
(2015) 04 OHC CK 0059
In the Orissa High Court
Case No : Writ Petition (C) No. 15016 of 2013

Bishnupriya Mohapatra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 22-04-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 294, 341, 506
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(i), 3(i)(x)

Citation : (2015) LabIC 3346

Hon'ble Judges : B.R. Sarangi, J

Bench : Single Bench

Advocate : B. Barik and M.N. Sahoo, for the Appellant; B. Senapati, Addl. Govt. Advocate, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Dr. B.R. Sarangi, J.

1. The petitioner, who was working as Principal-in-Charge of Naba Choudhuri Mahavidyalaya, Kendudhipi in the district of Nayagarh has filed this application seeking to quash the order of suspension dated 01.06.2013 passed by opposite party No. 3-Sub-Collector-cum-President, Governing Body of the aforesaid College in connection with her detention in custody for more than 24 hours vide Sarankul P.S. Case No. 74/2013 dated 04.05.2013 under Section 341/294/506 IPC and 3(i) of SC/ST (PA) Act as per the provisions contained in CCA Rule 12(2) of 1962. She further seeks for a direction to allow her to work as Principal-in-Charge of the College in question in view of the direction of the Government.

2. The short facts of the case in hand is that Naba Choudhuri Mahavidyalaya, Kendudhipi in the district of Nayagarh was established in the year 1990 after due recognition/approval of the Government of Odisha, Department of Higher Education. The petitioner was appointed as Lecturer in Odia against the first post in the said College vide Office Order No. 11 dated 25.05.1990. While she was so

continuing, the Governing Body of the said College allowed her to discharge her duty as Principal-in-Charge of the College which was duly approved by the Director of Higher Education vide Office Order No. 2G-444-2011-49907 dated 04.11.2011 as she was the Senior most approved teaching staff and consequentially she took the charge of Principal-in-Charge-cum-Secretary of the College in question and discharged the duty assigned to her. The College in question received Grant-in-Aid by way of Block Grant from the State Government as per G.I.A. Order, 2008 pursuant to notification No. 29273/HE dated 16.08.2011 and Govt. Letter No. 29279/HE dated 16.08.2011. After due verification with regard to the status and liability notified by the State Government, 40% Block Grant was accorded in favour of seven numbers of Teaching and five numbers of Non-teaching staffs of the college in question. While the petitioner was so continuing as Principal-in-Charge, an unapproved employee of the said college lodged an FIR before the OIC, Darpanarayan Outpost on 04.05.2013 on the allegation of commission of offence under Sections 341/294/506 IPC read with Section 3(i)(x) of the S.C/S.T.(P.A.) Act which was registered as Sarankul P.S. Case No. 74(2) dated 04.05.2013 corresponding to G.R. Case No. 406/2013. The petitioner was arrested by the Investigating Officer on 10.05.2013 and was produced before the learned S.D.J.M., Nayagarh and thereafter she was remanded to jail custody on rejection of her bail petition. She was released on bail by the learned Sessions Judge, Nayagarh on 05.06.2013. As she was detained in the custody for more than 24 hours in a criminal case vide Annexure-1, opposite party No. 3 who is the President of the Governing Body of the said College issued an order of suspension to the petitioner as per CCA Rules 12(2) of 1962 on 01.06.2013. Challenging the said order of suspension, the petitioner has approached this Court by filing this writ petition on the ground that 12(2) of OCS (CCA) Rules 1962 is not applicable to the employees of an Aided Educational Institution, rather the Odisha Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Education Institutions) Rules, 1974 (in short hereinafter referred to as 1974 Rules) is applicable to her case.

3. Mr. R. Acharya, learned counsel for the petitioner strenuously urged that the impugned order of suspension under Annexure-1 dated 01.06.2013 passed under Rule-12(2) of C.C.A. Rule, 1962 is not applicable to the petitioner as she is not a civil servant but is an employee of Aided Educational Institution which has obtained 40% Block Grant w.e.f. 16.08.2011. As per the provisions of Rule-20 of the 1974 Rules, the Director of Higher Education is the disciplinary authority to take a decision in respect of administrative affairs of the college and may also impose penalty as specified in the said Rules. According to Rule-21 of the 1974 Rules, the order of suspension should have been approved within 30 days from the date of issuance of the said order and in fact, the approval to the suspension order of the petitioner has been made by the Director of Higher Education on 09.07.2013 which is after 30 days of the order of suspension, as such the order of suspension is not maintainable. To substantiate his case, learned counsel for

the petitioner has relied upon the case of Adikanda Jena and another v. State of Orissa and others, 1990 (1) OLR 234 and Nabakishore Mohapatra v. State of Orissa and Ors (O.J.C.) No. 4017/1997 disposed of on 05.02.1997).

4. Mr. B. Senapati, learned Additional Government Advocate, strenuously urged that Naba Choudhuri Mahavidyalaya, Kendudhipi is a Non-Government Aided College under 662 category and the Governing Body of the said College is the appointing and disciplinary authority. As the petitioner was arrested by the police and remained in custody for more than 24 hours, she was placed under Suspension by opposite party No. 3 and such order of suspension passed against the petitioner was approved by the Director, Higher Education, Odisha as per Rule-21 of the 1974 Rules. Rule 12(2) of CCC Rule 1962 is not applicable to the staff of Non-Government Aided Colleges. Second proviso to Sub-Rule-(2) (b) of Rule-21 of the 1974 Rules states that the order of suspension to be passed by the competent authority, but in view of the provisions contained in Rule-11(1)(b) of the said Rules, the impugned order passed by the Governing Body is wholly and fully justified. To substantiate his contention he has relied upon the case of Jogeswar Bera v. State, 1991 (I) OLR 150. It is stated that though in compliance with the interim order passed by this Court, the subsistence allowance was released in favour of the petitioner, she has not received the same.

5. Mr. Amitav Tripathy, learned counsel for opposite party No. 3 urged with vehemence that the petitioner was arrested on 10.05.2013 in connection with a criminal case and was released on bail on 05.06.2013. The impugned order of suspension was passed on 01.06.2013 fixing her headquarters at the college and was allowed to get subsistence allowance as she remained in custody for more than 24 hours. In spite of repeated letters issued by the President and the Principal-in-Charge of the College to the petitioner to hand over the charge, she has neither handed over the charge nor joined in the College. The order of suspension passed by opposite party No. 3 was communicated to opposite party No. 2 for approval which has been done on 09.07.2013. The petitioner vide letter dated 23.08.2013 intimated opposite party No. 3 to allow her some time to hand over the charge as she was suffering from cold and cough and hypertension. In spite of that she has not handed over the charge. Therefore, opposite party No. 3 issued a letter on 25.09.2013 directing the authority to break open the almirah for recovery of the important records which were kept on it and accordingly on 09.10.2013 after breaking open the almirah, important records were recovered. Pursuant to interim order dated 13.11.2013 passed by this Court in Misc. Case No. 21227/2013, the petitioner was called upon to join in the College and receive her subsistence allowance, but till date she has neither joined in the College nor handed over the charge. Therefore, the claim of the petitioner cannot sustain in the eye of law.

6. On the basis of the facts pleaded above, it is to be considered whether the impugned order of suspension passed under Annexure-1 can sustain in the eye of law. Part-IV of the Orissa Civil Services (Classification, Control and Appeal)

Rules, 1962 (in short hereinafter referred to as OCS CCA Rules, 1962) deals with suspension. Sub-Rule (2) of Rule-12 states as follows:

"12. Suspension

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(2) A Government servant who is detained in custody whether on a criminal charge or otherwise, for a period exceeding forty-eight hours shall be deemed to have been suspended with effect from the date of detention, by an order of the appointing authority and shall remain under suspension until further orders".

The aforementioned provision clearly stipulates that if a Government servant is detained in custody on a criminal charge or otherwise for a period more than 48 hours he/she shall be deemed to have been suspended with effect from the date of detention. The impugned order of suspension under Annexure-1 has been passed pursuant to the above mentioned provisions of the Rules against the petitioner who is admittedly an Aided Educational Institution employee and was continuing as Principal-in-Charge of Naba Choudhuri Mahavidyalaya, Kendudhipi in the district of Nayagarh.

7. To regulate the service conditions of the employees of an Aided Educational Institution, rules have been framed by the Government called Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Education Institutions) Rules, 1974 (in short hereinafter referred to as 1974 Rules). Rule-11(1)(b) of the 1974 Rules reads as follows:

"11. Rules of conduct of employees

Xxx xxx xxx

(b) they shall at all times absolute integrity of character, devotion to duty and decorum of conduct".

Chapter-VI of the 1974 Rules deals with Disciplinary Action. Rule-21 deals with Disciplinary authorities. Second proviso to Sub-Rule-(2)(b) of Rule-21 reads as follows:

"21-Disciplinary authorities

Xxx xxx xxx

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".

Second proviso to Sub-Rule-(2)(b) of Rule-21 empowers the Managing Committee or Governing Body to 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. But the case in hand is not a

case where pending disciplinary proceeding, the petitioner has been placed under suspension rather it is a case where the petitioner has been taken into custody and remained in custody for more than 48 hours. Therefore, the order of suspension was passed by the Governing Body in the impugned order under Annexure-1.

8. Mr. R. Acharya, learned counsel for the petitioner submitted that the impugned order of suspension in annexure-1 having not been passed pursuant to second proviso to Sub-Rule-2(b) of Rule-21 of the 1974 Rules as no disciplinary proceeding has been initiated or even contemplated, the orders of suspension are invalid inasmuch as the same were beyond the scope and ambit of the power of suspension conferred by the aforesaid proviso. He has relied upon the case of Adikanda Jena and another v. State of Orissa and others, 1990 (1) OLR 234 wherein this Court held that as the cause of suspension had no connection with the initiation of the disciplinary action and as it was conceded that the Orissa Civil Services (Classification, Control and Appeal) Rules had no application to the staffs of aided educational institutions and the petitioner being the member of such staff, the suspension order cannot be sustained. It is further stated that the second proviso to Sub-Rule-2 of Rule-21 has been considered and it is held that the Managing committee or the Governing Body has no unlimited power to place an employee under suspension unless it is made at the initiation of a disciplinary proceeding. Reliance has been placed on Nabakishore Mohapatra (supra) wherein this Court had taken into consideration the case of Adikanda Jena and another (supra) wherein on the basis of the facts of the said case since no reference has been made to any contemplated proceeding or any civil proceeding whatsoever this Court held that the impugned order of suspension suffers from such wrong that it cannot be sustained following the ratio of the decision in Adikanda Jena case (supra) and accordingly quashed the order of suspension passed by the authority, but at the same time this Court granted liberty to the Governing Body to pass any fresh order of suspension if it is thought fit and proper relating to any disciplinary proceeding. It appears that the case of Nabakishore Mohapatra (supra) and Adikanda Jena and another (supra) referred to by Mr. R. Acharya, learned counsel for the petitioner is completely different than that of the fact of the present case. Therefore, both the judgments are distinguishable taking into consideration the fact of this case.

9. Admittedly, the petitioner was arrested being involved in a criminal case and remained in custody for more than 48 hours. Rule-11 deals with the conduct of employees of aided educational institutions. Clause (b) of Sub-rule (1) of Rule-11 requires that they shall at all times maintain absolute integrity of character, devotion to duty and decorum of conduct. There is no iota of doubt that if an employee of an aided educational institution would for instance commit rape or theft, even outside the educational premises and/or unconnected with the affairs of the institution, a disciplinary proceeding can definitely be drawn up against him as the case would be squarely covered by the aforesaid clause.

10. In Jogeswar Bera mentioned (supra) a Full Bench of this Court held that two petitioners of the said judgment "were found involved in misappropriation of large amount of money which act would have definitely thrown doubt on the integrity or character of the petitioner which is required to be maintained in its absolute form in view of Clause (b), Sub-rule (1) of Rule-11 of the Rules. The two petitioners being Headmasters, their close association with the accounts of the schools is apparent and if integrity of such persons be in doubt, their conduct would be definitely such as can be examined by drawing up disciplinary proceedings. Therefore, this Court held that the employees of aided educational institutions can be suspended for criminal acts which would tell upon their integrity of character and decorum of conduct even though the acts may not be connected with the discharge of their duties as such employees or may not be committed within the premises of the institutions.

11. Applying the ratio of the said judgment to the present context, the petitioner has been arrested in connection with a criminal case and remained in custody for more than 48 hours which raises doubt about her integrity of character and decorum of conduct. Even though the acts may not be connected with the discharge of her duties as such employee or may not be committed within the premises of the institutions, in that case the Governing Body being the competent authority can place the petitioner under suspension which in fact has been done in Annexure-1. So far as reference made to the provisions contained in Sub-Rule (2) of Rule-12 of the OCS CCA Rules, 1962 is concerned may be a wrong description of the provisions of law but that itself cannot abstrain the authority to keep its employee who has been involved in a criminal case and remained in custody for more than 48 hours even if such act might not be committed within the premises of the institution under suspension and in that case the ratio decided in the case of Nabakishore Mohapatra (supra) and Adikanda Jena and another (supra) cannot be attracted.

12. Therefore, this Court is not inclined to interfere with the order of suspension so passed by the Governing Body in Annexure-1 and accordingly, the writ petition stands dismissed.