

1. ORDER DATED 25-08-2003.

On being mentioned, this matter is taken-up today.

(2) Applicant, having faced a punishment in a disciplinary proceedings, preferred an appeal and the said appeal having been dismissed, on 17-07-2003, the Applicant has again preferred a revision petition under Annexure-A/12 dated 25-07-2003. Within five days thereafter, the Applicant has filed the present Original Application (under section 19 of the A.T. Act, 1985) on 30th July, 2003. It appears, therefore, that this original Application is premature.

(3) In the aforesaid premises, this original Application is disposed of, at the admission stage, with a direction to the Respondents (especially, the Respondent No. 2) to dispose of the revision petition (Annexure-A/12) of the Applicant within a reasonable time.

(4) Before parting with this case, I am to note that it has been alleged in the Review Petition (Annexure-A/12) that all the points raised by the Applicant before the Appellate Authority had not been considered properly. It appears that the Applicant prayed for a demonstration in respect of a technical aspect of the matter involved in the disciplinary proceedings in question; which was, apparently, not

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granted to him by the Appellate Authority. Therefore, the Revisional Authority, while examining all aspects of the matter, should do well in taking a demonstration, with the aid and assistance of other technical senior persons.

(5) While dealing with the revision petition of the Applicant, the Revisional Authority is hereby directed to remain free to pass such interim orders, as he deems fit and proper, in the facts and circumstances of the case and, until such considerations are given by him, relating to the interim prayer made in the Revision Petition, the punishment imposed on the Applicant shall remain stayed.

(6) The plea that neither the Appellate nor Revisional Authority has power to grant interim stay, is not sustainable; because of the fact that every authority (Appellate or Revisional) has got an inherent/ incidental/ ancillary powers to grant stay of the impugned order pending, in an appeal/revision. This aspect of the matter was considered by the Hon'ble High Court of Orissa in the case of MANAGING COMMITTEE, GARG-BANIKILO HIGH SCHOOL - VRS. - STATE EDUCATION TRIBUNAL, ORISSA AND OTHERS (reported in 1986 Indian Law Reports, Cuttack Series, Vol. I, page-27) wherein the Hon'ble High Court (R.N. MISHRA-J.) held

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that the Appellate Authority has got powers to grant stay in appropriate cases. In the case of INCOME TAX OFFICER, CANNANORE VRS. M.K. MOHAMMED KUNHI (reported in AIR 1969 SC 430), the Hon'ble Apex Court observed that ".... The powers which have been conferred by Section 254 on the Appellate Tribunal with widest possible amplitude must carry with them by necessary implication all powers and duties incidental and necessary to make the exercise of these powers fully effective ...". Maxwell on Interpretation of Statutes, Eleventh edition, contains a statement at p.350 that "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution ~~px.~~". An instance is given based on Ex parte, Martin (1879) 4 Q.B.D. 212 at p.491 that "where an inferior court is empowered to grant an injunction, the power of punishing disobedience to it by commitment is impliedly conveyed by the enactment, for the power would be useless if it could not be enforced". The Hon'ble Supreme Court quoted with approval a passage from the decision in Pelini v. Gray (1979) 12 Ch.D. 432 that "it appears to me on principle that the Court ought to possess that jurisdiction, because the principle which underlies all orders for the preservation of property pending litigation is this,

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that the successful party is to reap the fruits of that litigation, and not obtain merely a barren success. That principle, as it appears to me, applies as much to the Court of first instance before the first trial, and to the Court of appeal before the second trial, as to the Court of last instance before the hearing of the final appeal". Therefore, the Revisional Authority of the Applicant should do well in dealing with the interim prayer of the Applicant; because he has got inherent/ancillary powers to grant stay.

(7) Send copies of this order, alongwith copies of the original Application, to the Respondents and free copies of this order be given to Mr. A. Das, learned Counsel appearing for the Applicant and to Mr. R. C. Rath, learned Standing Counsel appearing for the Railways.

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Manoranjan Mohanty
(MANORANJAN MOHANTY)

MEMBER(JUDICIAL)

25/08/2003

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