

(1997) 04 OHC CK 0002
In the Orissa High Court
Case No : O. J. C. No. 1461 of 1961

Dinabandhu Swain

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 10-04-1997

Acts Referred:

Orissa Grama Panchayat Rules, 1968 — Rule 212, 213

Citation : (1997) 83 CLT 728 : (1997) 2 OLR 229

Hon'ble Judges : P.K. Mishra, J;D.M. Patnaik, J

Bench : Division Bench

Advocate : K.B. Panda, for the Appellant; N. Prusty Additional Govt. Advocate, for the Respondent

Judgement

D.M. Patnaik, J.—The petitioner assails the order of the District Panchayat Officer, Cuttack removing him from the post of Secretary, Tulasipur Gram Panchayat conveyed through letter dated 13.2.1996 of the Sarpanch under Annexure-6/A claiming the said action to be arbitrary and illegal.

2. To draw it mild, the case of the petitioner is, by resolution of the Tulasipur Gram Panchayat in its general body meeting on 16.5.1995, he was appointed as Secretary of the said Gram Panchayat on a monthly salary of Rs. 500/-. Pursuant to such appointment he joined the post. The Sarpanch by his letter dated 22.5.1995 directed Incharge-Secretary, G. P. Panda to hand over detailed charge to the petitioner by 25.5.1995. While, the petitioner was holding the said post, the Sarpanch under Annexure-4 invited applications for filling up the post of Secretary. Since the Gram Panchayat took a decision to appoint another Secretary and that too when the petitioner was still working as the Secretary, the petitioner moved this Court in O.J.C. No. 4197/95 for quashing the said notice and for a direction not to remove him from the post without following procedure under Rule 216 of the Orissa Gram Panchayat Rules, 1968. This Court by order dated 11.1.1996 held that the impugned notice (Annexure-4) which was pursuant to the order of the S.D.O., Banki annulling the resolution dated

16.5.1995 of the Gram Panchayat appointing the petitioner to the post of Secretary, was illegal. The same was quashed.

The present grievance of the petitioner is that the letter of the Sarpanch dated 13.2.1996 under Annexure-6/A is pursuant to the order of the District Panchayat Officer removing him from the post without any enquiry and without giving him any opportunity to meet the charges.

3. Opposite Party No. 3, District Panchayat Officer, Cuttack has filed a counter. The main ground of attack is that the writ is not maintainable in view of the decision of the Apex Court in the case of R.N.A. Britto Vs. Chief Executive Officer and others, , where Secretary of the Gram Panchayat has been held to be Government servant for which the aggrieved party has to approach the Administrative Tribunal and High Court's jurisdiction is barred. With regard to the merit of the case, the stand taken By the opposite party No. 3 is that this Court while disposing of the earlier writ petition has made it clear that the authorities were free to take steps in accordance with the statutory provisions for removal of the petitioner and therefore, according to the opposite party No. 3, since the appointment of the petitioner as the Secretary of the Gram Panchayat was in gross violation of the procedure laid down under Rules 212 and 213 of the Rules and that the appointment itself was not approved by the opposite party No. 3 as required under the provisions of the rules, the opposite party was right in directing removal of the petitioner.

4. Heard Mr. K. B. Panda, learned counsel for the petitioner and Mr. N. Prusty, learned counsel for the State.

So far as the point of maintainability of the writ petition before this Court is concerned, we express no opinion on the same and leave the point open for decision in other cases because, since the petitioner has been pursuing his remedy against his removal since the time when he challenged Gram Panchayat's appointment of another Secretary to the post by filling O.J C. No. 4197/95 disposed of on 11.1.1996 in his favour, it will not be proper to drive the petitioner after that length of time to again pursue the remedy before the Administrative Tribunal. Secondly, the case before the Supreme Court was one under Karnataka Village Boards Act. The learned counsel for the State has not pointed out as to how the decision of the Apex Court in the facts and circumstances, is applicable to the present case.

5. The second point is dealt with in the following manner.

Rule 212 of the Orissa Gram Panchayat Rules prescribes that a Secretary of the Gram Sasan can be appointed only with the previous approval of the District Panchayat Officer. Rule 213 (d) makes it mandatory on the part of the District Panchayat Officer to be satisfied with regard to the qualification and eligibility of the person for the post of Secretary and also to find out if the selection is made in accordance with the Rules and the remuneration proposed to be paid to the Secretary is reasonable and thereafter if so satisfied he shall approve the

proposal or else if he finds the candidate selected to be disqualified, he may direct the Gram Panchayat to select another candidate in the prescribed manner. Sub-rule (c) of Rule 213 further prescribes that after receipt of the approval of the District Panchayat Officer, a candidate may be appointed as Secretary. This sub-rule makes it further clear that no appointment to the post of Secretary of a Gram Panchayat can be made without previous approval of the District Panchayat Officer.

6. The main point advanced by Mr. Prusty, learned counsel for the State is that if there is no previous approval by the District Panchayat Officer, then the appointment is invalid in the eye of law, and therefore there is no question of the petitioner to be terminated pursuant to the prescribed procedure under the rules. In other words, the contention of learned counsel for State is that the petitioner has been removed from service because of his illegal appointment.

Annexure-6/A does not indicate as to why and how the selection of the petitioner as the Secretary has been disapproved by the opposite party No. 3. No material has been placed before us to hold that in fact the District Panchayat Officer applied his mind and that he was satisfied that the petitioner did not qualify or make himself eligible to be appointed as the Secretary. No doubt in the earlier writ petition, the crux of the point was that whether appointment of the petitioner as per the resolution of the Gram Panchayat dated 16.5.1995 was valid and the petitioner challenged the order of the Sub-Divisional Officer, Banki annulling the resolution. In the said case, counter was filed by the then Gram Panchayat Extension Officer-Incharge of the said Gram Panchayat, wherein a stand was taken by him that appointment order was issued to the petitioner before approval of the District Panchayat Officer. It is unfortunate that this stand of the opposite party-Gram Panchayat Officer that the petitioner's appointment was not approved by the Gram Panchayat Officer and for this his appointment was illegal, was not brought to the notice of this Court and therefore, the matter which could have been settled then was unnecessarily brought to the present stage. Be that as it may, Annexure-6/A does not bring out the reason for which the petitioner's appointment has not been approved by the District Panchayat Officer. Annexure-6/A indefinite term, is addressed to the petitioner indicating therein his removal from the post of Secretary. This document does not show that the petitioner was not working against the post and the letter of removal was merely one; for Observance of an official formality, nor it is the case of the State that he did not work as the Secretary. Thus, we have no hesitation to hold that the petitioner has been working in the said post since, 22.5.1995. though his appointment was not approved by the District Panchayat Officer.

7. In view of that, we quash Annexure-6/A and direct the opposite party No. 3 to take fresh decision in the matter of approval or disapproval of the petitioner's appointment in accordance with Rule 213(d) of the Rules.. This exercise should be done within three months from the date of receipt of this order. Needless to point out that the petitioner shall be entitled to his remuneration from the said

date till the matter is finalised at the opposite party No. 3's end.

8. The writ petition is disposed of with the aforesaid observation and direction.
No cost.

P.K. Mishra, J.

8. I agree.