

**HIGH COURT OF ORISSA : CUTTACK**

**RSA NO.462 of 2017**

In the matter of appeal under Section-100 of the Code of Civil Procedure assailing the judgment and decree passed by the learned 1<sup>st</sup> Additional District Judge, Bhubaneswar in R.F.A. No.6/19 of 2013-09 in setting aside the judgment and decree passed by the learned Civil Judge (Senior Division), Bhubaneswar in C.S. No.396 of 2006.

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*Xavier Institute of Management* :::: *Appellant*

--: VERSUS :-

*Ruturaj Pattnaik & Another* :::: *Respondents*

Advocate(s) who appeared in this case by hybrid arrangement  
(virtual/physical) mode.

*For Appellant* ... *Mr. B. Routray, Sr. Advocate*

*For Respondents* ... *Mr. S. N. Mohapatra, Advocate*  
*(Respondent No.1)*

**CORAM:**

**MR. JUSTICE D.DASH**

**Date of Hearing: 30.10.2023 :::: Date of Judgment: 08.01.2024**

**D.Dash,J.** The Appellant, by filing this Appeal, under Section-100 of the Code of Civil Procedure, 1908 (for short, 'the Code') has assailed the judgment and decree passed by the learned First Additional District Judge, Bhubaneswar in RFA No.6/19 of 2013-09. The Respondent as the Plaintiff had filed C.S. No.396 of 2006 in the Court of the Civil

Judge (Sr. Division), Bhubaneswar arraigning the present Appellant as the Defendant No.1.

The suit was filed to declare the order dated 11.03.2006 passed by the Director of the Appellant (Defendant No.1-Institute) as void and so also the order dated 06.05.2006 passed by the Respondent No.2 (Defendant No.2) as illegal with further prayer to direct the Appellant (Defendant No.1), Respondent No.2 (Defendant No.,2) to reinstate the Respondent No.1 (Plaintiff) with all service benefits and permanently injunct the Appellant (Plaintiff) and Respondent No.2 (Defendants) from taking any steps for realization of the amount from the Appellant (Plaintiff).

The suit stood decreed in part and, therefore, the Respondent No.1 (Plaintiff) being aggrieved by the same had carried the Appeal under section 96 of the Code. The First Appeal having been allowed, the aggrieved Defendant No.1 has filed this Second Appeal.

2. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to, as they have been arraigned in the Trial Court.

3. Plaintiff's case is that he was an employee of the Defendant No.1-Institute and had been appointed as the Project Manager on 01.04.1996 on contractual basis. His service was later on regularized with effect

from 01.10.1998 as Research Assistant which was subsequently re-designated as Project Manager. The Plaintiff on 15.01.2001 was transferred to Jeypore. It is stated that when the Plaintiff was functioning as Project Manager, Bhubaneswar during the year 1999, there came the Super Cyclone in the State. For rehabilitation of the affected persons at Astarang Block in the District of Puri, rehabilitation work was undertaken by the Defendant No.1-Institute receiving the funds from outside agencies. The Plaintiff was assigned with the work of rehabilitation which was targeted to be completed on or before 12.12.2000. Thereafter the documents were audited by the Chartered Accountant of the Defendant-Institute. The report came to the effect that the entire money has been utilized on 17.02.2001. The Plaintiff received a letter from the Dean about non-settlement of a sum of Rs.71,670.30. The Plaintiff replied about the utilization of the entire amount. But once again on 03.10.2001, the Defendant No.1-Institute issued another notice asking the Plaintiff to pay a sum of Rs.76,020.40. The Plaintiff again submitted his reply to the said notice and the Management kept silent over the matter for nearly about four years. On 01.02.2005, the Management, however, issued another notice to the Plaintiff informing the outstanding amount to be paid by him standing at Rs.65,670.30. In this way, communications were exchanged and finally

on 08.12.2005, the Plaintiff was placed under suspension and the departmental proceeding was initiated.

It is alleged that the Plaintiff was not supplied with relevant documents despite several representations and without due inquiry and examination of the witnesses on behalf of the parties, the Inquiring Officer submitted the report stating that the charges against this accused have been proved. On 30.01.2006, the Director of the Institute imposed penalty against the Plaintiff directing him to pay of RS.65,670.30 alongwith interest and further imposed penalty of stoppage of five increments with cumulative effect treating the suspension period. It was mentioned that in case the payment is not made voluntarily, the service of the Plaintiff would be terminated. The Plaintiff soon thereafter made several representations to the Director and ultimately on 11.03.2006, he was served with the notice of termination of his service with immediate effect. The Plaintiff thereafter preferred an Appeal before the Chairman of the Board of Governors of the institute on 21.03.2006 which was dismissed. It is said that both the Disciplinary Authority as well as the Appellate Authority without following the provision contained under Staff (Recruitment and Conditions of Service) Rule, 1993, which governs the service conditions of the employees under the Institute, have illegally terminated the service of the Plaintiff.

4. The Defendants in their written statement raised the issue of jurisdiction of the Civil Court to entertain the suit at the behest of the Plaintiff seeking the reliefs as advanced therein. It is stated that the Civil Court cannot act as Appellate and Revisional court in going to examine the events which had taken place in the disciplinary proceeding. It is further stated that the disciplinary proceeding against the Plaintiff has been properly conducted as per the 1993 Rules and the Plaintiff was supplied with all such documents and he was also allowed to verify and inspect all the documents. As per the case laid in the written statement, an inquiry was conducted strictly in accordance with 1993 Rules by the Inquiring Officer and the Plaintiff delayed the matter by resorting to dilatory tactics. The disciplinary proceeding was initiated under Rule 20 of the Rules, 2013 and there was no violation of the Rules in the enquiry. The Plaintiff was given the chance to settle the amount and when he failed to do so, he was visited with the penalty of termination of service taking into account the fact finding report of the Inquiring Officer.

5. The Trial Court on the above rival pleadings having framed six issues finally decreed the suit in part by passing the following order:-

- (i) Is the suit maintainable?
- (ii) Has the Plaintiff got any cause of action to file the suit?

- (iii) Is the Plaintiff entitled to the relief of declaration that the order of the Director dated 11.03.2006 terminating the service of the Plaintiff as null and void?
- (iv) Is the order of the Chairman Board of Governor, Xavier Institute of Management dt.06.05.2006 is illegal and void?
- (v) Is the Plaintiff entitled to the relief of reinstatement?
- (vi) Is the Plaintiff entitled to the relief of permanent injunction restraining the Defendants from realizing the claim amount?
6. The Plaintiff being aggrieved by the same had carried the First Appeal. The First Appellate Court at the end has said as under:-
- “On close analysis of the entire evidence and the submissions made, this Court is of view that the finding of learned Civil Judge, Sr. Division, Bhubaneswar that no infirmity has been caused in the procedure adopted by the inquiring officer appointed by the respondents is not sustainable. There has been complete violation of the fundamental principles of natural justice for which the appellant is entitled for a declaration that the order dtd.11.03.2006 and 06.05.06 passed by the respondents are void. The Appellant is further entitled for reinstatement to the post of Project Manager with back wages. However, considering the facts and circumstances of the case, it is held the appellant is not entitled to permanently restrain the Respondents for taking any step for realization of the amount”.
7. The Appeal has been allowed by passing the order as under:-

“The Appeal is allowed on contest. The judgment and decree passed by learned Civil Judge, Sr. Division, Bhubaneswar in CS No.396 of 2006 is hereby set aside. The order dtd. 11.03.2006 of the Director, Xavier Institute of Management, Bhubaneswar and the order dtd. 06.05.2006 of the Chairman, Board of Governors of Xavier Institute of Management, Bhubaneswar are hereby declared void and quashed. The respondents are directed to reinstate the appellants to the post of Project Manager forthwith with all financial benefits. Parties to bear their costs.”

8. Hence, the present Second Appeal is at the instance of the Defendant No.1.

9. This Appeal has been admitted to answer the following substantial questions of law:-

- (i) “Whether the Courts below have erred both on fact and law in assuming the jurisdiction to decide the factual controversies emanating from the pleading and entertain the suit with the reliefs as claimed therein?”
- (ii) Whether with the finding that there has been gross irregularities in the department proceeding, the First Appellate Court could have gone to the extent of passing an order to reinstate the Appellant with back wages instead of remitting the matter of the disciplinary authority to them enable to take decision afresh taking into consideration, the gravity of the charge involved with respect to whether it may still be required to hold a de novo enquiry, from the stage wherefrom the irregularities have been committed?”

10. Heard Mr. B. Routray, learned Senior Counsel for the Appellant and Mr. S.N. Mohapatra, learned counsel for the Respondent No.1 at length. I have carefully read the judgments passed by the Courts below.

11. It appears that the First Appellate Court having verified the entire record has found that the Enquiring Officer solely relying upon the audit report and without examining any witness from the side of the Institute accepted the audit report in toto and concluded that the Plaintiff has committed gross delegation of duty. It has also found that no record is available to show that the copy of the inquiry report vide Ext.'Z' was supplied to the Plaintiff prior to the imposition of punishment. Therefore, the First Appellate Court has taken a view that the Trial Court was not right in holding that the proceeding was conducted in a fair manner. The conclusion of the First Appellate Court is also that to the effect that the Enquiring Officer without following the principles of natural justice in a partition manner conducted the inquiry and basing upon the same, the order of punishment has been imposed upon the Plaintiff. In view of that, the First Appellate Court while declaring the order dated 11.03.2006 passed by the Defendants to be void has directed that there be reinstatement of the Plaintiff to the post of Project Manager with full back wages.



12. It is the settled legal proposition, that once the Court sets aside an order of punishment, on the ground that the enquiry was not properly conducted; the Court cannot reinstate the employee. It must remit the concerned case to the disciplinary authority, for it to conduct the enquiry from the point that it stood vitiated, and conclude the same. (vide: Managing Director, ECIL, Hyderabad etc. etc, v. B. Karunakr etc. etc. MANU/SC/0237/1994: AIR 1994 SC 1074; Hiran Mayee Bhattacharyya v. Secretary, S.M. School for Girls and Ors.; (2002) 10 SCC 293; U.P. State Spinning C. Ltd. V. R.S. Pandey and Anr. MANU/SC/2467/2005 : (2005) 8 SCC 246; and Union of India v. Y.S. Sandhu, Ex-Inspector MANU/SC/8064/2008 : AIR 2009 SC 161).

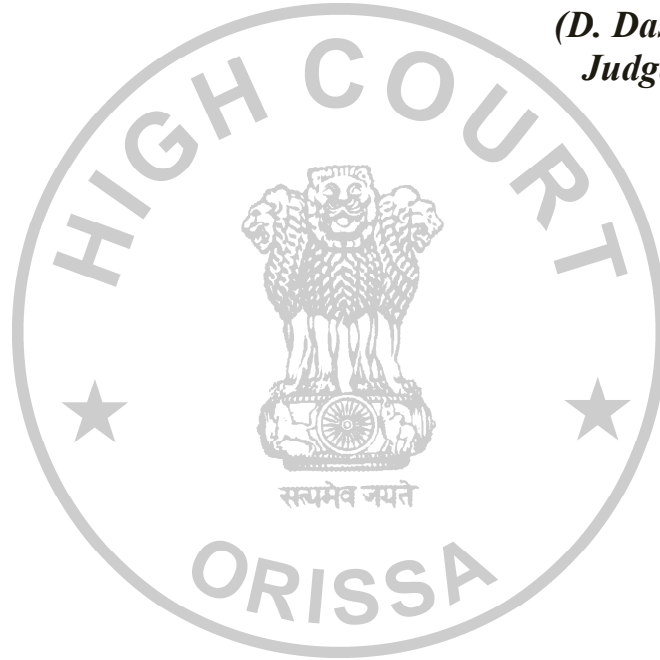
13. The Court while directing the Disciplinary Authority to furnish a copy of the inquiry report to the employee and then permitting him to submit representation/explanation in that final order to be passed has clearly stated that the same would not lead to reinstatement or back wages. The Hon'ble Apex Court has decided in case of Managing Director, ECIL, Hyderabad etc. v. B. Karunakar etc., (1993) 4 SCC 727 that there need be no reinstatement nor back wages need be paid when the Court directs that the principles of natural justice should be followed.

14. The provision of Specific Relief Act, 1963 prohibits the enforcement of contract of personal service. It is trite law that the courts do not ordinarily enforce performance of contracts of personal character, such as a contract of employment. A contract of employment cannot ordinarily be enforced by or against an employer. The remedy is to sue for damages. Section 14 read with section 41 of the Specific Relief Act says that grant of specific performance is purely discretionary and must be refused when not warranted by the ends of justice. Such relief can be granted only on sound legal principles. In the absence of any statutory requirement, courts do not ordinarily force an employer to recruit or retain in service an employee not required by the employer. There are, of course, certain exceptions to this rule, such as in the case of a public servant dismissed from service in contravention of Article 311 of the Constitution; reinstatement of a dismissed worker under the Industrial law; a statutory body acting in breach of statutory obligations, and the like. (S.R. Tiwari v. District Board, Agra MANU/SC/0223/1963 : (1964) ILLJISC; U.P. State Warehousing Corporation v. C.K. Tyagi MANU/SC/0499/1969 : (1970) ILLJ32SC ; Executive Committee of Vaish Degree College, Shamli and Ors. V. Lakshmi Narain and Ors. MANU/SC/0052/1979 : [1976] 2 SCR 1006; see Halsbury's Laws of England, Fourth Edn., Volume 44, Paragraph 405 to 420.)

15. On the anvil of the aforesaid legal principles, the Courts below are found to have erred in entertaining the suit as laid by the Plaintiff in seeking the reliefs as prayed for. The substantial questions of law are accordingly answered in favour of the dismissal of the suit.

16. In the result, the Appeal stands allowed. No order as to cost.

**(D. Dash),  
Judge.**



*Himansu*