
(2014) 09 OHC CK 0043
In the Orissa High Court
Case No : W.P. (C) No. 22037 of 2013

Debarchan Pradhan

APPELLANT

Vs

Odisha Forest Development Corporation Ltd.

RESPONDENT

Date of Decision : 24-09-2014

Acts Referred:

Citation : (2015) 120 CLT 1103 : (2015) 145 FLR 389 : (2015) 144 FLR 410 :
(2015) 1 ILR 1224 : (2015) 1 OLR 310

Hon'ble Judges : Biswanath Rath, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

Biswanath Rath, J.—By filing this writ petition, the petitioner has assailed the order no. 35 dated 30.4.2012 under Annexure-7 passed by opposite party no. 3 the disciplinary authority, the order dated 06.08.2013 passed by opposite party no. 2 the Appellate authority under Annexure-11 and for issuing a writ of mandamus directing the opposite parties to reinstate the petitioner in service forthwith with payment of his arrear and other service benefits.

2. Facts involved in the case as narrated in the writ petition and as argued during the course of hearing is that the petitioner joined as a daily wage employer in the Odisha Forest Development Corporation Ltd. on 01.01.1982. After an uninterrupted service of nine years, the petitioner's service was regularized on 01.01.1991 in a vacancy in the post of Peon in the above organization as required and as directed the petitioner submitted School Leaving Certificate issued by Headmaster Naulipada M.E. School in the district of Sambalpur. It is based on the recording in the said School Leaving Certificate an entry on his date of birth was made in the service book showing his date of birth to be 21.08.1960.

3. The petitioner alleged that based on frivolous complaint lodged by one Shri John Petor claiming to be the Vice-president of Youth Congress, Rairakhol, the opposite party no. 3 went for enquiry on the question of veracity in the date of

birth submitted by the petitioner. In the said process, the opposite party no. 3 wrote a letter on 23.11.2010 to the Headmaster Naulipada M.E. School for his replying on the authenticity of the documents provided by the petitioner. It is further alleged by the petitioner that in response to the above letter, the Headmaster, Naulipada M.E. School vide Reference No. 172 dated 17.10.2009 wrote back to opposite party no. 3 giving thereby a negative reply. It is based on the information that "it is verified from the school" and found that all the above information did not match to their school record (Annexure-E) in the meanwhile, opposite party no. 3 vide letter no. 3266 dated 23.11.2010 wrote the Headmaster Naulipada M.E. School to get a response as to whether the certificate produced by the petitioner at the time of his regularization is valid one. In response the Headmaster-in-charge Naulipada M.E. School by his letter dated 25.12.2010 (Annexure-4) intimated as follows:-

"Regarding confirmation letter issued from school vide letter no. 297 dated 22.12.2006 by our Ex-Headmaster, the office copy of which is not presently traceable in our office record. However, the seal and the signature is not found to be correct."

Again in very same letter, the Headmaster-in-charge also intimated as follows:-

"In fact SLC No. 52 dated 03.05.1975 has been actually not issued in favour of Shri Debarchan Pradhan on 03.05.1975 by our Ex-Headmaster from the school. But counter foil of the said T.C. and the connected documents are not traceable."

4. The petitioner further alleged that it is based on the aforesaid reports by issuing office memorandum dated 05.01.2011 (Annexure-5) he was intimated regarding setting up an enquiry to probe into the allegation in Annexure-1 enclosing therein the statement of implications of doubtful integrity and misconduct in support of article of charges as annexed Annexure-II and the list of documents are enclosed in Annexure-III. The petitioner was called upon to submit his written statement of his defence within thirty days of receipt of the above communication. The petitioner submitted his response vide Annexure-6. On conclusion of the aforesaid enquiry proceeding vide communication dated 30.04.2012 as appearing at Annexure-7 issued by opposite party no. 3, the petitioner was dismissed from service on the charges of doubtful integrity and misconduct.

5. The petitioner further alleged that for vehement protest by the petitioner, the opposite party no. 3 by letter no. 1077 dated 16.05.2013 wrote a letter to the District Inspector of Schools, Deogarh requesting him to direct the Headmaster, Naulipada M.E. School to verify the records and the authenticity of SLC No. 52 dated 03.05.1975 issued in favour of Shri Debarchan Pradhan and to send the report after counter signing the same by himself. In another communication no. 1082 dated 16.05.2013 a similar letter was issued to the Headmaster requesting him to verify the documents concerning the petitioner and intimating the under signed regarding the authenticity of the SLC No. 52 dated 03.05.1975 and the

confirmation of entries made therein from the Headmaster's end. In response to the same, the District Inspector of Schools, Deogarh vide his letter no. 1442 dated 13.06.2013 sent a response to the opposite party no. 3 enclosing therein a copy of the letter of the Headmaster Naulipada M.E. School dated 05.06.2013 indicating therein that in spite of his best effort, the SLC (counter foil) register in which the SLC No. 52 dated 03.05.1975 was issued was not found in the office, for which reason he was unable to give an appropriate report on the subject. Following the above development, the opposite party no. 3 wrote to the District Inspector of Schools, Deogarh on 29.06.2013 by issuing a letter under reference No. 1435 directing him to enquire into the matter and intimate the undersigned as to whether the Admission Register no. 07 (as mentioned in the SLC No. 52) and the SLC book from where SLC No. 52 was issued is available or not. Enclosing therein a copy of the report dated 25.12.2010 as submitted by Ex-Headmaster of the school which remain unattended as on date.

6. The opposite parties in their turn submitted a counter affidavit justifying their action and claimed that there is no illegality in the impugned order. In order to justify their action, the contesting opposite parties also filed a series of documents in proof of their detail probe in the matter. It is based on receipt of communications against the petitioner they have arrived at the impugned action.

7. On perusal of the record vide Annexures-1, 2, C, G, Annexure-8 series and Annexure-9, it appears that some of the records concerned Naulipada M.E. School vide Annexures-1 and 2 whereas other records give reference to Nakulipada. The record vide Annexure-4 indicates (counter foil) of the T.C. on SLC No. 52 is not traceable and the Headmaster is trying to trace the old records. Similarly, a letter dated 05.06.2013 by another Headmaster of the said school Naulipada also indicates the SLC (counter foil) was not found in the office in which the SLC No. 52 dated 03.05.1975 was issued for which he has expressed his inability to give a proper report regarding the authenticity of the SLC.

8. As appearing from documents vide Annexure-8 series a communication of the opposite party dated 16.05.2013, it appears that the investigation regarding the records to find out the authenticity of the School Leaving Certificate, was still not closed. Documents vide Annexure-9 a correspondence from the District Inspector of Schools clearly indicates that the Headmaster is failing to submit the Admission Register and counter foil slip T.C. and from the Headmaster's letter dated 05.06.2013 it also appears that the relevant documents are not traceable. In the above facts and situation, it is apparent that there is no material establishing the allegation against the petitioner regarding falsity in the information with regard to his date of birth. If the Enquiry Officer was satisfied with the records available with him and submitted a report to the satisfaction of the authority then there is no reason for the authority to further probe into the matter as appearing vide Annexures-8 series and 9. Since the investigation to find the authenticity in the furnishing of the date of birth by the petitioner

remained under cloud, the probe should not have been allowed to be concluded. Perusal of all these documents though established that the department with good intention started corresponding to different ends to find out the correctness in the SLC produced by the petitioner but there is no material to establish that there was any logical end. Consequently, I hold the conclusion of enquiry by the disciplinary authority is incomplete, erroneous. The appeal order being based on such erroneous finding is also to suffer. While setting aside both the impugned orders, I remit the matter back to the disciplinary authority to conclude their probe as initiated vide Annexure-8 series and the fate of the petitioner be decided depending on the fresh findings arrived at in the departmental probe. Since the petitioner is dismissed on the said erroneous and illegal conclusion of an unfinished disciplinary proceeding, he should be restored back to his service forthwith. Further since the petitioner remained disengaged for the aforesaid illegal action of the management but, keeping in mind the petitioner has not worked all through, I direct the management to pay 60% of back wages to the petitioner and treat his period of absence from service as period in service for purpose of his promotion and retiral benefits.

9. The writ petition succeeds to the extent directed above, however, there shall not order as to cost.