

(1988) 12 OHC CK 0025

In the Orissa High Court

Case No : Original Jurisdiction Case No. 452 of 1987

Ananta Charan Tripathy

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 14-12-1988

Acts Referred:

Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 — Rule 20, 21(1), 21(2), 24
Orissa Education Act, 1969 — Section 3

Citation : (1989) 67 CLT 377

Hon'ble Judges : H.L. Agrawal, C.J.; L. Rath, J

Bench : Division Bench

Advocate : J.K. Rath, for the Appellant; K.C.J. Ray, Government Advocate for Opp. Parties 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

H.L. Agrawal, C.J.—The Petitioner challenges the validity of the order of his suspension passed by the Managing Committee of Gulunagar High School (O. P. No. 4) where he was serving as the Headmaster. Undisputedly, the High School in question is an aided educational institution within the meaning of Section 3 (b) of the Orissa Education Act 1969 (shortly stated the Act'). The order of suspension was served upon the Petitioner by a letter dated 10.6.1987 (Annexure-1) issued by the Secretary of the Managing Committee which was purported to be issued under the directions of the Inspector of Schools, Cuttack.III (O. P. No. 3) and that of the Director of Secondary Education, Orissa (O. P. No. 2).

2. The ground for putting the Petitioner under suspension was that he had indulged in serious mal-practice during the Annual High School Certificate Examination, 1987. In his petition, the Petitioner has controverted the allegation. But, for the short question that has been pressed into service by Mr. J. K. Rath in challenge of the order of suspension, it is not necessary to enter into the merits

of the allegations of misconduct or the like against the Petitioner.

3. The stand of the Petitioner is that the order of suspension passed by the disciplinary authority be it either a Managing Committee or a Governing Body cannot remain in operation for a period of more than 30 days. The provision is contained in Rule 24 of the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of die Staff of Aided Educational Institutions Rules, 1974. It reads as follows:

21. Disciplinary authorities. (1) The Director may impose any of the penalties specified hi Rule 20 on any employee:

Provided that the Director shall not initiate any disciplinary proceeding unless the Managing Committee, of the Governing Body, as the case may be, refuses or neglects to take disciplinary action against any employee.

(2) Without prejudice to Sub-rule (1)" but subject to the provisions of sub-rules (3) and (4) any of the penalties specified in Rule 20" may be imposed (a) in respect of a lower grade employee, by the Headmaster or the principal, as the case may be and (b) 10 respect of any other employee by the Managing Committee or the Governing Body as the case may be ;

Provided that in case of suspension of employees falling under Clauses (a) and (b) the prior approval of the Inspector in respect of an employee serving in a School and of the Director in relation to any other employee is obtained;;
Provided further 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 Inspector or the Director, as the case may be.

(3),

(4)

4, As the matter is short and, could be disposed of at the admission stage itself, time was allowed twice to the State counsel to take instruction on the question as to,whether the order of suspension had been approved by the Inspector of Schools in terms of the second proviso to Rule 21 (2). Today, when the case was taken up, the learned Government Advocate took a different stand, and submitted, that since the order of suspension was passed in a contemplated departmental proceeding at the di reaction of the Inspector of Schools himself, the question 01 his approval did not arise. This submission was made on the basis of Rule 21 (1) read with its proviso.

5. The submission of the learned Government Advocate cannot" be accepted inasmuch as the proviso give authority to the Director to impose any of the penalties specified in Rule 20 including a penalty of suspension only when the Managing Committee or the Governing Body, as the case may be refuses or neglects to take disciplinary action against any employee. In other words the

Director cannot on his own and straightway initiate any disciplinary proceeding. If the Managing Committee or the Governing Body as the case may be does not feel inclined to initiate disciplinary proceeding against any employee then the expression refuses or neglects in the context must be considered to mean that there should be a direction in the first instance to the Managing Committee/ Governing Body by the director to initiate a proceeding, and since it is an administrative action of the Director there must be sufficient evidence in each case to show that the concerned authority had refused or neglected to take disciplinary action against the delinquent employee. Only in that event the Director gets authority to initiate a disciplinary proceeding.

6. The basis of argument of the learned Government Advocate is that the letter of the Secretary contained a statement that he has passed the order of suspension on the written direction of O. P. Nos. 2 and 3. It was further submitted by him that the Director has to pass an order only through the .agency of the Secretary and therefore, the impugned order of suspension must be deemed to have been passed by the Director.

7. In my opinion. it is not necessary that instead"of passing the order of suspension himself directly the Director has to direct the Secretary of the Managing Committee Governing Body to pass the order. In any event, it has not been established that the impugned order has been passed under the direction of O. P. No. 2 or 3, the administrative authorities in this regard, because the Managing . Committee had refused/neglected to initiate any proceeding against him.

8. There is, yet another aspect of the matter. The Petitioner has urged that in spite of elapse of more than a year and a half, the proceeding, has not commenced and in any case he has not been served with copy of the charges. It has been repeatedly observed that the disciplinary proceedings must be disposed of with speed and the order of suspension should not be, indefinitely continued. On that account also the order of suspension should not be allowed to be continued any further and it, should be revoked.

The Petitioner has made another prayer, which is coronary in nature, i.e. while quashing the order of suspension which became invalidated after expiry" of 30 days, he must be allowed to get his salary. I find this submission for claim of salary is also justified and valid.

9. In the result the order of suspension (Annexure-1) is hereby quashed subject to the observations, made, above. Evidently, the Petitioner is entitled to resume his duties and he must be paid his salary for the period after expiry of 30 days when the order of suspension became ineffective without any unreasonable delay and preferably within a period of three months from the date of receipt of a copy of this order. In the circumstances, I shall not impose any costs against the opposite parties.

L. Rath, J.

10. I agree.