. SATHASIVAM)

.....J.
(RANJAN GOGOI)

NEW DELHI;
NOVEMBER 22, 2012.



JUDGMENT

SUPREME COURT OF INDIA



JUDGMENT