

A STATE OF ORISSA AND ORS.

v.

SUKANTI DEBI

DECEMBER 2, 1996

B [K. RAMASWAMY AND G.T. NANAVATI, JJ.]

C *Service Law—Direction given by Tribunal for appointment against a future vacancy—Validity of—State of Orissa—M.E. Schools—Respondent appointed in a third post as Hindi Teacher which was not a sanctioned post—Need for such an appointment not recognised by Management—Government instructions dated May 1, 1992—Direction that Hindi being a non-Examinable subject in M.E. Schools, there was no need to allow the existing Hindi teachers in M.E. Schools to continue further—Held direction issued by Tribunal to appoint respondent against a future vacancy was not right.*

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 15712 of 1996.

From the Judgment and Order dated 2.3.95 of the Central Administrative Tribunal at Cuttack, Orissa in O.A. No 1499 of 1993.

E Ms. Kirti Mishra for the Appellants.

The following Order of the Court was delivered :

Delay condoned.

F Leave granted.

G This appeal by special leave arises from the order of the Orissa Administrative Tribunal at Cuttack, made on March 2, 1995 in OA No. 1499/93. Though the respondent was served on September 30, 1996, she did not appear. Therefore, we adjourned the matter by proceedings dated October 28, 1996 to see whether she appears or is represented through counsel. Even today, she has not appeared.

H The only question is : whether the direction issued by the Tribunal to appoint him in future vacancy is valid in law? It is seen that the third respondent came to be appointed in a third post as Hindi Teacher which

was not sanctioned post; nor was the need for such an appointment recognised by the management. It is also stated that he was not qualified for the post. We need not go into the question of his qualification. Suffice it would be to state that the Government in their letter dated May 1, 1992 have stated as under :

"I am directed to invite a reference to Govt. Education Department Letter No. 13409, dated 17.3.1992 and to inform you that Hindi being a *non-Examinable* subject in M.E. Schools, there is no need to allow the existing Hindi teachers in M.E. Schools to continue further. Therefore, it was decided that the Hindi teachers who are ... in M.E. Schools will be adjusted against the third post of teachers in M.E. Schools provided they possessed Matric C.T. Qualification. In case any of them not ... C.T. Qualification he should be given chance to acquire C.T. Qualification as in service candidate by summer vacation ... he will be allowed untrained scale of pay till then. In case any one is non-Matric he should be given the chance to acquire an equal C.T. Qualification. In case of former, the qualification would be acquired within three years for issue of order and in case the of non-Matriculation qualification should be acquired within period of Five Years."

In view of the above, the Tribunal was not right in giving the direction.

The appeal is accordingly allowed. No costs.

T.N.A.

Appeal allowed.