
(2025) 03 OHC CK 1364
In the Orissa High Court
Case No : Writ Petition (C) No. 38335 Of 2023

Jayanti Sahoo

APPELLANT

Vs

State Of Odisha & Others Vs

RESPONDENT

Date of Decision : 07-03-2025

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 — Rule 15

Citation : (2025) 03 OHC CK 1364

Hon'ble Judges : Biraja Prasanna Satapathy, J

Bench : Single Bench

Advocate : K.K. Swain, M.K. Das

Final Decision : Disposed Of

Judgement

Biraja Prasanna Satapathy, J

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard learned counsel appearing for the Parties.
3. Addl. Affidavit filed in Court along with a memo containing the C.T. pass certificate obtained by the Petitioner produced in Court be kept in record.
4. The present Writ Petition has been filed inter alia with the following prayer:-

"Under the above circumstances, it is humbly prayed that the writ petition may be allowed;

And

(A) a writ of mandamus or an appropriate writ may be issued quashing the impugned order 10.10.2023 passed by the Director, Elementary Education, Odisha, Bhubaneswar under Annexure: 19 and the removal order dated 31.12.2022 passed by the Block Education Officer, Bhapur under Annexure: 15 and necessary direction may be issued to the opposite parties to reinstate the

petitioner in her former post with all consequential service and financial benefits, within a time to be stipulated by this Hon'ble Court;

(B) And any other order / orders or direction / directions may be issued so as to give complete relief to the petitioner;

And for this act of kindness, the petitioner shall as in duty bound remain ever pray”.

4.1. It is contended that Petitioner was initially engaged as a Sikshya Sahayak vide order dtd.06.12.2006 so issued under Annexure-1.

4.2. It is the further contention of the learned counsel for the Petitioner that to get the benefit of engagement as a Sikshya Sahayak, Petitioner produced the HSC Pass Certificate and C.T. pass certificate. Accordingly on being found eligible she was given such benefit of engagement. In terms of the order issued on 06.12.2006, Petitioner joined as Sikshya Sahayak on 15.12.2006 and while so continuing vide order dtd.17.03.2012 under Annexure-2, he was regularized as a Junior Teacher w.e.f. 15.12.2009. Subsequently vide office order dtd.06.07.2013 under Annexure-3, Petitioner was treated as regular Primary School Teacher in Level-V Elementary cadre w.e.f. 15.12.2012.

4.3. It is contended that while the matter stood thus, basing on the complaint made by the Petitioner's brother, Petitioner was issued with a letter under Annexure-6 on 23.10.2020 with the following allegation:-

“BLOCK EDUCATION OFFICE, BHAPUR

To letter No.730 Date-23. x. 2020

Smt. Jayanti Sahoo, Assistant Teacher Manikia Pithakhai PUPS.

You are hereby instructed of that a number of allegation raised by Sri Ajita Kumar Sahoo, At-Goutam Budha Nagar, New Bus stand Area, Nayagarh-2 Pin-752070 regarding your fake CLC and SLC which was produced by you before Bankoi P.A.N. College. Though the Case is under subudice. We are unable to take disciplinary action against you. Again you are instructed to comply regarding your submission of SLC and CLC position in Bankoi C.T.School, Hatabasta. The office has also received a joint enquiry order regarding, false and fabricated SLC which was produced by you before the time of Admission. Hence you are again instructed to comply regarding in this matter as quick as possible before the under-signed of positively”.

4.4. It is contended that even though a reply was made with regard to the allegation made against the Petitioner under Annexure-6, but Opposite Party No.2 vide letter dtd.01.12.2020 under Annexure-7, directed B.E.O., Bhapur- Opposite Party No.4 to take disciplinary action against the Petitioner for his conduct in taking admission to prosecute +2 post by producing a fake SLC issued by the Head Master of Kumudini Panchagarh Ananga Narendra School of Education, Bankoi, Khurda.

4.5. It is contended that in terms of such order issued by Opposite Party No.2 under Annexure-7, a proceeding was initiated against the Petitioner vide Memorandum dtd.03.09.2021 under Annexure-9 inter alia with the following charges:-

"ANNEXURE-II

STATEMENT OF IMPUTATION OF MISCONDUCT IN SUPPORT OF THE ARTICLE OF CHARGE.

Statement of imputation of Misconduct in support of the article of charges framed against Smt. Jayanti Sahoo address Asst. Teacher Govt. UPS Manikia Pithakhai P.O. Fategarh District Nayagarh are enumerated as follows:-

1. Gross misconduct

Whereas Smt. Jayanti Sahoo, Asst. Teacher Govt. UPS Manikia Pithakhai P.O. Fategarh District Nayagarh while engaging vide order No. 2951(83) Dt. 06.12.2006 Collector-Cum-CEO Zilla Parishada Nayagarh signed by D.I. of Schools-cum- Addl. Executive Officer, Zilla Parishada Nayagarh and continued as Level-V (A) Asst. Teacher Govt. UPS Manikia Pithakhal, Fategarh.

The Board of Secondary Education Odisha, Cuttack vide their Notification No. 649 dated 23.05.2019 has cancelled the C.T. certificate of Jayanti Sahoo.

The Principal, P.A.N., Govt. ETEI, Bankoi vide his letter No. 66/ dt. 09.06.2020 reported that, the SLC issued on 02.06.1994 in favour of Smt. Sahoo is completely fake and fabricated.

2. CHARGE NO. 2 GIVING FALSE CERTIFICATES IN ORDRE GAIN PERSONAL ADVANTAGE.

As per Rule-15 OCS (CCA) Rules 1962 no Govt. employee shall enter in to a Govt. service by producing false certificates and documents for her personal advantage. If it proves then it will leads to criminal offence and FIR has been lodged as per rule.

The amount has been received towards remuneration and salary during the period from 06.12.2006 to 31.08.2021 which is quite irregular, illegal and cheating to Govt. by way of submitting false documents.

3. CHARGE NO. 3 SUBMISSION FALSE REPORT IN TEACHERS PROFILE.

You have submitted a false report in teacher profile portal regarding your qualification which proves your in-subordination to higher authority and cheating to Govt. official".

4.6. It is contended that the mis-conduct alleged in the Memorandum is with regard to the cancellation of the CT pass certificate issued by Board of Secondary Education, Orissa, Cuttack vide Notification dtd.23.05.2019 and production of a fake SLC issued on 02.06.1994 by the said School, to prosecute +2 under

Council of Higher Secondary Education.

4.7. Learned counsel for the Petitioner contended that the cancellation made by the Board of Secondary Education cancelling the C.T. Certificate issued in favour of the Petitioner vide Notification dtd.02.05.2019 was the subject matter of challenge before this Court in W.P.(C) No.12892 of 2019. This Court vide judgment dtd.11.08.2022 under Annexure-5 quashed the cancellation made by the Board while upholding the CT certificate issued in her favour. It is also contended that the order passed by this Court on 11.08.2022 remained unchallenged and accordingly it has attained its finality.

4.8. Taking into account the fact that the CT certificate cancelled by the Board was set aside by this Court vide its judgment under Annexure-5, the only charge which was the subject matter of the proceeding is regarding production of the alleged fake SLC by the Petitioner to prosecute +2 course under CHSE.

4.9. It is however contended that +2 certificate obtained by the Petitioner from CHSE has not been cancelled as on date basing of such charge framed against the Petitioner.

4.10. It is also contended that at the time of getting the benefit of engagement as Sikshya Sahayak, Petitioner had produced the HSC pass certificate and C.T. pass certificate so obtained from the Board of Secondary Education. There is no dispute with regard to the qualification acquired by the Petitioner in passing his HSC as well CT from the Board. The Board when cancelled the CT pass certificate vide Notification dtd.23.05.2019, the same was interfered with by this Court vide its judgment under Annexure-5 and the said cancellation has been set aside.

4.11. It is also contended that even though Petitioner prosecuted +2 and passed the same from CHSE, but at no point of time, the said certificate was either produced or utilized by the Petitioner to get any benefit of any nature. Since the Petitioner got the benefit of engagement basing on the qualification of HSC with CT, and at no point of time, she produced the +2 certificate before the authority to get the benefit of any nature, the charge framed that Petitioner by producing a fake SLC, prosecuted +2 under CHSE cannot be taken as a mis-conduct.

4.12. It is contended that even it is admitted that Petitioner by producing a fake SLC prosecuted +2, but since the Petitioner at no point of time used the certificate to get any benefit from the Opposite Parties, charge made in that regard is not sustainable in the eye of law.

4.13. It is also contended that non-use of the +2 certificate by the Petitioner in any manner is also reflected in order dtd.10.10.2023 under Annexure-19. In the said order, it has been admitted that Petitioner got the benefit of engagement as Sikshya Sahayak basing on her Matric CT qualification. But by holding that Petitioner since has acquired +2 qualification by using a fake SLC, she has been rightly disengaged by Opposite Party No.4 vide order dtd.31.12.2022 under Annexure-15, further confirmed vide order under Annexure-19.

4.14. It is contended that since the Petitioner at no point of time utilized the +2 certificate in any manner whatsoever to get benefit of any nature, the ground on which Petitioner was disengaged initially vide order dtd.31.12.2022 under Annexure-15 of Opposite Party No.4 so confirmed by Opposite Party No.2 vide order dtd.10.10.2023 under Annexure-19 are not sustainable in the eye of law and it requires interference of this Court. A further submission was also made that the Petitioner if will be allowed to continue with quashing of the order of removal, the +2 qualification acquired by the Petitioner will never be utilized by her, nor it will be taken into consideration by the Opposite Parties if produced.

5. Mr. M.K. Das, learned Addl. Standing Counsel for the State on the other hand made his submission basing on the stand taken in the counter affidavit so filed by Opposite Party No.4. It is contended that though it is not disputed that the Petitioner got the benefit of engagement as Sikshya Sahayak by taking her qualification as HSC with CT, but subsequently she passed +2 from CHSE by utilizing a fake SLC issued by the School in which Petitioner was prosecuting C.T. on 02.06.1994.

5.1. It is contended that when allegations were received that Petitioner has acquired +2 by producing a fake SLC from the School where she was prosecuting the C.T, enquiry was conducted and on such enquiry a report was received from the School that such a SLC was never issued in her favour enabling the Petitioner to take admission to prosecute +2.

5.2. It is contended that since Petitioner in course of his employment under the Opposite Parties acquired +2 by utilizing a fake SLC, which came to the knowledge of the Opposite Parties basing on the complaint made, taking into account the enquiry report prepared by the authority and the direction issued by Opposite Party No.2, the proceeding in question was initiated against the Petitioner vide Memorandum dtd.03.09.2021 under Annexure-9. However, it is not disputed that the CT certificate which was cancelled by the Board has already been set aside by this Court in its judgment dtd.11.08.2022 in W.P.(C) No.12892 of 2019 under Annexure-5. But learned Addl. Government Advocate for the State contended that since Petitioner in course of her employment passed +2 by utilizing a fake SLC that amounts to mis-conduct and accordingly in terms of the proceeding initiated under Annexure-9 and by following due procedure of law, Petitioner was disengaged by Opposite Party No.4 vide order dtd.31.12.2022 under Annexure-15.

5.3. Challenging such order, Petitioner approached this Court and in terms of the order passed in W.P.(C) No.12892 of 2019, the matter was examined by Opposite Party No.2. Opposite Party No.2 after going through the materials placed before him confirmed the order of dismissal with passing of the order dtd.10.10.2023 under Annexure-19.

5.4. It is contended that since the Petitioner while continuing as a Level-V Asst. Teacher with her initial engagement as a Sikshya Sahayak, she prosecuted +2 by

producing a fake SLC from the School, such conduct of the Petitioner amounts to mis-conduct and accordingly no illegality or irregularity can be found with the action of the Opposite Parties in disengaging the Petitioner from her services.

5.5. In support of his submission, Mr. Das, learned Addl. Standing Counsel for the State relied on the decision of the Hon'ble Apex Court in the case of Indian Oil Corporation Ltd. Vs. Rajendra D. Harmalkar, decided on 21.04.2022 in Civil Appeal No.2911 of 2022. Hon'ble Apex Court in Para-7.1 of the said judgment has held as follows:-

"7.1 In the present case, the original writ petitioner was dismissed from service by the Disciplinary Authority for producing the fabricated/fake/forged SSLC. Producing the false/fake certificate is a grave misconduct. The question is one of a TRUST. How can an employee who has produced a fake and forged marksheet/certificate, that too, at the initial stage of appointment be trusted by the employer? Whether such a certificate was material or not and/or had any bearing on the employment or not is immaterial. The question is not of having an intention or mens rea. The question is producing the fake/forged certificate. Therefore, in our view, the Disciplinary Authority was justified in imposing the punishment of dismissal from service".

5.6. It is accordingly contended that no illegality or irregularity can be found with the action of the Opposite Parties in terminating the Petitioner from her services vide order under Annexure-15, so confirmed vide order under Annexure-19.

6. To the submission made by learned Addl. Standing Counsel for the State, learned counsel for the Petitioner made further submission and contended that since the Petitioner at no point of time produced the +2 certificate nor utilized the same to get any benefit, the decision relied on by learned ASC is not applicable to the facts of the present case.

6.1. It is contended that Hon'ble Apex Court took such a view as the party therein had produced the certificate to get the benefit. Since the Petitioner has never produced the +2 certificate to get any benefit, the decision passed by the Hon'ble Apex Court cannot be made applicable to the case in hand. Learned counsel for the Petitioner relied on another order passed by this Court on 20.11.2024 in W.P.(C) No.9626 of 2013. This Court in Para-6, 6.1. and 6.2 of the said order has held as follows:-

"6. Having heard learned counsel appearing for the Parties and considering the submissions made, this Court finds that Petitioner was issued with the certificate showing her having belong to SEBC category vide certificate issued under Annexure-2. Basing on the said caste certificate Petitioner was engaged as a Sikshya Sahayak vide order dtd.20.02.2004 under Annexure-3. No document has been filed by the State showing that the Petitioner by availing any caste certificate issued in her favour having belong to ST category has got any benefit. No cogent material has also been placed by the State showing that Petitioner prosecuted her primary education as well as acquired CT training by utilizing the

ST caste certificate issued in her favour.

6.1. Since Petitioner as found from the record has never utilized any certificate issued in her favour having belong to ST category and all through she having belong to SEBC category got the benefit of appointment, this Court is of the view that the Committee without proper appreciation of the reply filed by the Petitioner and the evidence laid after remand of the matter wrongly held the Petitioner to have got the benefit having belong to ST category.

6.2. In that view of the matter, this Court is inclined to quash order dtd. 28.01.2013 so passed by the Committee under Annexure-6 in FCC No. 43 of 2012 so far as it relates to the Petitioner. While quashing the same, this Court allows the writ petition”.

6.2. It is also further contended that +2 qualification acquired by the Petitioner from CHSE will not be utilized by her to get any benefit of any nature while in employment under the Opposite Parties.

7. Having heard learned counsel appearing for the Parties and considering the submissions made, this Court finds that the Petitioner taking into account her qualification as HSC with CT, was selected and engaged as a Sikshya Sahayak vide order dtd.06.12.2006 under Annexure-1. While so continuing vide order dtd.17.03.2012 under Annexure-2, she was regularized as a Junior Teacher and subsequently vide order dtd.06.07.2013 she was regularized as a Primary School Teacher in Level-V of the elementary cadre.

7.1. While so continuing when the CT certificate issued by the Board was cancelled vide Notification dtd.23.05.2019 under Annexure-4, the same was challenged by the Petitioner before this Court in W.P.(C) No.12892 of 2019. However, during pendency of the Writ Petition before this Court, the proceeding in question was initiated against the Petitioner vide Memorandum dtd.03.09.2021 under Annexure-9 with the charges as indicated hereinabove. However, it is not disputed that by the time Petitioner was removed from her services vide order dtd.31.12.2022 under Annexure-15, the C.T certificate cancelled by the Board was already set aside by this Court in its judgment dtd.11.01.2022.

7.2. In view of such order passed by this Court the charge framed against the Petitioner that she is not eligible to continue as the CT certificate has been cancelled by the Board vide Notification dtd.23.05.2019 no more subsists. The only issue now for consideration by this Court is with regard to the allegation that Petitioner prosecuted +2 by producing a fake SLC issued by the School from where she was prosecuting C.T. It is not disputed by the learned State Counsel that such +2 certificate was ever produced by the Petitioner to get benefit of any nature.

7.3. It is also admitted that Petitioner got the benefit of engagement taking into account her qualification as HSC with C.T. Since the Petitioner has never produced the +2 certificate even though she passed the same from CHSE vide

Annexure-10, in the examination held in the year March, 1997, the decision relied on by the learned ASC as per the considered view of this Court is not applicable to the facts of the Petitioner's case.

7.4. Since the Petitioner has never produced the +2 certificate to get the benefit of engagement and the undertaking given by the Petitioner that she will never utilize the same in course of her employment under the Opposite Parties, this Court taking into account the entirety of the fact is of the view that the order of dismissal passed against the Petitioner under Annexure-15 so confirmed by the Opposite Party No.2 vide order under Annexure-19 are not sustainable in the eye of law.

7.5. Accordingly, this Court is inclined to quash order dtd.31.12.2022 and 10.10.2023, so passed by Opposite Party Nos.4 and 2 respectively. While quashing both the orders, this Court directs Opposite Party No.4 to reinstate the Petitioner in her services subject to the Petitioner filing an undertaking that she will never utilize the +2 certificate to get any benefit of any nature in course of her employment under the said Opposite Parties. Opposite Party No.4 is directed to pass an order of reinstatement within a period of four (4) weeks from the date of receipt of this order. Break period of service be regularized in accordance with law, in which this Court expresses no opinion.

8. Accordingly, the Writ Petition stands disposed of.

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