

**HIGH COURT OF ORISSA: CUTTACK.**

**FAO NOS. 460 & 461 OF 2010**

From the judgment dated 6.9.2010 passed by Shri P.K. Ray, Presiding Officer, State Education Tribunal, Bhubaneswar in G.I.A. Case Nos. 263 of 2007 and 18 of 2008.

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**(In both the cases)**

Natabar Malla ..... Appellant

-Versus-

State of Orissa and others ..... Respondents

For Appellant : M/s. P. Mohanty, D.N. Mohapatra,  
Smt. J. Mohanty, P.K. Nayak &  
S.N. Dash

For Respondents : M/s. B.R. Sarangi, S. Patra-I,  
& N.H. Sattar.

Addl. Government Advocate

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Date of Judgment: 31 .07.2013  
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**P R E S E N T:**

**THE HONOURABLE SHRI JUSTICE M.M.DAS**  
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**M.M. Das, J.** Both the aforesaid two appeals have been preferred by the appellant against the common judgment dated 6.9.2010 passed by the State Education Tribunal (for short 'the Tribunal) in G.I.A. Case No. 263 of 2007 filed by the appellant and G.I.A. Case No. 18

of 2008 filed by the respondent no. 4 relating to the dispute with regard to the date of their appointment to the post of Assistant Librarian in Astaranga College in the district of Puri and to their entitlement to receive Grant-in-Aid.

2. Initially the appellant filed OJC No. 8934 of 1998 seeking a direction of this Court to the respondent nos. 1 and 2 not to withdraw the sanction order issued in his favour and for a further direction to release the Grant-in-aid forthwith as per the sanction order already accorded. When the matter was taken up for hearing as by that time Section 24-B of the Orissa Education Act already came into operation providing a forum i.e. State Education Tribunal, to adjudicate this dispute relating to release of Grand-in-aid and approval of the post, the writ petition was disposed of by order dated 6.11.2007 permitting the petitioner-appellant to withdraw the writ petition and file an appropriate case before the Tribunal.

3. The appellant filed G.I.A. Case No. 263 of 2007 and the respondent no. 4 thereafter filed G.I.A. Case No. 18 of 2008 before the Tribunal. The Tribunal adjudicating the dispute by the impugned order, turned down the claim of the appellant in G.I.A. Case No. 263 of 2007 and allowed the claim of the respondent no. 4 in G.I.A. Case No. 18 of 2008 holding that the respondent no. 4 is entitled to approval of his post of Assistant Librarian and also

entitled to Grant-in-aid with effect from 1.6.1994. Being aggrieved, the appellant has preferred the aforesaid two appeals.

4. The case of the appellant is that he was engaged on honorary basis as Assistant Librarian in the college on 1.7.1987. Subsequently, he acquired the qualification of Graduate in Arts as per the certificate dated 20.6.1991 given by the Secretary, Governing Body of the College. He was appointed on regular basis as Librarian in the college as per appointment letter dated 3.7.1989 and he joined and functioned as such with effect from 3.7.1989. He was offered to undergo the course of Library Science in Nilakantha College of Library and Information Science, Bhubaneswar and accordingly, the Secretary of the college sent a letter to the Principle of the said college of Library and Information Science, Bhubaneswar. After completion of the course, he resumed his duty on 1.5.1992. However, he passed the Bachelor Degree in Library and Information Science on 13.9.1994 and his name was recommended by the college in the prescribed Form-A to the Directorate for the purpose of approval and release of Grant-in-aid on 25.2.1995. In the said Form, though the appellant's name appeared above the respondent no. 4 but wrongly the date of appointment order of respondent no. 4 was shown as 1.2.1989 and correctly as against the name of appellant as 3.7.1989. However, the name of respondent no. 4 was shown against +3 Wing of the

college. The appellant alleges that the respondent no. 4 has never been appointed from 1.2.1989, but, in fact, he joined in the college with effect from 5.7.1993 against +3 Wing. It is further alleged that there is no resolution of the Governing Body giving him appointment with effect from 1.2.1989. There is also no attendance register nor any Acquaintance Roll showing him to have been functioning from 1.2.1989 or receiving any salary from the college. The appellant, therefore, has alleged that the appointment letter furnished by the respondent no. 4 is a manufactured one, which was never issued from the college. There is also no communication by any memo number and date as per Dak Dispatch Register of the college. There is no joining report of the respondent no. 4 dated 2.2.1989. The Director after verification of the college records found the appellant to have been appointed with effect from 3.7.1989 and therefore, Grant-in-aid was released in his favour with effect from 1.6.1995 as per 1994 Grant-in-aid Order in accordance with the Directorate Letter dated 25.3.1998. At this juncture, the respondent no. 4 sent an application to the Deputy Director (+2 Education) on 17.4.1998 allegedly by forging a certificate endorsed therein with memo no. 1234 dated 17.4.1998 of the Principal of the college to the effect that the case of the respondent no. 4 is genuine as per his contention made in the said application. The respondent no. 4 disputed the appointment of the

appellant and claimed to have been appointed earlier against +2 Wing. It is alleged that he manufactured another letter no. 1235 dated 20.4.1998 of the Principal of the college. The Principal has denied those letters. According to the appellant, there is also no record in the college showing to have issued such letters and the memo number and date as per the Dak Dispatch Register, but the said Register shows that the said letters have been issued in different context relating to different matters. When such dispute was raised by the respondent no. 4, the Director as per his Office Memo No. 27181 dated 11.5.1998 required the Principal of the college to clarify the position being present before him, as to whether the earlier letter sent by the Secretary in his Memo No. 1160 dated 14.12.1996 recommending the case of the appellant for approval to the post of Assistant Librarian is correct or subsequent letter no. 1235 dated 20.4.1998 in favour of respondent no. 4 is correct. The Principal attended the office of the Director on 12.5.1998 and certified on the letter no. 1235 dated 20.4.1998 purporting to have been sent by the Principal of the college as, in fact, not sent by the college and similarly, the endorsement made in the application dated 17.4.1998 by the Principal is also not correct. The respondent no. 4 was appointed and joined with effect from 5.7.1993 as against +3 Wing of the college which was opened in the year 1993-1994. The appellant stating all these facts filed his

counter in G.I.A. Case No. 18 of 2008 filed by the respondent no. 4 before the Tribunal seeking a direction to treat him as the approved Assistant Librarian of the college in question and to release the salary component as provided to the post of Graduate Librarian.

5. It is contended by the appellant that even though exhaustive pleadings were submitted before this Court in the writ petition wherein counter affidavits and rejoinder affidavit were filed by the respective parties but still then the respondent no. 4 filed G.I.A. Case No. 18 of 2008 before the Tribunal stating that the appellant had no training qualification of Library Science and he was not appointed from 3.7.1989 and his appointment being in a +2 Wing was the second post which was not permissible under law. The college was notified as an aided college within the meaning of Section 3 (b) of the Orissa Education Act as per Notification No. 15451 dated 15.2.1997 and the respondent no. 4 pleaded that the Governing Body has submitted the Form-A with mala fide intention showing him to have been appointed in +3 Wing instead of +2 Wing. The Director without properly going through the records in a mechanically manner recommended the name of the appellant for approval against the said post for which the respondent no. 4 made a representation to the Deputy Director claiming to have been appointed with effect from 2.2.1989. Therefore, the Governing Body recommended to cancel the approval of the appellant. The

Deputy Director after enquiry recommended to cancel the approval in favour of the appellant and in this view of the matter, the respondent no. 4 claimed that a direction should be issued for approval of his appointment and not the appointment of the appellant.

6. Mr. Mohanty, learned counsel for the appellant submitted that the Tribunal without appreciating the facts and the documents produced, in its proper perspective, has committed an error in passing the impugned judgment allowing the claim of the respondent no. 4 and disallowing that of the appellant.

7. Mr. Sarangi, learned counsel appearing for the respondent no. 4, on the contrary, supporting the impugned judgment, submitted that the Tribunal has correctly found that the yardstick of non-teaching staff in non-Government colleges as prescribed by the Government of Orissa on 8.7.1997 provides admissibility of only one post of non-Graduate Librarian up to the roll strength of 500 and further found that there is no claim in this case that in the year 1989, the roll strength of the college exceeded to 500. Thus, one post of non-Graduate Librarian was admissible to the college. The Tribunal has further found that admittedly, in 1989 the respondent no. 4 was a non-graduate as he acquired graduation in the year 1990 but he acquired the certificate of Library Information Science in the year 1984, whereas the appellant

acquired the qualification of Library and Information Science in 1992. Thus, in the year, 1989, by the time of appointment of respondent no. 4 on 2.2.1989, he was having requisite qualification of Library and Information Science. The college was notified to receive Grant-in-aid on 15.2.1997. By that date, both the appellant and respondent no. 4 have acquired the qualification of graduation as well as Library Information Science, but the respondent no. 4 having been appointed on 1.2.1989 and joined on 2.2.1989 was senior to the appellant as he was regularly appointed on 3.7.1989. As per the yardstick, only one post of non-graduate Librarian was permissible. Therefore, the appellant who joined subsequent to the appointment of respondent no. 4 can not have any claim for the post. The Tribunal relied upon the enquiry report of the Deputy Director, Higher Education with regard to appointment, seniority and approval of appointment in the context of approval of the appointment of staff for release of Grant-in-aid. The Deputy Director has stated in his counter before the Tribunal that after verification of the records, he came to the conclusion that appointment of respondent no. 4, who was the petitioner in G.I.A. Case No. 18 of 2008, was legal and valid in respect of +2 Wing of the college and such appointment deserves to be approved and consequently for release of Grant-in-aid. Thus, he recommended the name of respondent no. 4 for the above purpose. The Tribunal



after taking into consideration all the relevant records and the recommendation made by the Deputy Director of Higher Education allowed the G.I.A. Case No. 18 of 2008 filed by the respondent no. 4 while dismissing the G.I.A. Case No. 263 of 2007 filed by the present appellant.

8. It appears from the enquiry report of the Deputy Director (+2 Education), Orissa annexed as Annexure-7 to G.I.A. Case No. 18 of 2008 that the Deputy Director made a thread bare enquiry referring to the documents produced by the college and found the anomalies in the documents sent to the Directorate by the college and as a matter of fact, the photo copy of the Governing Body resolution submitted to the Directorate was being verified with the original Governing Body resolution dated 24.10.1994 of Sitting No. 12 produced by the Principal-in-charge and it was found that the photo copy given to the Directorate is a manipulated one in which the portion bearing the name of respondent no. 4-Shri P.K. Jena was deliberately erased by putting a paper on it while preparing a photo copy, but in the original Governing Body resolution, the name of Shri P.K. Jena as Librarian appears and his date of appointment is shown to be 2.2.1989. It was also further found that in the original Governing Body resolution, '+3' has been inserted against the name of Shri P.K. Jena after erasing the original portion and against the appellant, it has been inserted as

'+2' and the attendance register beginning from 1987 till 1989 showed that neither the appellant nor the respondent no. 4 has signed the same. The Acquaintance Roll was also found to be manipulated.

9. In view of such facts, this Court is of the opinion that the Tribunal has rightly relied upon the enquiry report of the Deputy Director and taking into consideration the yardstick of 1977, has rightly concluded that the respondent no. 4 was appointed on 1.2.1989 and joined on 2.2.1989 i.e. prior to the appellant and there was no second post of Assistant Librarian. Hence, appointment of respondent no. 4 is entitled to be approved and he is entitled to receive Grant-in-aid. As I find no infirmity in the impugned order, the same stands confirmed. Both the FAOs being devoid of merit stand dismissed.

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

***Orissa High Court, Cuttack.***  
***Dated the 31 th July, 2013/bks***

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