

(1990) 05 OHC CK 0028
In the Orissa High Court
Case No : OJC No. 2778 of 1983

Chiranjib Parida

APPELLANT

Vs

Suite of Orissa and Others

RESPONDENT

Date of Decision : 16-05-1990

Acts Referred:

Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 — Rule 15(4)
Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 — Rule 21(2), 22(12), 22(13), 22(4)

Citation : (1990) 2 OLR 70

Hon'ble Judges : B.L. Hansaria, C.J.; P.C. Misra, J

Bench : Division Bench

Advocate : J.K. Rath, for the Appellant; S.C Dash and B.K. Patnaik and Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

B.L. Hansaria, C.J.—The facts which need be noted for disposal of the case are these while the Petitioner was serving as a graduate teacher in K.N. Janata High School, Sajanapara some allegations, such as, absence without intimation, negligence in duty violation of the rules of the school insubordination and indulging in indisciplined activities were made against him. This was some time in August, 1978. The Petitioner Submitted his explanation denying the allegations. He Was thereafter placed under Suspension on 14-2-1979 pending inquiry into the charges drawn up against him. The Managing Committee thereafter Constituted an enquiry committee to enquire into the Charges framed against the Petitioner. This inquiry committee consisted of one member of the Managing Committee and two "Outsiders. The Petitioner raised objection regarding, constitution of the enquiry "Committee and did not participate in the deliberations of the Committee. The enquiry was, therefore, conducted ex parte and a report was submitted to the Managing Committee which was considered by it OR 29-9-1979 and it resolved, on the basis of the findings arrived at by the

enquiry committee, to recommend removal of the Petitioner from service from 1-10-1979. The advice of the Director of Secondary" Education was sought in the matter as required by Rule 22(12) of the Orissa Education (Recruitment and Conditions of Service of Teachers and Members and Staff of Aided - Educational Institutions Rules, 1974 (hereinafter called "the Rules"). This letter of the Managing Committee dated 12-10-1979 was replied by the Director vide his Memo No. 9338 dated 23-2-1983 desiring fresh enquiry as the enquiry committee consisted of two outsiders. There was some exchange of correspondence between the, Managing Committee and the Director thereafter" which resulted in the letter of the Deputy Director No. 9727 dated 4-4-1984 requesting the Managing Committee to appoint an Enquiry Officer after observing the procedure as provided under Rule 22(4) of the Rules. The Managing Committee, however took the stand that there was no defect in the enquiry which had been conducted by the committee appointed by it about which reference has been made earlier.

2. On the aforesaid facts, the only question which really calls for determination is whether the enquiry in the case at hand by the committee as constituted by the Managing Committee was in accordance with law or not. A reply to this question" has to be found in Rule 22(4) of this Rules which at the relevant time read as below:

22. (4). On receipt of the written statement of defence, or if no such statement is received within the time specified, the disciplinary authority may itself make enquiry into such of the charges as are not admitted, or, if he considers necessary so to do, appoint any other person who shall either be a member of the Governing Body or the Headmaster or the Principal;

x x x x

Before we advert to the submissions made by Dr. Dash relating to the legality of the constitution of the enquiry committee, it may be pointed out that there is no dispute that in the present case it is the Managing Committee of the school who has to be regarded as the disciplinary authority in view of what has been stated in Rule 21(2)(b) of the Rules. It is only in respect of lower grade employee that the Headmaster or the Principal can be regarded as the disciplinary authority. Dr. Dash submits that as the school had no Headmaster at the relevant time, the question of any enquiry by the Headmaster could not arise in the present case. This being so, it is the Managing Committee alone which could have made the enquiry; in view of what has been stated in Rule 22(4). Dr. Dash submits that in the enquiry committee as constituted in the present case, there was in fact one member of the Managing Committee and so the enquiry must be regarded to have been held by the Managing Committee which was the disciplinary authority in the present case; and induction of two outsiders in the committee would not make the constitution of the committee illegal in the eye of law. It is strenuously urged by the learned Counsel that as the Managing Committee of a school consists of 11 persons, enquiry by the entire body was not visualised by the

aforesaid rule and as such, enquiry by one member of the Managing Committee in which work he was assessed by two outsiders cannot be said to be in violation of the requirement of law.

3. Before we examine the main contention advanced by Dr. Dash, it is opposite to point out that Rule 22(4) as it stood at the relevant time, did not permit enquiry even by one member of the Managing Committee inasmuch as the rule as it then stood stated about enquiry by a member of the Governing Body alone, and not by a member of the Managing Committee which was, however, permitted subsequently when amendment was made in the aforesaid rule by S.R.O. No. 20186 dated 7-1-1986 as published in Orissa Gazette (Extraordinary) No. 81 dated 24-1-1986. Even so, we are prepared to concede that Rule 22(4) as it was at the relevant time permitted enquiry even by one member of the Managing Committee. The important question is whether induction of two outsiders in the enquiry committee vitiated the findings arrived at by it. As to this, we may state that Rule 22(4) having laid down as to who could make the enquiry, it is not permissible in law to travel beyond the language of the rule. Dr. Dash has, however, placed reliance on three decisions of three different High Courts of the country in support of his submission that no illegality was committed by indicating two outsiders in the committee. These decisions are : (1) Bhagatram v. Union of India 1969 (3) S.L.R. 66 (Delhi) (1) Satpal v. Himachal Pradesh Financial Corporation 1977 (2) S.L.R. 447 Himachal Pradesh and Bipad Bhanjan v. State of West Bengal 1978 (1) S.L.R. 656 (Cal).

4. Let us see whether the aforesaid decisions can be called in aid by Dr. Dash. In Bhagatram, a submission had been advanced that the enquiry against the Petitioner having been conducted by an officer who was subordinate to the General Manager-who was his disciplinary authority-was vitiated. This contention was regarded as without merit by stating that an enquiry officer could be subordinate to the punishing authority. A reference to paragraph 9 of the judgment shows that the contention had been advanced to satisfy the mind of the Court that an enquiry by a subordinate officer could not have been fair or unbiased. The contention was rejected by stating that the mere fact that the enquiry officer was a subordinate employee or was subordinate in position to the General Manager would not indicate that he could not form his independent judgment and was under the influence of his superior officers. The point at issue in the case at hand is, however, entirely different inasmuch as the same is whether a person unknown to Rule 22(4) could have been made a member of the enquiry committee. In this connection it is worthwhile to point out that in Bhagatram, the Court was examining this aspect of the matter in the context of the provisions finding place in the Central Civil Services (Classification, Control and Appeal) Rules, 1965 whose Rule 14(2) speaks of enquiry by the disciplinary authority but which also visualises appointment of an authority to enquiry into the charges. We may point out that Rule 15(4) of the Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 also speaks about enquiry into the "charges by the disciplinary authority, inter alia, by "an inquiring officer" the

wide language used in either the Central Civil Services Rules or the Orissa Civil Services Rules is not to be found in Rule 22(4) which has named as to who could be the persons apart from the disciplinary authority to enquire into charges.

4-A. In Satpal, the concerned Staff Regulations had contemplated enquiry by an officer of the Corporation. The enquiry in question was, however, conducted by the Directors of the Corporation. The Court observed in paragraph 24 that though the Directors did not fall within the category of "officers", this circumstance alone would not vitiate the enquiry because it could be presumed that an enquiry by the Directors stood on a higher footing than on an enquiry by mere officers. In taking this view it was pointed out that the relevant Acts and Regulations recognised higher status of Directors than accorded to the officers of the Corporation. Though this decision shows that an enquiry could be by some person or persons, not contemplated by the concerned provision, but then Mr. Rath rightly pointed out that the Directors cannot be regarded as outsiders. We are, therefore, of the view that the decision in Satpal also does not advance the case of the contesting opposite parties.

4-B. As to Bipad Bhanjan, it is worth pointing out that initiation of the proceeding in that case was not regarded to have been in violation of Regulation 85(O) of the Police Regulations (Bengal) inasmuch as Section 2-A of the West Bengal Amendment of the Police Act, 1851 had conferred relaxation powers which had been invoked in that case. There is no parallel provision in the case at hand.

4-C. We may also state here that the attempt of Dr. Dash to soft pedal the participation of the two outsiders by submitting that they had merely assisted the member of the Managing Committee cannot be accepted as the number of outsiders being two in the committee of three, it can as well be that it is their view which ultimately counted. Even if there would have been one outsider, he too could have influenced the thinking of others

5. In view of all the above, the contention of Dr. Dash that the finding arrived at by the enquiry committee as appointed in the present case was not vitiated cannot be accepted. This being the state of affairs, it has to be held that the recommendation of the Managing Committee to terminate the service of the Petitioner based on the aforesaid findings cannot be sustained.

6. Before concluding, we would like to deal with the submission of Dr. Dash that the advice tendered by the Deputy Director vide his Memo No. 9727 dated 4-4-1984 to get the matter enquired by appointing an enquiry officer after observing the procedures provided in Rule 22(4) had no sanction of law and it is because of this that the advice was not acted upon. This submission has been advanced by the learned Counsel because, according to him, the advice which the Director is permitted to give under Rule 22(13) of the Rules can be only on the question of penalty. To appreciate this submission, let us note Rule 22(13):

22(13). On receipt, of the advice of the Director, the disciplinary authority under Sub-rule (2) of Rule 21 shall consider the advice and determine penalty, if any, to

be imposed on the employee and pass appropriate order on the case.

The language of the rule being what it is, we would not be justified in confining the advice of the Director merely to the question of penalty inasmuch as this rule states that after considering the advice, the disciplinary authority shall determine if any penalty is to be imposed on the employee. This would indicate that the advice may be not only on the question of penalty, because after receipt of the advice penalty may be not be imposed at all, but the same may also be on the correctness or otherwise of the finding arrived at by the enquiring authority or relating to any matter connected therewith.

7. Dr. Dash finally contends that the Managing Committee ought to be given an opportunity now to hold proper enquiry in view of serious nature of charges against the Petitioner. We are, however, of the view that as, after receipt of the letter of the Deputy Director dated 4-4-1984, the matter was not taken up at all further with the Director by pointing out to him that the advice tendered by him was not in accordance with law, or by acting in accordance with his advice, granting of any further opportunity to the Managing Committee after a lapse of six years to enquire into the charges would be against the call of justice inasmuch as the Petitioner who has been under suspension since 1979 cannot be asked to face a prolonged enquiry and its longish aftermath after a lapse of about 11 years.

8. In the result, the petition is allowed by quashing the order of suspension and by directing reinstatement of the Petitioner in the post of graduate teacher within a period of one month from today. On the facts of the case, we make no order as to costs.

P.C. Misra, J.

9. I agree.

Petition allowed.