

CASE NO.:
Appeal (civil) 4179 of 2006

PETITIONER:
Balakrushna Behera and Anr.

RESPONDENT:
Satya Prakash Dash

DATE OF JUDGMENT: 22/10/2007

BENCH:
A.K. Mathur & Markandey Katju

JUDGMENT:
JUDGMENT

ORDER

Heard learned counsel for the parties.

Leave granted.

This appeal is directed against the judgment and orders dated 24.1.2006 of the High Court of Orissa whereby contempt proceedings were initiated against the appellants herein and they were directed to be present in Court for further proceeding in the matter of Contempt.

The brief facts necessary for the disposal of the present appeal are that the respondent herein filed a writ petition against the Utkal University of Culture and sought a mandamus that the University be directed to complete the entire selection process for the post of Lecturer in South & South East Asian Studies. The Division Bench of the High Court vide order dated 10.3.2005 disposed of the writ petition and directed that "it is a fit case where the opposite parties should be directed by issuing a writ in the nature of mandamus to complete the entire process of selection and publish the result." The Court accordingly issued a writ in the nature of mandamus commanding opposite parties 1 & 2 to complete the entire process of selection and publish the result in respect of the post of Lecturer in South & South East Asian Studies within a period of two months from the date of communication of the said order, It was further observed that "it was needless to mention that after declaration of the result, consequences to follow by opposite parties 1 & 2".

After passing of the said order, the same allegedly having not been complied with by the University authorities within the time stipulated, a contempt petition was filed by the respondent herein (writ petitioner before the High Court). In reply to the contempt petition, the appellants herein (the Registrar and Vice-Chancellor of the University) stated that in view of Statute 4(3) of the Utkal University of Culture First Statute, 2001 since the Board of Management differed from the recommendation of the Selection Committee, the matter had to be referred to the Chancellor of the University. In the meantime, the High court issued notice the contempt of Court for alleged disobedience of its judgment dated 10.3.2005, but in view of the results having been published, the contempt proceedings were dropped. It is alleged that despite the selection of the respondent herein, no appointment letter was issued to the respondent. Hence, he filed yet another contempt petition on which the impugned orders dated 24.1.2006 and 27.1.2006 were passed. By the said orders the Vice Chancellor and Registrar of the University were directed to be personally present in Court.

The plea taken by the appellants herein the reply to show cause was that as per the Second proviso to Statute 4(1) of the Utkal University of Culture First Statute, 2001, all appointment have to be approved by the State

Government. The second proviso to Statute 4(1) of the Utkala University of Culture First Statute, 2001 reads as under:

"Provided further that the appointment of all the teaching faculties including Professors, Deans, Experts and Consultants are subject to availability of funds and on prior approval of administrative department and Finance Department of State Government."

The State Government took the stand that in view of the restructuring/reorganising of the whole set up the posts of Lecturer in South & South East Asian Studies have been abolished and therefore the respondent herein could not be appointed to the said post. The appellants herein of course wrote to the State Government for grant of approval for their appointment and funds for the said posts but the State Government declined to grant approval and abolished the posts and consequently no appointments could be made to the said post. Thereafter, the Division Bench by the impugned order dated 24.1.2006 directed the Registrar and Vice Chancellor of the University (appellants herein) to be present in Court on 27.1.2006.

Aggrieved against the impugned orders dated 24.1.2006 and 27.1.2006 passed by the Division Bench of the High Court, the present appeal by special leave has been filed.

We have heard learned counsel for the parties and perused the record.

The first and foremost question is whether the Court can direct the State Government by a writ of mandamus to appoint a person against a post which has been abolished by the State Government. Our answer to this question is in the negative. The respondent even after selection has no indefeasible right to be appointed on the post because a selection does not confer a right of getting appointment which can be enforced by filing a writ petition under Article 226 of the Constitution. In this view we are supported by a Constitution Bench decision of this Court in the case of *Shankarsan Dash v. Union of India*, [1991] 3 SCC 47. Since the respondent has only an inchoate right to the post, there is no question of contempt against the appellants herein. The initial direction of the High Court was to complete the selection process and publish the results. That was done by the appellants herein. There was no order of the High Court directing that the respondent be appointed. Hence we fail to see how there is any contempt of Court.

Subsequently some developments took place and the State Government abolished the posts in question and re-organized the set up of the University. In the facts and circumstances of the case, in our view the High Court could not have directed the initiation of contempt proceedings against the appellants when the respondent has no perfect or complete right to seek a mandamus for appointment to the post. The appellants have complied with the order of the Division Bench of the High Court and completed the process of selection and published the results within the time granted by the High Court. In view of second proviso to Statute 4(1) of the Statutes of the University, since no appointment could be made without the prior approval of the State Government, and the State Government having abolished the posts in question, the respondent cannot claim a right to the post, nor is there any contempt of Court.

In view of the foregoing reasons, we are of the view that no contempt is made out against the appellants herein and the orders dated 24.1.2006 and 27.1.2006 are accordingly set aside and the notice of contempt against the appellants is discharged.

The appeal is allowed. No order as to costs.