

(2021) 01 OHC CK 0021

In the Orissa High Court

Case No : Writ Petition (Civil) No. 26951 Of 2019

Biswanath Sethi

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 28-01-2021

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 — Rule 10(b),
13(vi), 13(vii), 13(viii), 13(ix), 15, 15(2), 15(3), 15(5), 15(6), 15(7)

Citation : (2021) 01 OHC CK 0021

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

Bench : Single Bench

Advocate : Bimbisar Dash, A. Nayak, A.K. Behera, B. Satpathy

Final Decision : Allowed

Judgement

Dr. B.R.Sarangi, J.

1. The petitioner, who was working as an Assistant Teacher (Level-V, Elementary Cadre) in Aptira UGME School, has filed this writ petition

challenging the office order dated 16.12.2019 under Annexure-12 terminating his service with immediate effect under Rule-15 of OCS (CCA) Rules,

1962 on the ground of submission of fake C.T. pass certificate

2. The factual matrix of the case, in hand, is that after completion of H.S.C. examination conducted by the Board of Secondary Education, the

petitioner took admission in Secondary Teachers Training School, Agarpada for prosecuting C.T. course in the year 1999. In July, 2001, he appeared

in all the subjects but could not clear some papers. In 2002, the petitioner again appeared and cleared all but eight papers. In October, 2003, the

petitioner appeared in those eight papers and having not come out successful, he

appeared in the compartmental examination and cleared all the papers. After clearing the Secondary Teachersâ?? Training Certificate examination, Board of Secondary Education, Odisha issued necessary certificate in favour of the petitioner on 30.12.2003. The Secretary, Board of Secondary Education, Odisha vide letter no.3142 (4781) dated 17.09.2004 sent the provisional certificate-cum-memorandum of marks of the petitioner to the Headmaster, S.T. School, Agarpada, Bhadrak. Though there were some wrong recording of marks by the Board of Secondary Education, Odisha, after scrutiny, Board of Secondary Education, Odisha issued revised mark sheet in favour of the petitioner.

2.1 Thereafter, the petitioner joined as an Asst. Teacher (Level-V of Elementary Education Cadre) in Aptira UGME School, Agarpada. While the petitioner continuing as such, the Block Education Officer, Bonth vide letter dated 05.11.2019 called upon the petitioner to produce all the testimonials regarding educational qualification by 06.11.2019. In response to the same, the petitioner submitted all the documents before the Block Education Officer, Bonth for verification. On 11.11.2019, Block Education Officer, Bonth requested the Secretary, Board of Secondary Education, Odisha to verify copy of the C.T. certificate produced by the petitioner and to confirm about its genuineness.

2.2 At that point of time, one Bikash Kumar Dhal alleged that the petitioner submitted fraudulent and forged C.T. certificate and, as such, the petitioner never passed C.T. examination from the Board of Secondary Education, Odisha. Basing upon such allegations, the District Project Coordinator, SSA, Bhadrak vide letter dated 26.11.2019 requested the Block Education Officer, Bonth to conduct an enquiry into the aforesaid allegations and to take appropriate action and submit compliance report thereof. On 27.11.2019, Block Education Officer, Bonth claimed that the certificate submitted by the petitioner is forged one and sought explanation from the petitioner to be submitted within a period of seven days, failing which the higher authority will be requested to initiate disciplinary action against him. The Principal, District Institute of Education and Training, Agarpara, Bhadrak vide memo dated 28.11.2019 clarified the position that the petitioner has passed C.T. examination in the year 2003 as a compartmental candidate and the serial number of such certificate was 030858.

As such, the revised mark sheet issued by Board of Secondary Education, Odisha and other relevant documents were also forwarded by the District Institute of Education and Training, Agarpada, Bhadrak.

Accordingly, on 02.12.2019 the petitioner submitted his explanation before the Block Education Officer, Bonth clarifying that the C.T. certificate

received from District Institute of Education and Training, Agarpada, Bhadrak is genuine and original. Though the petitioner submitted such

explanation and clarification was given by the Principal, District Institute of Education and Training, but without considering the same, the Block

Education Officer, Bonth proceeded with the matter by initiating proceeding against the petitioner.

2.3 Challenging the above action of the opposite parties, the petitioner approached this Court by filing W.P.(C) No.24972 of 2019, which was disposed

of vide order dated 10.12.2019 directing the Block Education Officer, Bonth to consider the documents submitted by the petitioner and pass

appropriate orders in presence of the petitioner within a period of four months from the date of communication/production of the order. In compliance

thereof, the petitioner submitted representation on 16.12.2019 before the District Education, Officer, Bhadrak and Block Education Officer, Bonth

enclosing the order dated 10.12.2019 passed in W.P.(C) No.24972 of 2019. But, without considering the documents submitted by the petitioner and

without giving any opportunity of hearing to him, the Block Education Officer, Bonth vide office order dated 16.12.2019 terminated the services of the

petitioner with immediate effect under Rule-15 of the OCS (CCA) Rules, 1962 on the ground of production of fake C.T. pass certificate. Hence this

application.

3. Mr. Bimbisar Dash, learned counsel for the petitioner contended that while imposing harsh penalty of termination of service, the procedure as

envisaged under OCS (CCA) Rules, 1962 has not been complied with nor the petitioner has been given opportunity of hearing while passing the order

of punishment and, more so, no inquiry has been conducted on the allegations, thereby, the order so passed in Annexure-12 dated 16.12.2019

terminating the services of the petitioner cannot sustain in the eye of law.

4. Mr. B. Satpathy, learned Standing Counsel for School and Mass Education Department referring to the counter affidavit filed by opposite party no.6

vehemently contended that since the petitioner has produced fake C.T. pass certificate to get an employment as an Asst. Teacher and on verification of documents the same was found to be forged, action as deemed fit has been taken against the petitioner. Thereby, the authorities have not committed any illegality or irregularity in passing the order impugned. It is further contended that once the petitioner has got employment by producing fake certificate, if it is detected that the same is forged one, the authority has got every right to take action against the petitioner. Therefore, it is contended that this Court should not interfere with the same at this stage and, as such, he seeks for dismissal of the writ petition.

5. This Court heard Mr. Bimbisar Dash, learned counsel for the petitioner and Mr. B. Satpathy, learned Standing Counsel for School and Mass

Education Department by virtual mode, and perused the records. Pleadings having been exchanged, with the consent of learned counsel for the parties, this writ petition is being disposed of finally at the stage of admission.

6. There is no dispute with regard to the fact that the petitioner was continuing as an Asst. Teacher by producing a C.T. pass certificate. But, the

Block Education Officer, Bonth, pursuant to letter dated 05.11.2019 called upon the petitioner to produce relevant documents on 6. 11.2019 and on

that basis the Block Education Officer requested the Secretary, Board of Secondary Education, Odisha to verify the genuineness of the C.T.

certificate produced by the petitioner. When such process was continuing, on the basis of the allegations made by one Bikash Kumar Dhal, the District

Project Coordinator, SSA, Bhadrak, vide letter dated 26.11.2019, requested the Block Education Officer, Bonth to conduct an enquiry into the

aforesaid allegation and to take appropriate action. But the Principal, District Institute of Education and Training, Agarpara, Bhadrak vide memo dated

28.11.2019 clarified the position that the petitioner has passed the C.T. examination 2003 as a compartmental candidate and serial number of such

certificate is 030858 and, as such, the revised mark sheet issued by Board of Secondary Education, Odisha and other relevant documents were also

forwarded by the District Institute of Education and Training, Agarpara, Bhadrak.

7. The impugned order indicates that the service of the petitioner has been terminated with immediate effect as per Rule-15 of OCS (CCA) Rules,

1962. On perusal of the provisions contained in Rule-15 of the OCS (CCA) Rules,

1962, it appears that elaborate procedure has been prescribed for imposing penalties of termination from service. As per sub-rule (2) of Rule-15 of Rules, 1962, the disciplinary authority shall frame definite charges on the basis of the allegations on which the inquiry is to be held. Such charges together with a statement of the allegations on which they are based, shall be communicated in writing to the government servant and he shall be required to submit, within such time as may be specified by the disciplinary authority but not ordinarily exceeding one month, a written statement of his defence and also to state whether he desires to be heard in person. Sub-rule(3) of Rule-15 of Rules, 1962 prescribes that the government servant shall, for the purpose of preparing his defence, be supplied with all the records on which the allegations are based. He shall also be permitted to inspect and take extracts from such other official records as he may specify, provided that such permission may be refused if, for reasons to be recorded in writing in the opinion of the disciplinary authority such records are not relevant for the purpose or it is against interest of the public to allow him access thereto. Similarly, for causing inquiry, presenting officer and inquiry officer are to be appointed by the disciplinary authority as per sub-rule(5) of Rule-15. Rule-15(6) and (7) provides examination of witnesses. As per sub-rule 10(b) of the Rule-15, the disciplinary authority is to impose any of the penalties as specified in clauses (vi) to (ix) of Rule-13 of OCS (CCA) Rules, 1962. If such elaborate procedure has been prescribed under law, while imposing major penalty of termination from service vide order impugned in Annexure-12 dated 16.12.2019, the aforesaid procedures have not been followed and more so there is non-compliance of principles of natural justice. Nothing has been placed on record to elucidate that due procedure has been followed to award the punishment of termination from service.

8. Furthermore, when report was called for from the Board of Secondary Education, Odisha on 11.11.2019 under Annexure-6, whether such report has been received from the Board or not, that has not been placed on record. Therefore, on the basis of mere allegation of an outsider, the action so taken for termination of service of the petitioner without following due procedure, cannot sustain in the eye of law.

9. It is the basic principles of law long settled that if the manner of doing a

particular act is prescribed under any Statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor, (1875) 1 Ch D 426, which was followed by LORD ROCHE

in Nazir Ahmad v. King Emperor, 63 Ind App 372 : AIR 1936 PC 253 who stated as under:-

-â??where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.â??

The same view has also been taken by the apex Court in Babu Verghese and others v. Bar Council of Kerala & Ors., AIR 1999 SC 1281 at page

1288.

In view of detailed procedure envisaged under Rule-15 of the OCS (CCA) Rules, 1962, if the same has not been followed in letter and spirit as to the

law discussed above, any action taken in violation of such rules cannot sustain in the eye of law.

10. Apart from the above, the Principal, District Institute of Education and Training, Agarpara, Bhadrak vide memo dated 28.11.2019 addressed to the

Block Education Officer, Bonth with regard to genuineness of the secondary teachers training certificate issued to the petitioner, has specifically

clarified that the petitioner having Roll No.02CP002 has passed the C.T. examination, 2003 (Compartmental) and serial no. of certificate is 030858.

Consequently, a revised mark sheet was also issued by the Board of Secondary Education, Odisha. Therefore, there should not have been any doubt

about the certificate produced by the petitioner to get into the job as an Asst. Teacher. In such view of the matter, this Court is of the considered

opinion that without making any proper inquiry and without ascertaining the correctness of the certificate and also without giving opportunity of hearing

to the petitioner, the order so passed in Annexure-12 dated 16.12.2019, is contrary to the provisions of law and violates the principles of natural justice.

11. Lord Reid in Ridge v. Baldwin, (1964) AC 40 : (1963) 2 All ER 66 (HL) very succinctly described it as not being capable of exact definition but

what a reasonable man would regard as a fair procedure in particular circumstances.

12. In A.K. Kraipak v. Union of India, AIR 1970 SC 150, the apex Court held that the principles of natural justice which are meant to prevent

miscarriage of justice are also applicable to domestic enquiries and

administrative proceedings.

The same view has also been taken by the apex Court in *Dr. G. Sarana v. University of Lucknow*, AIR 1976 SC 2428.

13. In *State Bank of Patiala v. S.K. Sharma*, AIR 1996 SC 1669, the apex Court held that "Natural Justice" means "fair play in action".

14. In *Union of India v. E.G. Nambudiri*, (1991) 3 SCC 38, the apex Court held as follows:

"The purpose of the rules of natural justice is to prevent miscarriage of justice and it is no more in doubt that the principles of natural justice are

applicable to administrative orders if such orders affect the rights of a citizen. Arriving at the just decision in the aim of both quasi-judicial as well as

administrative enquiry; an unjust decision in administrative enquiry may have more far reaching effect than decision in a quasi-judicial enquiry. Now, there is no doubt that the principles of natural justice are applicable even to administrative enquiries. The question is whether principles of natural justice require an

administrative authority to record reasons. Generally, principles of natural justice require that opportunity of hearing should be given to the person against

whom an administrative order is passed. The application of principles of natural justice, and its sweep depend upon the nature of the rights involved, having

regard to the setting and context of the statutory provisions. Where a vested right is adversely affected by an administrative order, or where civil consequences

ensue, principles of natural justice apply even if the statutory provisions do not make any express provision for the same, and the person concerned must be

afforded opportunity of hearing before the order is passed. But principles of natural justice do not require the administrative authority to record reasons for the

decision, as there is no general rule that reasons must be given for administrative decision. Order of an administrative authority, which has no statutory or

implied duty to state reasons of the grounds of its decision, is not rendered illegal merely on account of absence of reasons. It has never been a principle of

natural justice that reason should be given for decision. Though the principles of natural justice do not require reasons for decision, there is necessity for giving

reasons in view to enable the citizens to discover the reasonings behind the decision. Right to reasons is an indispensable part of a sound system of judicial

review. Under our Constitution an administrative decision is subject to the right

of a citizen, it is therefore desirable that reasons should be stated.â??

15. In *Suresh Chandra Nanhorya v. Rajendra Rajak*, (2006) 7 SCC 800, the apex Court held that â??Natural justiceâ?? is the essence of fair

adjudication, deeply rooted in tradition and conscience, to be ranked fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice.

16. In *Sahara India (Firm) v. CIT*, (2008) 14 SCC 151 relying upon *A.K. Kraipat v. Union of India*, (1969) 2 SCC 262, the apex Court held as follows:

â??Rules of â??natural justiceâ?? are not embodied rules. The phrase â??natural juiceâ?? is also not capable of a precise definition. The underlying principle

of â??natural justiceâ??, evolved under the common law, is to check arbitrary exercise of power by the State or its functionaries, it implies a duty to act fairly i.e.

fair play in action. The aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice.â??

In view of the law laid down by the apex Court, as discussed above, while passing the order impugned, there is non-compliance of the principles of

natural justice and the entire action has been taken in gross violation of the provisions of law and, thereby, the order impugned cannot sustain.

17. In the counter affidavit filed by opposite party no.6, the contention raised in paragraph-17(b) of the writ petition has remained uncontroverted,

inasmuch as, no specific reply has been given with regard to conduct of inquiry. Rather, reply has been given in paragraph-11 of the counter affidavit

that when the C.T. certificate produced by the petitioner was proved as fake one, opposite party no.6 took immediate steps by lodging FIR against the

petitioner and at the same time terminated him from service with immediate effect vide office order no.2290 dated 16.12.2019. Thereby, it is

specifically admitted that the provisions contained under Rule-15 of OCS (CCA) Rules, 1962 with regard to conduct of inquiry have not been followed

in the present case. More so, compliance of the order dated 10.12.2019 passed by this Court in W.P.(C) No.24972 of 2019 has not been done in letter

and spirit.

18. In view of the facts and circumstances, as well as proposition of law, as discussed above, since the impugned order dated 16.12.2019 in

Annexure-12 has been passed without following due procedure of law, i.e.

Rule-15 of OCS (CCA) Rules, 1962 and without complying the principles of natural justice, inasmuch as no opportunity of hearing was given to the petitioner, the same cannot sustain in the eye of law and is hereby quashed.

The opposite parties are directed to reinstate the petitioner in service with immediate effect.

19. The writ petition is thus allowed. There shall be no order as to costs.