

**HIGH COURT OF ORISSA: CUTTACK.**

**FAO NO. 177 OF 2011**

From the judgment 15.03.2011 passed by the Presiding Officer, State Education Tribunal, Bhubaneswar in G.I.A. Case No. 36 of 2004.

Smt. Pravati Dash and eight others ..... Appellants

-Versus-

State of Orissa and others ..... Respondents

For Appellants : M/s. S.K. Das & S.K. Mishra

For Respondents : M/s. K.R. Mohapatra, S.Ghosh,  
D. Panigrahi & A.R. Panigrahi.  
(For Caveator)  
M/s. D.N. Rath, S.N. Rath  
& P.K. Rout.  
(For R. 5 to 7, 9 & 13)

M/s. R.K. Rath & D. Sahoo  
(For R. 4, 10 to 12 & 14)

Addl. Government Advocate

Date of Judgment: 31.07.2012

**P R E S E N T:**

**THE HONOURABLE SHRI JUSTICE M.M.DAS**

**M.M. Das, J.** The appellants along with one Sachindananda Jena preferred G.I.A. Case No. 36 of 2004 under Section 24-B of the

Orissa Education Act, 1969 (hereinafter referred to as 'the Act') before the State Education Tribunal, Bhubaneswar making the following prayer:

“Under the above circumstances, it is, therefore, humbly prayed that the Hon’ble Tribunal be graciously pleased to call for the original records from the respondents and the present Ex-Secretary of the Governing Body and on scrutiny of the same, the Hon’ble Tribunal be pleased to direct the opposite parties 1 and 2 to approve the appointment of the applicants and to release the necessary Grant-in-aid in their favour from their respective dates of entitlement.”

2. The appellants’ case is that Shantilata Mohavidyalaya, Uitikiri, in the District of Balasore was established in the year, 1980, which got concurrence and affiliation from the State Government and the Utkal University respectively for Intermediate Arts Course. The C.H.S.C., Orissa, Bhubaneswar affiliated the +2 College, which received Grant-in-aid with effect from 1.6.1988. The +3 Wing (Arts) of the college was opened in the year, 1987-1988, which also got concurrence and affiliation. As per the Rules, the Governing Body of the +3 Wing was registered separately on 25.4.1994 with one Shri Satrugna Jena as the Secretary. The said institution received Grant-in-aid in the year, 1991. After registration of the Governing Body of the +3 Wing in the year, 1994, Smt. Santilata Jena became the Secretary of the said Governing Body. The appellants were duly appointed by the said competent Governing Body in different teaching and non-teaching posts as per Annexure-3 to the

application filed before the Tribunal, but the opp. parties 4 to 14 before the Tribunal in connivance with the opp. parties 1 to 3 managed to create some records regarding their appointments in the institution and filed a writ petition before this Court being OJC No. 10891 of 2001 for a direction to the Director of Higher Education for verification of the records. The said writ petition was disposed directing the Director of Higher Education to consider the claim of the opp. parties 4 to 14, who were petitioners in the said writ petition, relating to their approval of appointments and release of Grant-in-aid as per law. The opp. party no. 2 before the Tribunal i.e. the Director of Higher Education, recommended the case of opp. parties 4 to 14 without verification of the records for approval of their appointments and release of Grant-in-aid. The appellants along with the said Sachindananda Jena approached the Tribunal in G.I.A. Case No. 36 of 2004.

3. The opp. parties 1 and 2 before the Tribunal, who are respondent nos. 1 and 2 herein, filed their counter affidavit, inter alia, stating that the petitioners have never been appointed in the College and have managed to fabricate and forge records in support of their claim. On the other hand, on verification of the records, it was found that the opp. parties 4 to 14 (respondent nos. 4 to 14) are regular staff of the College for which a proposal was submitted for necessary approval in compliance with the order of this Court dated

20.1.2004 passed in OJC No. 10891 of 2001. It was further pleaded by the opp. parties 1 and 2 that in pursuance of the direction of this Court in OJC No. 347 of 1989, the Director of Higher Education, Orissa, submitted his report after physical verification on 24.6.1989 where the opp. parties 4 to 14 are found to be the staff of the College. In the aforesaid background, the petitioners have no case.

4. The opp. party no. 3 (respondent no. 3)-Governing Body in its counter affidavit, inter alia, stated that the petitioners-appellants are not the staff of the College. After the +2 Wing of the College was notified to receive Grant-in-aid with effect from 1.6.1988, the services of teaching and non-teaching posts, which are admissible under the Rules, were approved and Grant-in-aid Order releasing the Grant-in-aid with effect from 1.6.1988 was passed by the Government on 27.2.1999 and 12.3.1999 respectively. Consequent to the letter dated 25.4.2000 of the Director of Higher Education, Orissa, the Principal of the College produced the records relating to the service of the opp. parties 4 to 14 for verification, who were appointed due to increase in the work load. Since a dispute arose relating to appointment of the staff members, the matter was brought before this Court in OJC No. 347 of 1989. In pursuance to the direction of this Court, the Director of Higher Education on 24.6.1989 found 22 persons were working in the College as teaching and non-teaching staff and recommended their names, who are

eligible to receive Grant-in-aid. The said report further revealed that Sri Satrughana Jena was responsible for all sorts of irregularities, which took place in the College. Challenging the said report, Sri Jena approached this Court in OJC No. 880 of 1991, which was dismissed by this Court accepting the report of the Director of Higher Education, Orissa relating to the staff position of the College. The names of the petitioners-appellants did not find place in the said report, rather the names of the opp. parties 4 to 14 (respondent nos. 4 to 14) found place therein. As no action was taken thereafter by the Director, the opp. parties 4 to 14 approached this Court in OJC No. 10891 of 2001 in which this Court directed the Director of Higher Education to consider the claim of the petitioners (respondent nos. 4 to 14) in accordance with law. Challenging the said order, the appellants in this appeal filed Review Petition No. 17 of 2004.

5. A rejoinder affidavit was filed by the appellants-petitioners before the Tribunal to the counter affidavit filed by the Governing Body, inter alia, stating that Jatindra Nath Das, who claims to have been approved as the Principal-in-charge, has got no valid appointment by the competent Governing Body. Sri Satrughana Jena was the Secretary of the Governing Body and continued to be so till the institution became aided on 27.2.1999. After concurrence and affiliation was given to the +3 Wing of the College, the State Government directed the College to register

separate Governing Body for Shantilata Degree Mahavidyalaya, which was accordingly registered in the year 1994 with Smt. Shantilata Jena as the Secretary. It was, therefore, pleaded that anybody claims to be an employee of Shantilata Mahavidyalaya would have been appointed by Smt. Shantilata Jena as the Secretary. As some of the employees have not been issued with any appointment letter by Smt. Shantilata Jena, the Government coming to know about this fact issued a letter dated 1.3.2010 for verification of the records in respect of those persons. Out of them, it was found that Sri Jatindra Nath Das was having only 43% marks in M.A. though the requirement for Lecturers was 55% in case of +3 Colleges and 54% in case of +2 Colleges. Even though he appeared in a repeat M.A. Examination, but he secured only 52% marks, which was not the minimum prescribed percentage of marks. One of such Lecturers approached this Court against the order of the Government, in W.P.(C) No. 2463 of 2010, but this Court did not accept the claim and directed for further enquiry. In the rejoinder affidavit, the appellants however pleaded that there is no concept of composite college under the Orissa Education Act and Rules and the opp. parties 4 to 14 (respondent nos. 4 to 14) are strangers to the College and the petitioners are validly appointed staff of the College having been appointed by the competent authority.

6. The Tribunal after taking note of the respective cases of the parties came to the conclusion that the report of the Director of Higher Education pursuant to his verification of the records on 24.6.1989, included the names of the opp. parties 4 to 14 (respondent nos. 4 to 14) as staff of the College and the said report was challenged before this Court by Shri Satrugghana Jena in OJC No. 880 of 1991 where this Court accepted the report of the Director of Higher Education. The said report cannot be said to be contrary to law. The Tribunal also took note of the fact that the said report does not reveal the names of the petitioners-appellants herein. The Tribunal thus concluded that there is no scope for it to reopen the matter other than accepting the report of the Director of Higher Education, Orissa, submitted in pursuance to the order passed by this Court in OJC No. 347 of 1989 and accepted by this Court in OJC No. 880 of 1991. Under the above circumstances, the Tribunal dismissed the application filed by the appellants under Section 24-B of the Act registered as G.I.A. Case No. 36 of 2004. Being aggrieved by the said judgment, the appellants have preferred the present appeal.

7. On perusal of the judgment passed in OJC No. 880 of 1991 by a Division Bench of this Court on 2.2.1996, it appears that the said writ petition was filed by one Satrugghana Jena with the following prayer:

“(a) That a Rule Nisi in the nature of a writ of Mandamus and/or any other writ or writs and/or order or orders and/or direction may be issued calling upon the opposite parties to show cause why the list of names of the members of the staff of Shantilata Mahavidyalaya at Utikiri submitted by the opposite party no. 1 to the opposite party no. 3 and eligible to get their pay shall not be quashed and the names submitted by the Governing Body shall not be accepted.

(b) That if the opposite parties fail to show cause or show insufficient cause the Rule Nisi may be made absolute.

(c) That costs of the petitioner may be allowed in favour of the petitioner”.

8. Some of the staff members of the College were impleaded as opp. parties in the said writ petition. This Court taking note of all the previous writ petitions filed before this Court with regard to the dispute persisting in connection with the approved staff as well as the management of the College and further taking note of the respective affidavits filed by the writ petitioners and the opp. parties therein referring to the enquiry report of the Director of Higher Education while accepting the said report and dismissing the writ petition held as follows:

“We have given the matter our anxious consideration and are of the view that the relief claimed cannot be granted to the petitioner. In compliance of the orders passed by this Court in the earlier writ petitions, an enquiry was conducted by the Director, who is a responsible officer in the Education Department. The enquiry report indicates that all possible efforts were made by the Director to notice and hear all who appear to be in some manner or the other connected with the dispute. Members of the staff, Sarpanch and the Headmaster of another institution were heard. But neither the petitioner nor his brother Rabindranath Jena appeared



in spite of repeated notice and even though Mr. A.K. Roy, the Deputy Director had personally approached the petitioner and tried to persuade him to participate in the enquiry. Request was also made to the members of the Governing Body and villagers to attend the inquiry and to make statements if they so desire. The fact that a Magistrate and the police had to be requisitioned gives an indication of the atmosphere which was prevailing at that time.”

9. I, therefore, find no error or illegality to have been committed by the Tribunal in dismissing the G.I.A. case filed by the appellants by placing reliance on the enquiry report of the Director of Higher Education, which was accepted by this Court in its judgment passed in the aforesaid writ petition. This appeal being devoid of merit stands dismissed. The interim order passed on 13.5.2011 stands vacated.

.....  
***M.M. Das, J.***

Orissa High Court, Cuttack.  
Dated the 31<sup>st</sup> July, 2012/bks

