

(1989) 08 OHC CK 0039

In the Orissa High Court

Case No : Original Jurisdiction Case No. 180 of 1982

Harishankar Acharya

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 17-08-1989

Acts Referred:

Orissa Education (Management of Private Schools) Rules, 1980 — Rule 4(3)
Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 — Rule 21(2), 9A

Citation : (1990) 1 OLR 38

Hon'ble Judges : L. Rath, J;A. Pasayat, J

Bench : Division Bench

Advocate : S.C. Dash, for the Appellant; Addl. Standing Counsel and J. Das, for the Respondent

Final Decision : Allowed

Judgement

L. Rath, J.—The Petitioner the headmaster of a primary aided school assails the order of his suspension dated 17-12-1981, annexed to the writ petition as Annexure-6, passed by the Inspector of Schools. The facts briefly stated are that the previous managing committee of the school had, before going out of office, submitted a panel of names to the Inspector of Schools, opp. party No. 3. The Inspector however approved a managing committee, different from the recommended on 15-12-1981 and in the very order constituting the managing committee, Annexure-3, directed holding of the first meeting of the managing committee on 16-12-1981 at 6.00 p.m. and the Petitioner was to arrange for holding the meeting. In the meeting so held, the President and Secretary of the managing committee were elected. On the next day of the meeting, i.e. on 17-12-1981, the Inspector passed the impugned order of suspension of the Petitioner. The Inspector purported to approve the election of the President and Secretary by his Office Memo. No. 4 dated 1-1-1982, Annexure-A/1. Dr. Dash, the learned Counsel appearing for the Petitioner, has advanced substantially two contentions assailing the suspension. It is submitted by him that since the

managing committee had been approved on 15-12-1981 and its first meeting was held on 16-12-1981, it must be said that the managing committee was constituted on 15-12-1981 as stipulated under Rule 4(3) of the Orissa Education (Management of Private Schools) Rules, 1980, for short "the management rules" with the power of suspension of the headmaster vested in it and that the Inspector having power to place the Petitioner under suspension. It is next contended by him that even if the Inspector was purporting to function as the managing committee, he was to obtain the approval of his next higher authority within one month of the order of suspension as stipulated in the second proviso to Rule 21(2) of the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974, for short "the 1974 rules". Besides, the third submission made by Dr. Dash, though not seriously pressed, is that the managing committee as approved by the Inspector being not a valid one, he having approved a different managing committee from what was submitted by the outgoing managing committee, the outgoing managing committee must be deemed to have been in office till the expiry of six months from 15-12-1981 and as the order of suspension fell within such period, the Inspector was not competent to pass the same.

2. Even without going into the validity of the last submission, it is apparent that the first submission of Dr. Dash has sufficient force. Admittedly, the managing committee was approved on 15-12-1981. Rule (3) of the management rules provides that the managing committee shall be deemed to have been constituted with effect from the date of issue of the order of approval. The newly constituted managing committee thus must be construed to have been constituted from 15-12-1981. There is no provision in the management rules for approval of the election of the President and Secretary and hence the constitution of the managing committee will not be taken to have made from 1st January, 1982 as contended by the State counsel. Thus the managing committee being in office since 15-12-1981, the Inspector had no power to place the Petitioner under suspension, such power, under the 1974 rules, being exclusively of the managing committee. The order of suspension of the Petitioner by the Inspector, opposite party No. 2, hence must be held to be without authority.

3. Even otherwise, the Inspector had no power to place the Petitioner under suspension. There is no provision in the management rules or anywhere else for the Inspector of Schools to function as the managing committee prior to introduction of Rule 9-A of the said rules authorizing the Inspector to assume the powers and functions of the managing committee till a committee is constituted in accordance with law. The insertion of Rule 9-A was made only on 30-7-1982. Prior to such date, the Inspector having no power to act as the managing committee had also no power to place the Petitioner under suspension.

4. In the result, the writ petition is allowed with costs. The order of suspension of the Petitioner dated 17-12-1981 by the Inspector of Schools, opp. party No 2, is quashed. The Petitioner must be deemed to be continuing in service throughout

and would be entitled to all arrear emoluments and service benefits. The opposite parties are directed to calculate the arrear dues of the Petitioner within a period of two months from the date of receipt of the writ from the Court, the opp. party No. 3 is to submit the bill of the Petitioner to opp. party No. 2 within a period of fifteen days thereafter and the dues be paid to the Petitioner within a period of one month from the date of submission of the bill.

Hearing fee is assessed at Rs. 400/-

A. Pasayat, J.

5. I agree.