

(2024) 04 OHC CK 0073

In the Orissa High Court

Case No : Writ Petition (C) Nos.30550, 31489 Of 2011, 9619 Of 2012 and 13949 Of 2014

Binodini Senapati

APPELLANT

Vs

State Of Odisha & Others

RESPONDENT

Date of Decision : 10-04-2024

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Odisha Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 — Section 21(2)

Citation : (2024) 04 OHC CK 0073

Hon'ble Judges : Sashikanta Mishra, J

Bench : Single Bench

Advocate : L.K.Mohanty, A.R.Dash, B. Sahoo, S.K.Das

Final Decision : Disposed Of

Judgement

Sashikanta Mishra, J

1. All these Writ Petitions having been filed by the same parties involve the same facts and law. As such, they were heard together and are being disposed of by this common judgment.

2. The Petitioner (Binodini Senapati) in W.P.(C) No.30550/2011 has filed this Writ Petition challenging the order dated 25.10.2011 passed by the Director, Secondary Education, Odisha, in Appeal No.5/2011 whereby the Opposite Party No.5 (Jyostna Mahanta) was held to be the Senior most Teacher.

3. W.P.(C) No.31489/2011 has been filed by Jyostna Mahanta with prayer for implementation of the aforementioned order of the Director with further direction to allow her to remain as Headmistress in-charge of the School.

4. W.P.(C) No.9619/2012 has been filed by Binodini Senapati challenging the order dated 20.4.2012 of the Director whereby the suspension of Jyostna Mahanta was set aside and certain directions were issued in consequence thereof.

5. W.P.(C) No.13949/2014 has been filed by said Jyostna Mahanta with prayer to quash the Managing Committee Resolution dated 20.6.2011 placing her under suspension and the order dated 10.2.2012 of the Inspector of Schools approving such Resolution as also the order dated 11.2.2012 of the President of the Managing Committee in intimating the Petitioner that she had been placed under suspension.

6. For convenience and to avoid confusion, the parties shall be referred to by their respective names.

7. Though much has been pleaded and argued by the parties, this Court deems it prudent to refer only to those facts that are relevant for deciding the lis involved in all these Writ Petitions.

8. Chitrada Girls' High School, situate under Marda P.S. in Mayurbhanj District was a private unaided educational institution having been established in the academic year 1988-89. The Petitioner was appointed against Trained Graduate Teacher post on 20.9.1988 and joined as such on 01.10.1988. She being the senior-most Teacher of the School was allowed to function as Headmistress-in-charge by the Managing Committee. She acquired B.Ed. degree on 20.5.1991. On the other hand, Binodini Senapati was appointed as another T.G. Teacher in the School. The School was notified as an Aided High School on 22.9.2007. The Managing Committee of the School was approved by the prescribed authority on 03.2.2010 and Jyostna Mahanta was approved as the Headmistress-in-charge-cum-Secretary. On 21.5.2010, the Managing Committee took a decision to oust Jyostna Mahanta from the post of Headmistress on several allegations and to permit Binodini Senapati to act as the Headmistress. Her name was sent for approval to the Inspector of Schools even though Jyostna Mahanta was functioning as Headmistress. On 02.5.2011, the Inspector of Schools allowed Binodini Senapati to deal with the financial matters of the School. On 20.6.2011, the Managing Committee passed Resolution placing the Petitioner under suspension on the ground that she did not hand over the charge of Headmistress to Binodini Senapati. According to Jyostna Mahanta however, no such meeting of the Managing Committee was ever convened and that the Resolution was prepared subsequently and ante-dated.

9. Being thus aggrieved Jyostna Mahanta approached this Court by filing a Writ Petition being W.P.(C) No.17195/2011. By order dated 01.7.2011, this Court disposed of the Writ Petition directing the Director Secondary Education to decide the issue. By order dated 16.11.2011, the Director held that the order of the Inspector of Schools granting approval to the Managing Committee's decision to permit Binodini Senapati to function as the Headmistress-in-charge was not correct and that Jyostna Mahanta being the senior-most Teacher among them should be allowed to function as such. Surprisingly however, on 10.2.2012, the Inspector of Schools approved the Resolution dated 20.6.2011 of the Managing Committee placing Jyostna Mahanta under suspension. On 11.2.2012, the President of the Managing Committee intimated such fact to her. Being

aggrieved, Jyostna Mahanta approached the Director, who by order dated 20.4.2012, set aside the order of suspension and directed to take steps for supersession of the Managing Committee for not obeying the order and instructions of the authorities.

10. Heard Mr. Laxmikanta Mohanty, learned counsel for Binodini Senapati, Mr. Sameer Kumar Das, learned counsel for Jyostna Mahanta and Mr. A.R.Dash, learned Addl. Government Advocate.

11. Mr. Mohanty has forcefully argued referring to the letter dated 04.2.2011 of the Sub-Collector, Baripada vide Annexure-16 to W.P.(C) No.30550/2011 that Jyostna Mahanta herself had given in writing to the President of the School on 13.2.2002 not to remain as Headmistress-in-charge because of her personal problems. As per the relevant norms laid down by the Government, once a Teacher expresses her unwillingness to act as the Headmaster/Headmistress, she is not entitled to be given such change again. Further, because of repeated non-cooperation with the Managing Committee in development activities, the then Inspector of Schools rightly held that Binodini Senapati is more efficient than Jyostna Mahanta and accordingly, the Management's decision to allow her to function as Headmistress was approved. As regards the order of the Director, Mr. Mohanty submits that the Director did not grant opportunity of hearing to Binodini Senapati and also did not appreciate the report of the Inspector dated 24.9.2011 in the correct perspective. As regards the order of the Director in setting aside the order of suspension passed against Jyostna Mahanta, Mr. Mohanty would argue that the Director has not taken into consideration the reasons for which the Managing Committee took the decision to place Jyostna Mahanta under suspension. Instead of conducting an inquiry or verifying the records, which would have proved the misconducts of Jyostna Mahanta, the Director straight away set aside the order of suspension, which cannot be countenanced in law.

12. Per contra, Mr. Sameer Kumar Das, learned counsel appearing for Jyostna Mahanta would submit that there is no dispute that the Petitioner had joined much earlier than Binodini Senapati and had also acquired B.Ed. qualification before her joining. Determination of seniority depends on the date of joining which, according to Mr. Das the Director has rightly considered and held Jyostna Mahanta as senior to Binodini Senapati. He further argues that the Management appears to have taken a contradictory stand in the matter inasmuch as on one hand, it is alleged that Jyostna Mahanta had herself requested to be relieved of the charge of Headmistress and yet on the other, it is stated that the Managing Committee resolved to allow Binodini Senapati to function as Headmistress-in-charge as Jyostna Mahanta was not cooperating with it in development activities of the School nor remaining present in the Managing Committee meetings. Mr. Das further argues that the report of the Inspector dated 19.1.2011 and 24.9.2011 cannot be taken into consideration for the reason that the said officer was found to have committed several irregularities in service as admitted by the

Government in its counter affidavit filed in W.P.(C) No.9619/2012. On the question of suspension, Mr. Das has invited the attention of the Court to the Resolution dated 20.6.2011, which was approved on the same day instead of in the next meeting. That apart, no order of suspension was ever served upon Jyostna Mahanta, which was purportedly approved by the Inspector of Schools on 10.2.2012. So the President of the Managing Committee could not have intimated the Petitioner on 11.2.2012 of the fact of approval of her order of suspension, which amounts to retrospective approval of the same and not permissible in the eye of law.

13. Mr. A.R.Dash, learned Addl. Government Advocate, has supported the orders dated 16.11.2011 and 20.4.2012 passed by the Director by submitting that the same are strictly in accordance with law inasmuch as, as per Government norms any Teacher preferably, the senior-most is to be kept as Headmistress in-charge. In the case at hand, Jyostna Mahanta was admittedly functioning as the Headmistress-in-charge since 1988. The Inspector in his report admitted that he had approved the Management's decision permitting Binodini Senapati to function as Headmistress of the School by wrongly holding that she is senior to Jyostna Mahanta on the basis of acquisition of B.Ed. qualification. Mr. Dash contends that the Director therefore rightly found fault with the report and held Jyostna Mahanta as senior to Binodini Senapati. Similarly, the Director found that the order of suspension purportedly passed against Jyostna Mahanta was without prior approval and therefore, rightly set aside the same. Mr. Dash concludes his argument by submitting that the impugned orders do not warrant any interference for such reasons.

14. A ground has been taken that Binodini Senapati was not granted opportunity of hearing by the Director. This Court, however, finds from the impugned order that the Director has specifically mentioned therein the direction of this Court in W.P.(C) No.17195/2011 to take a decision on the representation of the appellant (Jyostna Mahanta) after hearing Jyostna Mahanta and Binodini Senapati and that pursuant to such order 'hearing of both the parties were conducted on 14.9.2011 and 28.9.2011'. This obviously implies that both Jyostna Mahanta and Binodini Senapati were heard. No material has been placed before this Court to hold otherwise.

15. On merits of the case, having heard learned counsel for the parties at length and on going through the materials on record, this Court finds that the date of appointment of Jyostna Mahanta, i.e. 01.10.1988 is not disputed. It is also not disputed that she acquired B.Ed. qualification on 20.5.1991. Binodini Senapati, on the other hand, having B.Ed. qualification joined the institution on 15.7.1991. It goes without saying that the inter-se seniority of Teachers is to be reckoned from the date of their joining and not from the date they acquired B.Ed. qualification. This Court finds that in the report dated 24.9.2011, the Inspector held Binodini Senapati as senior to Jyostna Mahanta on the basis of B.Ed. qualification which is untenable.

16. As to the stand taken by the Management that Jyostna Mahanta had requested in writing not to remain as Headmistress-in-charge, a document marked Annexure-26 to W.P.(C) No.30550/2011 has been pressed into service. It purports to be a written application submitted by Jyostna Mahanta addressed to the Secretary of the Managing Committee of the School, which was accepted on 13.2.2002. If such written request of Jyostna Mahanta was accepted way back on 13.2.2002, then how could she be found to be functioning as the Headmistress-in-charge by the Inspector of Schools during his visit to the School on 6.12.2010 as stated in the letter dated 19.1.2011 (copy enclosed as Annexure-15 to W.P.(C) No.30550/2011). The position that emerges thus is, even accepting that Jyostna Mahanta had submitted in writing not to remain as Headmistress-in-charge, the same was never acted upon at least till 06.12.2010 when the Inspector of Schools had visited the School.

17. It is further seen that according to the Inspector, the Managing Committee in its Resolution dated 25.5.2010 resolved to allow Binodini Senapati to act as Headmistress-in-charge of the School as Jyostna Mahanta was not cooperating in developmental activities of the Schools nor remaining present in the meetings. No acceptable evidence has been adduced by the Management in this regard. Be that as it may, it appears that further to the inquiry conducted by the Inspector on 6.12.2010, the Sub-Collector, Baripada, submitted his views to the Director on 04.2.2011 (Annexure-16 to W.P.(C) No.30550/2011) more or less stating the same thing. However, the Director in the letter communicated on 11.3.2011 directed the Inspector to decide the matter of the School at his level by allowing one of the Teachers of the Institution, preferably the senior-most to remain in-charge of the Headmistress. Significantly, he did not make any observation with regard to the other issues cited by the Inspector and the Sub-Collector in their respective reports. Despite such order, the Inspector approved the functioning of Binodini Senapati as in-charge of the Headmistress, which he justified in his report dated 24.9.2011 in the manner as already stated herein before.

18. Perusal of the impugned order dated 16.11.2011 reveals that the Director has duly considered the material evidence put forth by both parties and the report of the Inspector dtd.24.9.2011. It was held that in view of the earlier joining of Jyostna Mahanta, she is senior to Binodini Senapati and therefore, as per norms prescribed by the Government (D.O. No.44025/E dated 21.9.1991) preferably, the senior-most T.G. Teacher is to be kept as the Headmistress-in-charge of the School. Obviously, the Director was not inclined to accept the allegations made against Jyostna Mahanta regarding her alleged non-cooperation to the Managing Committee etc. It has not been demonstrated before this Court as to how non-acceptance of the material facts relating to alleged non-cooperation by Jyostna Mahanta is perverse or untenable so as to persuade this Court to interfere.

19. The Director being the fact-finding authority decided not to accept the factual aspects reported by the Inspector though it was not explicitly stated so. This

Court exercising writ jurisdiction would be slow to enter into the factual aspects more so when nothing is placed before it to show as to how the order of the Director is wrong.

20. As regards the other impugned order, i.e. 20.4.2012, without entering into the factual controversy referred to by Mr. Sameer Kumar Das relating to the date of issuance of the order of suspension and its approval by the Inspector, this Court finds from the counter affidavit filed by the District Education officer in W.P. (C) No.9619/2012 that the very same order being challenged before this Court earlier in W.P.(C) No.8516/2012 was refused to be interfered with on the ground that there is no illegality and irregularity therein. Furthermore, the order of suspension was passed without prior approval of the competent authority as has been duly reflected in the order dated 20.4.2012. As per Rule 21(2) proviso, of the Odisha Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974, prior approval of the Inspector is required to be taken before placing an employee under suspension. In the instant case, the Managing Committee purportedly resolved to place the Petitioner under suspension on 20.6.2011 but the same was approved on 10.2.2012. This Court therefore, finds no infirmity much less illegality in the order passed by the Director so as to be persuaded to interfere therewith.

21. Thus, from a conspectus of the analysis of facts and the discussion made hereinbefore, this Court finds no reason to interfere with the order dated 25.10.2011 and 20.4.2012 passed by the Director, Secondary Education. In such view of the matter, W.P.(C) Nos.30550/2011 and 9619/2012 are hereby dismissed.

22. W.P.(C) No.31489/2011 is allowed to the extent of directing the Managing Committee of the School to implement the order dated 20.11.2011 of the Director in letter and spirit without any further delay.

23. In view of the order passed in the aforesaid Writ Petitions, no order needs to be passed in W.P.(C) No.13949/2014, which is disposed of as such..

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