

PETITIONER:
GOVERNING BODY OF DAYANAND ANGLO VEDIC COLLEGE

Vs.

RESPONDENT:
PADMANABHA PADHY & ORS.

DATE OF JUDGMENT 14/01/1988

BENCH:
SHARMA, L.M. (J)
BENCH:
SHARMA, L.M. (J)
OZA, G.L. (J)

CITATION:
1988 AIR 612 1988 SCR (2) 707
1988 SCC (1) 653 JT 1988 (1) 113
1988 SCALE (1) 90

ACT:

Constitution of India 1950: Article 226-Writ petition-Grant of relief to petitioner-Necessary facts to be proved-College lecturer-Services terminated-Appointment and termination orders-Examination of.

Pleadings-Admission-To be accepted or rejected as a whole-Not in part.

HEADNOTE:

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The 1st respondent was appointed as a Lecturer in the appellant College on 26th July, 1971 and was placed under probation for one year. He was informed by a letter dated 28th March, 1972 that his services were no longer required and would stand terminated with effect from the afternoon of 30th April, 1972.

The 1st respondent challenged the aforesaid termination order by a writ application contending that his appointing authority was "The Managing Committee or the Governing Body" of the College, and as such the order of termination of his services by the Principal of the College was without jurisdiction. The writ application was contested on behalf of the Appellant by contending that the Principal who was the Ex-officio Secretary was the appointing authority and was vested with the power to terminate the appellant's services. On behalf of the director of Public Instruction, who was also a party to the writ application, it was stated that both the orders of appointment and termination had been passed by the Governing Body and the Principal who communicated the same to the 1st respondent was acting on behalf of the Governing Body, and that the DPI was not concerned with the termination orders passed before 3rd of May, 1972 the date from which 1974 Amendment of the Orissa Education Act, 1969 took effect, and that the DPI had no power to look into the matter.

The High Court rejected the objection to the maintainability of the writ application on the ground that the College was a private institution, and held that in view of the provisions of the Orissa Education

708

Act, 1969 Berhampur University Act 1966 and the Berhampur

university Statutes 1966, the college must be considered to be a statutory body amenable to the writ jurisdiction. It held that, "undoubtedly until confirmation petitioner had no right to the post and during the period of probation he could be turned out from his service", but in view of the language of the appointment letter and the termination order both the orders have been passed by some authority other than the Principal and the Principal was merely a communicating agent. It opined that the termination order did not emanate from the Governing Body of the College which alone had the power to terminate the services of a teacher, and as such held that the termination order- was issued without jurisdiction. The writ application was allowed, and the 1st respondent was declared to have continued in service.

Allowing the appeal by the College, this Court,

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HELD: 1. The writ petition was founded on the assumption that it was the Principal who had passed the termination order by himself and that he had no jurisdiction to do so. Instead of merely pointing out that it was not so, the affidavit on behalf of the College made a confused statement forgetting that the Principal was only one of the members of the Governing Body. Both sides, thus, misrepresented the situation before the Court.[711D-E]

2. Although it is permissible for a tribunal to accept part and reject the rest of any witness's testimony, so far as admission in pleading is concerned, it cannot be so dissected. It may be accepted as a whole or not at all. [712A-B]

M.M. Essabhoy v. M. Haridas, AIR 1915 PC 2 referred to.

3. The case of the College had been that both the appointment and the termination orders were given by the Principal. This plea is of course incorrect but for that reason the statement by the College cannot be truncated and part of it accepted while rejecting the other part. It had to be accepted as a whole or not at all. [711H]

4. The finding and the assumption made by the High Court that the termination order was passed by an authority other than the appointing authority being not supported by any material whatsoever on the record has to be set aside. [712B]

5. The burden of proving the necessary facts for grant of relief

709

was on the writ petitioner which was not discharged. The writ application was, therefore, bound to fail. The decision of High Court is set aside, and the writ petition dismissed. [712B-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1074(N) of 1977.

From the Judgment and order dated 26.11.1976 of the High Court of Orissa in original Jurisdiction Case No. 811 of 1974.

Rajinder Sachher and Amrish Kumar for the Appellant.

Pankaj Kalra, Amicus-Curiae and R.K. Mehta for the Respondents.

The Judgment of the Court was delivered by

SHARMA, J. The respondent Padmanabha Padhy was appointed as a Lecturer in the appellant College on the 26th July, 1971 and was placed under probation for one year. He

was informed by the letter dated the 28th March, 1972 that his services were no longer required and would stand terminated with effect from the afternoon of the 30th April, 1972. He challenged the termination order by a writ application before the Orissa High Court, which was allowed and the writ petitioner was declared to have continued in service. The appellant has filed the present appeal against the High Court judgment after obtaining special leave.

2. The respondent, in the first instance had filed a writ application which was registered as O.J.C. No. 308 of 1972 but later withdrew it and approached the Director of Public Instruction (in short referred to as the DPI), present respondent No. 2, for the necessary relief. Subsequently on 12.8.1974 he filed a second writ application being O.J.C. No. 811 of 1974 which has been allowed by the judgment presently impugned. It is stated before us on his behalf that the D.P.I. by his order dated 19.9.1973 declined to interfere which necessitated the filing of the second case. It has been, inter alia, contended by Sri Padhy in his writ application that his appointing authority was "the Managing Committee or the Governing Body" and as such the impugned order of termination of his services by the Principal was without jurisdiction. The stand of the College was that the Principal who was the Ex-officio Secretary was the appointing authority and was vested with the power to terminate the appellant's services. The counter

710 affidavit of the D.P.I. stated that both the orders of appointment and termination had been passed by the Governing Body and the Principal was, in sending the orders to Sri Padhy, acting on behalf of the Governing Body. It has further been said that he (D.P.I.) was not concerned with termination orders passed before the 3rd of May, 1972, the date from which the relevant 1974 Amendment of the Orissa Education Act, 1969 took effect and he had, therefore, no power to look into the matter.

3. The High Court held that, "undoubtedly, until confirmation petitioner had no right to the post and during the period of probation he could be turned out from service", but in view of the language of the appointment letter and the termination order it proceeded to point out that both the orders had been passed by some authority other than the Principal and the Principal was merely a communicating agent. The High Court further opined that the Principal was acting on behalf of the Management of the Trust which had established the College, and the termination order did not emanate from the Governing Body. Observing that it is only the Governing Body of a College which has power to terminate the services of a teacher, it was further held that the impugned order was without jurisdiction. The objection to the maintainability of the writ application on the ground that the College was a private institution was rejected and it was held that in view of the provisions of the Orissa Education Act, 1969, Berhampur University Act, 1966 and the Berhampur University Statutes, 1966, the college must be considered to be a statutory body amenable to the writ jurisdiction.

4. Mr. Sachher, learned counsel appearing in support of the appeal, has contended that both the orders of appointment and termination of service were passed by one and the same body and the finding of the High Court to the contrary is not based on any material and, therefore, has to be set aside. Referring to the statement of Sri Padhy in paragraph 7 of the writ petition that the Governing Body of the College and the Managing Committee are one and the same

body, it was argued that the termination order was passed by the appointing authority of the writ petitioner and it could not be set aside on the ground of lack of jurisdiction. The maintainability of the writ application in the High Court has also been seriously challenged and it has further been urged that in any view of the matter the High Court on the facts and in the circumstances of the case should have refused to allow any relief to the writ petitioner.

711

5. Mr. Kalra, learned counsel representing Sri Padhy respondent No. 1, has submitted that the finding of the High Court as to the authorship of the appointment and termination orders should not be disturbed by this Court. He also supported the view of the court below that the writ petition was maintainable and that it is a fit case in which the High Court was right in granting the relief as prayed for.

6. The learned counsel for both sides placed before us the appointment and termination orders more than once and there is no manner of doubt that none of the orders was passed by the Principal alone. The termination order stated that the Principal had been directed to inform Sri Padhy that his services were being no longer required and stood terminated with effect from 30.4.1972. It is true that none of the two letters expressly states about the authority passing the respective orders but this much is clear that the Principal was only conveying the decision of another authority and was thus acting in the same capacity on both occasions. The writ petition was founded on the assumption that it was the Principal who had passed the termination order by himself and that he had no jurisdiction to do so. Instead of merely pointing out that it was not so, the affidavit on behalf of the College made a confused statement forgetting that the Principal was only one of the members of the Governing Body. Both sides, thus, misrepresented the situation before the Court and it was only the D.P.I. who correctly appreciated the position. In this background the question arises as to whether the High Court was right in assuming that the termination order was passed by an authority other than the appointing authority.

7. No material or basis has been referred to in the Judgment of the High Court in support of its view and neither side has pointed out before us any evidence to that effect. Mr. Kalra contended that in view of the statutory provisions it should be presumed that Sri Padhy had been appointed by the Governing Body as envisaged in law, and further in view of the stand of the College before the High Court that the Principal had issued the termination order, it should be held that the same was without jurisdiction. The finding of the High Court in this regard is in his opinion thus supported by the supposed admission of the College in its pleading. We are afraid, the argument cannot be accepted. The case of the College has been that both the appointment and the termination orders were given by the Principal. This plea is of course incorrect but for that reason the statement by the College cannot be truncated and part of it accepted while rejecting the other part.

712

As was observed by the Privy Council in *M.M. Essabhoy v. M. Haridas*, AIR 1915 PC 2, although it is permissible for a tribunal to accept part and reject the rest of any witness's testimony, so far as admission in pleading is concerned, it cannot be so dissected. It may be accepted as a whole or not at all. We therefore, hold that the assumption made by the High Court in this connection being not supported by any

material whatsoever on the records has to be set aside. The burden of proving the necessary facts for grant of relief was on the writ petitioner which was not discharged. The writ application was, therefore, bound to fail. The appeal accordingly must succeed on this ground and it is, therefore, not necessary to consider the other questions raised on behalf of the appellant.

8. In the result, the appeal is allowed, the decision of the High Court is set aside and the writ petition is dismissed. Parties shall bear their own costs throughout.

N. V. K.

Appeal allowed.

713

JUDIS