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SHRI GAJANAN L. PERNEKAR

v

STATE OF GOA AND ANR.

AUGUST 16,1999

B

[DR. A.S. ANAND, CJ., M. JAGANNADHA RAO AND  
N. SANTOSH HEGDE, JJ.]

*Service Law:*

C

*Educational Institution—Headmaster of High School—School taken over by Government—Appellant—Headmaster appointed as Headmaster of other school which was a middle school—His representation allowed by Government order dated 16.2.1994 and he was absorbed as Headmaster of Government High School w.e.f. 1.4.1974 with consequential benefits—Writ petition filed by appellant as consequential benefits not granted—High Court*

D

*disposed of writ petition with liberty to appellant to make representation to department—High Court, however, observed that appointment of appellant as Headmaster of Middle School was with his consent—Appeal against the observations—Meanwhile on the strength of order of High Court, Government by order dated 21/22.1.99 not only rejected representation of appellant for*

E

*consequential benefits but also rescinded order of absorption dated 16.2.1994—Held, observations made by High Court were uncalled for and, therefore, set aside—Order of Government dated 21/22.1.1999 having been passed in breach of principles of natural justice and in violation of fair play in action, is also set aside—Liberty to appellant to make representation to*

F

*Government which would decide the same expeditiously—Administrative Law—Principles of natural justice—Opportunity of hearing.*

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4504 of 1999.

From the Judgment and Order dated 14.7.98 of the Bombay High Court in W.P. No. 261 of 1996.

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Dhruv Mehta, Fazlin Anam, Ms. Shobha and S.K. Mehta, for the Appellant.

Ms. A. Subhashini for the Respondents.

H

The following Order of the Court was delivered :

Delay condoned. A

Leave granted.

The appellants were appointed as the Headmaster of Shri Ramdas High School, Amona, Goa on 25th May, 1970 in the pay scale of Rs. 325-575. He was confirmed in the post of Headmaster after completion of the period of probation on 1.6.1972. Shri Ramdas High School, which was a private school, was taken over by the Government, alongwith the staff working in the said school w.e.f. 1.4.1974. At the time when the school was taken over, the appellants were drawing his pay in the revised pay scale of Rs. 400. After the take over of the school vide an order dated 10th June, 1974, the Government appointed the appellants as Headmaster of Government Middle School at Saligao in the pay scale of Rs. 300-25-450-EB-25-600. Appellants protested against his appointment as Headmaster of the Middle School, since earlier he had been working as a Headmaster of the High School. The appellants, after having joined the post of the Headmaster of the Middle School, made various representations. He cited cases of some others to point out the injustice that had been done to him. On 13th January, 1993, the appellants were promoted to the post of Deputy Education Officer in the Directorate of Education on *ad-hoc* basis. B C D

The representations made by the appellants from time to time were considered by the Government and on 16.2.1994, an order came to be made whereby the appellants were absorbed as a Headmaster of Government High School with retrospective effect from the date of take over of the School, i.e. with effect from 1.4.1974 with all consequential benefits flowing therefrom. The earlier order dated 10.6.1974 was rescinded. Since the consequential benefits, as granted by the Government in its order dated 16.2.1994, were not given to the appellants, he filed Writ Petition No. 261/1996 in the High Court of Bombay at Goa. The precise issue raised in the writ petition was with regard to the failure to give consequential benefits to him as flowing from the order of the Government, dated 16.2.1994. On 14th July, 1998, the writ petition was heard and disposed of. So far as the consequential benefits are concerned, the appellants were given the liberty to make a representation to the department and the department was directed to decide that representation within a period of three months from the date of receipt of the representation. E F G

In para -2 of the order of the High Court, dated 14th July, 1998, the learned Bench observed:-

"2. During the course of hearing it was revealed that the absorption H

A of the petitioner against the post of Headmaster in a middle School was with his consent. Mr. Lotlikar tried to urge that consent was obtained under duress and coercion. It is painful to note that such averment was not incorporated in the petition. We treat this as material suppression. We do not propose to entertain the petition.”

B The appellant, being aggrieved of this direction, has filed this appeal by special leave. During the pendency of the proceedings in this Court the Government, influenced by the observations made in para-2 of the order of the High Court, dated 14th July 1998 (supra), made an order on 21st/22nd January, 1999. The Government not only rejected the request of the appellant  
 C for grant of consequential benefits flowing form the earlier order dated 16.2.1994 but even rescinded the order of absorption of the appellant as Headmaster of the Government High School without putting the appellant to any notice  
 D and without hearing him in that behalf.

E It is not disputed before us that the issue before the High Court in Writ  
 D Petition No. 261/96 was a limited one, confined to the grant of consequential benefits. The observations made in para-2 (supra) were, in our opinion, strictly speaking, not called for. Those observations have led to the passing of the order dated 21st/22nd January, 1999. In the counter filed on behalf of the respondents to the special leave petition, it has been stated in para-2 of the preliminary objections that “the respondents have, in obedience to the  
 E High Court’s directions have passed order dated 22.1.1999 recalling the Government’s earlier order dated 16.2.1994 taking a decision on the representations made by the petitioner”.

F The manner in which the order dated 21st/22nd January, 1999 came to be made was, to say the least, not proper. The appellant was denuded of the benefits of the order dated 16.2.1994 unheard. There has been a breach of the principle of natural justice and a violation of fair play in action. The earlier order made in favour of the appellant as early as on 16.2.1994 was rescinded without giving any opportunity to the appellant to show cause against it.  
 G Absorption of the appellant as Headmaster of Government High School by the order dated 16.2.1994 had not been put in issue through any proceedings by any party at any point of time. That benefit could not have been taken away from the appellant without affording him any opportunity of hearing, even where the absorption as Head Master of High School had been put in issue. The principles of natural justice have been respected in their breach.  
 H The order dated 21st/22nd January, 1999 was made by the respondents

influenced by the observations contained in para-2 of the order of the High Court (supra), which observations, we have already found, were not at all called for. In the facts and circumstances of the case, the order dated 21st/22nd January, 1999 cannot be sustained and we accordingly set it aside. Consequently, we allow this appeal and set aside the observations of the High Court contained in para-2 of its judgment dated 14th July, 1998 (supra) as well as the follow-up order made by the State on 21st/22nd January, 1999. As a result the order dated 16.2.1994 would stand revived. We grant liberty to the appellant to make a representation to the State Government for grant of consequential benefits flowing from the order of 16.2.1994, as was directed by the High Court itself. In case a representation is filed by the appellant before the concerned department within six weeks from the date of this order, the same shall be decided by the department within a period of twelve weeks from the date of the receipt of the copy of the representation. The representation shall be decided by the department uninfluenced by the order made on 21st/22nd January, 1999 as well as the observations made in para-2 of the High Court order (supra), which, we have set aside.

The appeal, thus, succeeds and is allowed in the above terms. No costs.

R.P.

Appeal allowed.