
(2015) 04 OHC CK 0033

In the Orissa High Court

Case No : Writ Petition(C) No. 19101 of 2010

Banaja Basini Mohapatra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 07-04-2015

Acts Referred:

Citation : (2015) 04 OHC CK 0033

Hon'ble Judges : Akshaya Kumar Rath, J.

Bench : Single Bench

Advocate : Sarojananda Mishra, for the Appellant; B.P. Pradhan, AGA, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Dr. Akshaya Kumar Rath, J.—Aggrieved by and dissatisfied with the order dated 22.12.2009 passed by the Collector and District Magistrate, Keonjhar, vide Annexure-12, dismissing the appeal and thereby confirming the order of disengagement dated 21.10.2008 passed by the Sub-Collector, Anandapur, vide Annexure-8, the petitioner has filed this writ petition.

2. Bereft of unnecessary details, the short facts of the case of the petitioner is that she was appointed as an Anganwadi Worker in Anra (1) Anganwadi Centre under Hatadihi Block on 7.1.2000 by the C.D.P.O., Hatadihi, opposite party No. 5, vide Annexure-1. One Anirudha Nayak, Secretary of the school in which the petitioner's husband is working as a Headmaster, to wreak his personal vengeance, made frivolous allegations against the petitioner, which was published in the daily "The Samaj". The Sub-Collector, Anandapur, opposite party No. 3, called for an explanation from the petitioner on 12.3.2007. She submitted the reply. Again on 10.8.2007, opposite party No. 3 called for an explanation from the petitioner. The petitioner submitted the reply on 20.8.2007. Thereafter, the matter was set at rest. While the matter stood thus, opposite party No. 3 on 8.9.2008 issued a show cause notice, vide Annexure-6. The petitioner submitted her reply on 15.9.2008 denying the allegations. Opposite party No. 3 by order

dated 21.10.2008 disengaged the petitioner from service without conducting any enquiry. Thereafter, she filed a writ petition before this Court, which was registered as WP(C) No. 15825 of 2008. By order dated 3.11.2008, the writ petition was disposed of with a direction to the petitioner to file an appeal before the Collector, Keonjhar, opposite party No. 2, within four weeks. Thereafter, the petitioner filed an appeal before the opposite party No. 2, which was registered as Appeal No. 93 of 2008. On 4.5.2009, the petitioner attended the office of opposite party No. 2. She was asked to submit all papers. She submitted the papers, but she was not heard. By letter No. 949/SW dated 6.5.2009, the District Social Welfare Officer, Keonjhar communicated the order dated 5.4.2009 of the Collector disengaging the petitioner from service.

3. It is further stated that the Sub-Collector, Aandapur, opposite party No. 3, had shown his personal interest against the petitioner for extraneous reasons in order to favour some other person to be engaged as Anganwadi Worker. During pendency of the appeal, opposite party No. 3 published the order dated 21.10.2008 in the daily "Sambad" which contained indecent and defamatory remarks. Challenging the order of disengagement passed by the Collector, Keonjhar, opposite party No. 2, vide Annexure-10, the petitioner filed a writ petition being WP(C) No. 8613 of 2009. By order dated 9.6.2009, this Court set aside the order passed by the Collector, Keonjhar, opposite party No. 2 and directed him to file an appeal. The Collector was directed to pass a reasoned order after giving opportunity of hearing to the petitioner. After disposal of the writ petition, by notice dated 5.9.2009, opposite party No. 2 directed the petitioner to attend the office on 7.9.2009. She attended the office on the appointed day. The Sub-Collector, Anandapur, opposite party No. 3, was also present in the office of the opposite party No. 2. The petitioner was asked to submit written note of submission by 14.9.2009 by the next date of hearing. She submitted the written note on 13.9.2009. Though on 14.9.2009 she was present, but without affording opportunity of hearing the Collector, Keonjhar, opposite party No. 2, by order dated 22.12.2009 rejected the appeal.

4. Further case of the petitioner is that the impugned order suffers from non application of mind. No enquiry was conducted pertaining to the allegations made in the show cause notice and, as such, the same is bad in law. Further, an affidavit has been filed by the petitioner on 28.3.2011 enclosing certain FIRs filed in Nandipada Police Station to show that the name of the petitioner has not found place in the FIRs.

5. Pursuant to issuance of notice, a counter affidavit has been filed by the opposite parties 2, 3 and 5. The sum and substance of the case of the opposite parties is that the petitioner was appointed as Anganwadi Worker in Anra-1 Anganwadi Centre. The villagers as well as the beneficiaries were totally dissatisfied with the functioning of the petitioner and made complain against her. Basing on the allegation of opposite party No. 5, an explanation was called for from the petitioner on 12.3.2007. The petitioner submitted her reply on

19.3.2007. The villagers after being harassed by the petitioner resorted to hunger strike. It was also ascertained that the petitioner was not functioning the Anganwadi Centre in the proper place decided by the villagers. After receiving information, opposite party No. 5 went to the spot and discussed the matter with the villagers where the petitioner admitted her fault and promised to run the Anganwadi centre in the specified place. The petitioner submitted an undertaking where she admitted that she would accept next course of action if she repeats the fault again in future. It is further stated that by letter 8.9.2008, opposite party No. 3 called for an explanation from the petitioner on the following allegations;

"1. Negligence in duty and disobedience of order of higher authority.

2. Creating disturbance in WSHG namely "YUGASKATI GAYATRI" in the name of providing subsidized loans to the members of the group and collection of money from the members of the group.

3. F.I.R by the SGH members against the petitioner has been lodged in Nandipada P.S. Case No. 993 dated 19.8.2008 for collecting money from the members in the name of providing subsidized loans which was subsequently proved against the petitioner. For this, there was serious law and order situation due to her involvement in nuisance activities, fraud, misappropriation of SHG member's money etc. A case has been registered against the petitioners for such lapses. The reply of the F.I.R. Copy has already been submitted to opposite party No. 3 by the O.I.C. Nandipada P.S."

She submitted her reply on 15.9.2008. The explanation submitted by the petitioner was not satisfactory. Opposite party No. 5 called for an explanation from the petitioner a number of times. The petitioner was allowed to work as Anganwadi Worker with an expectation that she would amend her activities. It is further stated that the members of WSGH i.e., Yugasakti Gayatri submitted a letter regarding acceptance of money by the petitioner @ Rs. 350/- from ten members assuring them to get the loan sanctioned from the bank. The enquiry was conducted by the C.D.P.O, Hatadihi and found to be true. The petitioner being a member of Yuga Shakti Gayatri, WSHG with mala fide intention created disturbance and misappropriated the money. She had also violated the undertaking made to the villagers. FIR regarding misappropriation of money was lodged against the petitioner by the members of the WSHG. As per the provision, all Anganwadi Workers were instructed to form WSHG in their respective Anganwadi Centres, but the petitioner formed YUGASAKTI GAYATRI out of her jurisdiction and remained as an active member till 2007. It is further stated that the show cause submitted by the petitioner was taken into account. The allegations levelled against the petitioner were enquired into by the opposite party No. 5, whereafter she submitted a report on 20.8.2008. Besides, opposite party No. 3 along with other opposite party No. 5 also visited the centre area on 8.11.2004. Several explanations were called for from the petitioner. For the better interest of the villagers as well as beneficiaries, the petitioner was

disengaged from service. Further to avoid law and order situation and for the better interest of the Anganwadi Centre in the locality, opposite party No. 2 rejected the appeal.

6. Heard Mr. S.N. Mishra, learned counsel for the petitioner, Mr. B.P. Pradhan, learned Addl. Government Advocate for the opposite parties 1,2,3 and 5 and Mr. S.K. Nayak, learned counsel for the opposite party No. 5.

7. Mr. Mishra, learned counsel for the petitioner, submits that to wreck vengeance, one Anirudha Nayak, Secretary of the school in which the petitioner's husband is working as a Headmaster published frivolous news items in the daily newspapers. Opposite party No. 4 in order to show undue favour to some other persons and for extraneous reasons, during pendency of the appeal before opposite party No. 2, published the order of disengagement dated 21.10.2008 in the daily "Sambad" which contained the indecent and defamatory remarks on the character of the petitioner. He did not tender any apology for publishing the news item. He further submits that the hearing of the appeal before the Collector, Keonjhar was an empty formality inasmuch as no opportunity of hearing was provided to the petitioner. He further submits that no enquiry was conducted by opposite party No. 5 pertaining to mismanagement of foodstuff and taking bribe from the members of the Yuga Shakti Gayatri WSHG. The allegation that the petitioner while working as Anganwadi worker in Anra-1 Anganwadi Centre was maintaining all routine registers of certain Women's Self Help Group unauthorisedly was not communicated to her. She was also not communicated any FIR lodged against her. Further, in the FIR, the name of the petitioner does not find place. In view of the same, reliance placed by the opposite party No. 2 in the FIR has totally misplaced.

8. Per contra Mr. Pradhan, learned Addl. Government Advocate and Mr. Nayak, learned counsel for opposite party No. 5, supports the orders passed by the opposite parties 2 and 3.

9. It is apt to state here that the Sub-Collector, Anandapur has impleaded in person as opposite party No. 3. Allegation of mala fide has been made against him. On perusal of records, it is evident that the petitioner has failed to substantiate the same. Mere allegation of mala fide is not suffice. In the absence of any cogent material on record, it is not possible to accept the submission of Mr. Mishra, learned counsel for the petitioner. Much stress is laid upon the publication of news item in the daily newspaper pertaining to disengagement of the petitioner. On perusal of the news item published in the daily "Sambad" dated 30.01.2009, vide Annexure-11, this Court does not find any indecent or defamatory remarks made by the Sub-Collector, Anandapur. The submission of Mr. Mishra that the Sub-Collector, Anandapur ought to tender apology for publication of the news. It is highly inconceivable that the petitioner, who is an Anganwadi Worker to make such irresponsible remarks against the Sub-Collector. The petitioner has travelled beyond her jurisdiction to make such reckless and irresponsible remarks. The next submission of Mr. Mishra, learned counsel for the

petitioner that no enquiry was made by the Sub-Collector, Anandapur as the allegation made against her is difficult to fathom. All allegations made against the petitioner were enquired into by the C.D.P.O., Hatadihi, opposite party No. 5, whereafter she submitted a report on 20.8.2008 as would be evident from paragraph-12 of the counter affidavit. Further, opposite party No. 3 along with opposite party No. 5 had visited the centre on 8.11.2004, interacted with the villagers and found that the petitioner was irregular in her duties. Opposite party No. 5 had also visited spot on 9.1.2004 and pacified the villagers, who resorted to hunger strike for non-functioning of Anganwadi Centre in proper place, misappropriation of foodstuffs and harassment made by the petitioner. During spot visit of opposite party No. 5, the petitioner had admitted her fault and gave an undertaking that she would accept the next course of action taken against her. So far as FIRs are concerned, the same are not the sole basis of allegations/imputations in the show cause notice. Further, the explanation offered by the petitioner had also been taken into account. The last submission of Mr. Mishra, learned counsel for the petitioner that no opportunity of hearing was afforded to the petitioner. The submission has no legs to stand. Order dated 22.12.2009 passed by the Collector and District Magistrate, Keonjhar, opposite party No. 2, vide Annexure-12, reveals that after disposal of WP(C) No. 8613 of 2009, the matter was taken up on 23.11.2009. The petitioner was heard in person in the presence of the Sub-Collector, Anandapur, C.D.P.O., Hatadihi and D.S.W.O. Keonjhar. The opposite party No. 2 perused the appeal memo, relevant records and documents produced by all concerned.

10. The facts as depicted in the writ petition show that the petitioner had made allegation against one Anirudha Nayak, who is not a party to the writ petition. She has also alleged mala fide against the Sub-Collector, Anandapur, but failed to substantiate the same. Allegation has been made against the Collector and District Magistrate, Keonjhar that no opportunity of hearing was provided to her. But then, record reveals that opportunity of hearing was provided to her. The petitioner has not spared any authority.

11. The allegations made against the petitioner are serious in nature. The same had been enquired by the C.D.P.O as well as the Sub-Collector, Anandapur. Both had also visited the Anganwadi Centre area to ascertain the truth of the allegations. After affording opportunity of hearing, the Sub-Collector passed the order of disengagement. The Collector, on a vivid discussion of facts and materials on record, came to hold that further continuance of the petitioner will create social tension in the locality as she has lost social rapport. In view of the uncontroverted allegations, continuance of the petitioner in the Anganwadi Centre will detrimental to the interest of the tiny tots. Judging the case from any angle, this Court does not find any infirmity or illegality in the order of disengagement dated 21.10.2008, Annexure-8, passed by the Sub-Collector, Anandapur, opposite party No. 3 which is upheld by the Collector, Keonjhar, opposite party No. 2, by order dated 22.12.2009 so as to warrant interference by this Court.

12. The writ petition sans any merit deserves dismissal. Accordingly, the writ petition is dismissed.