

DIRECTOR, ELEMENTARY EDUCATION AND ORS.

v.

PRATAP KUMAR NAYAK

JANUARY 6, 1997

[K. RAMASWAMY AND G.T. NANAVATI, J.]

*Administrative Tribunal—Power of review—Held Tribunal cannot go behind the main order—Scheme sponsored by Central Government for education programme—Appointment of facilitators—Direction given by Administrative Tribunal to appellants to consider the case of respondent according to rules—Respondent not appointed since he did not fulfil the prescribed qualifications—Application for contempt filed by respondent—Order by Tribunal that respondent be given appointment—Challenge to order passed by Tribunal—Held the Tribunal has gone wrong in giving direction contrary to the directions issued in the main order—In a review petition, the Tribunal could not have gone behind the main order and issued fresh directions—Order passed by Tribunal set aside.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 102 of 1997.

From the Judgment and Order dated 15.1.96 of the Orissa Administrative Tribunal, Bhubaneshwar in M.P. No. 3473 of 1995.

P.N. Misra for the Appellants.

Mrs. Kirti Mishra for the Respondent.

The following Order of the Court was delivered :

Leave granted. We have heard learned counsel on both sides.

This appeal by special leave arises from the order dated 15.1.1996 of the Orissa Administrative Tribunal, made in M.P. No. 3473/95. The respondent was initially appointed as non-formal Facilitator under a non-formal Education Programme, a scheme sponsored by the Central Government for imparting primary education to the children in the age group of 6 to 12 year. The State Government issued on October 10, 1990 guidelines for appointment of Facilitators as regular primary school teachers. In the said

guidelines, the Facilitators have to complete three years of service and must have acquired C.T. training by 31.12.1990. When the respondent filed an O.A. in the Tribunal, the Tribunal had given direction to the appellant to consider his case according to rules. It is not in dispute that by proceedings dated May 19, 1993, his case was considered and he was not found eligible under the rules. The respondent filed contempt proceedings in the Tribunal stating that the appellants have deliberately violated the orders passed by the Tribunal. In the impugned order, it is stated that :

"In the circumstances, the order dated 11.11.1992 be implemented within 15 days from the date of receipt of a copy of this order. The applicant be given appointment like his juniors who have been given such appointment. If none of his juniors have been given appointment, then the Respondents would take action as per the prevailing instructions by giving him notional appointment as Sikhyakarmi in accordance with the Circular dated 24.9.1992 and after determining his deemed date of appointment as Sikhyakarmi, give appointment to him as regular primary school teacher, as is being done in cases of Sikhyakarmis."

Calling that order in question, this appeal has been filed.

From the order, it is clear that the Tribunal has gone wrong in giving direction contrary to the directions issued in the main order. Since direction was issued to consider his case according to rules, necessarily, the appellants were required to consider the claim of the respondent in accordance with the guidelines. Obviously, since the respondent had not fulfilled the qualifications prescribed in the guidelines, he could not be appointed. Accordingly, his case was rejected. The impugned direction is contrary to the direction issued on the earlier occasion and the rules. Therefore, in a review petition, the Tribunal could not have gone behind the main order and issued fresh directions. When we asked the learned counsel for the appellant to state whether any of the juniors of the respondent have been appointed, it is stated that none of the juniors have been appointed. Learned counsel appearing for the respondent has stated that some of the persons who did not fulfil the qualifications are being appointed and, therefore, it is contrary to the direction issued by the Tribunal. We find no force in the contention. Admittedly, they are not juniors to the respondent and we do not know under what circumstances their appoint-

ment came to be made. But the learned counsel for the appellants has stated that after the superannuation of number of teachers some vacancies have arisen; a seniority list of teachers has been prepared; the name of the respondent is also included in the seniority list; his case would be considered as and when the vacancies arise and he would be appointed accordingly.

In view of the above circumstances, the appeal is allowed. The order of the Tribunal stands set aside. The statement made by the learned counsel for the State stands recorded. No costs.

appeal allowed.