

(1989) 08 OHC CK 0015

In the Orissa High Court

Case No : Original Jurisdiction Case No. 2095 of 1989

Adikanda Jena

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 24-08-1989

Acts Referred:

Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 — Rule 12(2)
Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 — Rule 11, 21, 21(2)
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Citation : (1990) 1 OLR 234

Hon'ble Judges : L. Rath, J;K.C. Jagadeb Roy, J

Bench : Division Bench

Advocate : P. Palit, for the Appellant; P.K. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

L. Rath, J.—The two Petitioners are respectively the Bearer and Clerk-cum-Typist of the Anandapur College and having been placed under suspension under identical circumstances have challenged the orders of suspension in the two writ applications. Since the facts relating to both the cases are the same they are disposed of by this common judgment.

2. Both the Petitioners were issued letters on 11-4-1988 by opp. party No. 3, the Principal of the College, directing them to show cause as to why disciplinary action would not be taken against them since it had been reported by the Officer-in-charge, Ghasipura P.S. that the Petitioner in O.J.C. No. 2095/89 had surrendered in Court on 15-2-1989 and was remanded to jail custody till 17-2-1989 in connection with Ghasipura P.S. Case No. 16 dated 10-2-1989 and the Petitioner in O.J.C. No. 2099/89 had been arrested in connection with the same case and forwarded to Court in custody on 11-2-1989 and remanded to jail custody till 14-3-1989, but that the casual leave application of the former reached the Botany Department on 15-2-1989 directly without having come

through the jail authorities and the casual leave application of the latter was received in the College on 14-2-1989 directly without the same having been sent through the jail authorities. Thus, in substance the Petitioners were asked to show cause for their leave applications having been sent to the college authorities directly without having come through the jail authorities. The Petitioner in O.J.C. No. 2095/89 submitted his explanation that he had surrendered before the Court on 15-2-1989 at 4.30 p.m. and was subsequently enlarged on bail and that before that in the forenoon of 15-2-1989 he had applied for casual leave on the ground of Court work and hence the application had been sent directly. The Petitioner in O.J.C. No. 2099/89 also submitted his reply to the notice to show cause on 20-4-1981 although the same has not been annexed to the writ petition. A communication was made thereafter from the office of the Director, Higher Education, Orissa, Bhubaneswar, opposite party No. 2, that the Petitioners should not have been allowed to join the college when they had been arrested and detained in jail custody beyond forty-eight hours and that they should have been suspended as per the provisions of Rule 12(2) of the Orissa Civil Services (Classification, Control and Appeal) Rules, 1962. On the basis of such communication from the office of the opposite party No. 2, a resolution was passed by the college on 31-5-1989 that as per the report of the Officer-in charge, Ghasipura P.S. sent through his letter of 23-3-1989, the Petitioners were found to have been involved in a criminal case and had been arrested and kept in jail custody for more than forty-eight hours. The matter had been referred to opposite party No. 2 whose reply of 5-5-1983 had been received and was placed before the governing body of the college in consideration of which it was resolved that both the Petitioners would be placed under suspension with effect from 1-6-1989. The resolution has been annexed as Annexure-4 to the writ petition in O.J.C. No. 2035/89 and Annexure-3 to the writ petition in O.J.C. No. 2099/89. In pursuance of the resolution, the Petitioners were placed under suspension by orders passed on 31-5-1989 as per Annexure-5 in the first case and Annexure-4 in the second case.

3. In assailing the orders of suspension, it has been contended on behalf of the Petitioners that their suspension being on account of the opinion of opposite party No. 2 that they were liable to be placed under suspension in accordance with the provision of Rule 12(2) of the Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 due to their detention in jail custody beyond forty-eight hours, the orders are illegal as the Orissa Civil Services (Classification, Control and Appeal) Rules are not applicable to them.

4. Opposite parties 3 and 4 have filed counter affidavits in both the cases. Their stand as disclosed in the counter affidavits is that the Petitioners were involved in a criminal case u/s 147, 148, 323, 324, 504, 307 and 149, IPC and their involvement in a criminal case is violative of Rule 11 of the Orissa Education (Recruitment and Conditions of Services of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974. On consideration of the report received from the Officer-in-charge, Ghasipura P.S. it was decided by the

governing body to place them under suspension with effect from 1-6-1989. The Petitioners had been earlier asked to show cause as per Annexure-1 prior to initiation of disciplinary proceedings under Rule 21 of the Recruitment Rules and as the period of suspension continued to be more than forty days, the opposite party No. 2 was moved who accorded permission by his letter of 5-5-1989. It is immaterial whether opposite party No. 2 quoted a different rule which is not applicable to the Petitioners and that the Director and the governing body of the college had the power otherwise to take such action.

5. The power of suspension of the staff of aided schools is provided under the second proviso to Rule 21(2) of the 1974 Rules and it is stipulated that the managing committee or the governing body, as the case may be, may place an employee under suspension at the initiation of, disciplinary proceedings for a period of thirty days pending approval of the Inspector or the Director, as the case may be. Thus the provision of the Rules empowers the Managing Committee to place an employee under suspension at the initiation of a disciplinary proceeding. Initiation of a disciplinary proceeding does not necessarily mean commencement of such proceeding by service of a charge-sheet, but may also embrace the stages where such proceeding is actively contemplated. So far as the cases of the Petitioners are concerned, however Annexure-1 though called upon them to show cause as to why disciplinary action would not be taken against them, yet asked them to explain only regarding the fact of their casual leave applications having been submitted directly instead of being sent through the jail authorities. It thus can be inferred that the disciplinary proceedings, if at all any, contemplated against the Petitioners were in respect of their conduct of sending the casual leave applications directly. The Petitioner in O.J.C. No. 2095/89 submitted the explanation that he had sent the application prior to his surrendered before the Court. The explanation submitted by the other Petitioner has not been annexed to the writ petition. But at any rate the orders of suspension of the Petitioners do not seem to have proceeded on the footing of their application having been sent directly. The resolution of the managing committee, read with the communication of opposite party No. 2 dated 5-5-1989, placing the Petitioners under suspension candidly discloses that the Petitioners had been involved in a criminal case and were in jail custody for more than forty-eight hours and that the matter had been referred to the Director who had opined that the Petitioners were liable to be placed under suspension in accordance with Rule 12(2) of the Orissa Civil Services (Classification, Control and Appeal) Rules, 1962. Not a word is mentioned in the resolution deciding to place the Petitioners under suspension such decision having been taken in connection with disciplinary proceedings to be initiated against them because of their casual leave applications having been sent directly and not through the jail authorities. It could thus appear that any contemplation of disciplinary proceedings on account of such had as stated in Annexure-1 to the writ petitions was not the deciding factor for placing the Petitioners under suspension and on the contrary suspensions were ordered only because they were in jail custody for

more than forty-eight hours and that the Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 provide for an employee to be placed under suspension in such circumstances. Even otherwise that the Petitioners could not have been placed under suspension in pursuance of Annexure-1 is apparent since in the very counter affidavit it has been stated that the show cause had been asked as per Annexure-I before initiation of disciplinary proceedings under Rule 21 of the Rules. As such, since suspension could be ordered only at the initiation of disciplinary proceeding as provided in the second proviso to Rule 21(2), it goes without saying that suspension in the case of the Petitioner was not consequent upon the notices to show cause as per Annexure-1.

6. It being thus the conclusion that the suspensions were ordered only in accordance with the provisions of Rule 12(2) of the 1962 Rules the Petitioners having been detained in Jail custody for more than forty-eight hours, it is to be seen as to how far such Rules are applicable to the Petitioners. As a matter of fact, the learned Counsel appearing for the opposite parties candidly admitted the Rules to have no application to the staff of the aided educational institutions. There is also otherwise no provision in the conditions of service of the Petitioner making them liable to be placed under suspension if they are detained in jail custody for more than forty-eight hours in connection with any criminal case. The advice/approval of opposite party No. 2 of 5-5-1989 to the suspension of the Petitioners being under the impression that the Rules are applicable to them was thus misconceived and the resolution placing the Petitioners under, suspension being exclusively based upon such view of opposite party No. 2 is equally vulnerable and cannot be sustained. The Petitioners being employees of, an aided educational institution are not ipso facto Government servants and the conditions of service applicable to Government servants are not otherwise applicable to them.

7. Mr. P.K. Mohanty, learned Counsel appearing for the opposite parties, however purported to rely upon a decision of this Court in OJC No. 1392/78 decided on 11-1-1979 Governing Body of Aska Science College and Ors. v. The State Education Tribunal, Orissa and Ors. to contend that the employer has the inherent power of putting an employee out of employment and that the governing body of a college is therefore entitled to suspend an employee when he is implicated in a criminal charge. The question that arose in that case for consideration of the Court was regarding maintainability of an appeal before the Education Tribunal against an order of suspension. It was held that the order of suspension being one not passed by way of punishment but being suspension simpliciter on account of involvement of the employee in a criminal case, an appeal before the Tribunal did not lie. In that connection, the Court held that apart from the question of suspension being ordered as a punishment, every employer has an inherent power to place an employee under suspension, reliance for which was placed upon an earlier decision of this Court in Managing Committee, Ranihat High School and Others Vs. Inspector of Schools, Circle-I and Another, In neither of the cases, the question of implication of the second

proviso to Rule 21(2) was specifically considered for the simple reason that both the decisions were prior to insertion of the proviso which came only on 10-12-1981. While there is no controversy that an employer has an inherent right to place its employee under suspension, yet so far as the power of a managing committee or a governing body is concerned, it has been circumscribed by the proviso to the extent that such suspension can be only ordered at the initiation of a disciplinary proceeding for a period of thirty days pending approval of the Inspector or the Director, as the case maybe. Hence, the managing committee of the governing body would not have an unlimited power to place an employee under suspension unless it is made at the initiation of a disciplinary proceeding and when an order of suspension is challenged as being violative of the provision of the proviso, its validity or otherwise is open to be scrutinised by Court.

8. In the result, therefore, the writ applications succeed and are allowed with costs. Hearing fee in each case is assessed at Rs. 200/-.

K.C. Jagadeb Roy, J.

9. I agree.

Writ applications allowed.