
(2014) 08 OHC CK 0054
In the Orissa High Court
Case No : O.J.C. No. 1831 of 1998

Jogendra Behera

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 20-08-2014

Acts Referred:

Citation : (2015) 119 CLT 76 : (2014) 2 ILR 876 : (2014) LabIC 4281 : (2014) 2 OLR 810

Hon'ble Judges : Biswanath Rath, J

Bench : Single Bench

Judgement

Biswanath Rath, J.—By filing this writ petition the petitioner has assailed the impugned orders vide Annexure-4 a resolution dtd. 20.01.1998 thereby adopting the decision of the Satyabhamapur Gram Panchayat terminating the services of the petitioner from the post of Secretary and the order under Annexure-5 an order of the District Panchayat Officer approving the proposal No. 5 in the above regard passed under Annexure-4. The case of the petitioner is that he was selected for the post of Secretary in a duly constituted selection process and was issued with the appointment order for being appointed as the Secretary of the Satyabhamapur, Gram Panchayat vide Annexure-1. He joined the said post by submitting his joining report on 25.05.1994 as appearing at Annexure-1(A). The further case of the petitioner is that while he was continuing as such, he was served with a communication suspending him from the post of Secretary in exercise of power U/s. 115(1) of the Orissa Gram Panchayat Act, 1964 (for short "Act"). Following his suspension, a representation was submitted at the instance of the Ward Members of the Gram Panchayat on 15.12.1997 to the Deputy Collector, Bhubaneswar alleging the disorderly behavior of the petitioner-Secretary. Consequent upon receipt of the above complaint, opposite party No. 3 vide his letter No. 285 dtd. 25.12.1997 asked the petitioner to show cause. In response to the notice to the said show cause, the petitioner submitted his reply on 29.12.1997 refuting the allegations made against him. The reply of the petitioner is appearing at Annexure-3(A). The petitioner further alleged that on

the date of his submission of reply, he was forced by the opposite party No. 3 to handover the Minutes Book of the Indira Abas Yojana. While the matter stood thus, a proposal was adopted on 29.01.1998 by the Gram Panchayat deciding removal of the petitioner. Upon receipt of the adoption of the proposal for removal of the petitioner from the post of Secretary under Annexure-4, the District Panchayat Officer approved the decision of the Gram Panchayat terminating the petitioner from his services. In assailing the orders under Annexure 4 & 5 the petitioner submits that the impugned orders are in violation of the statutory provisions contained in Rule 216(a) of the Orissa Gram Panchayat Rules, as, he has not been provided with reasonable opportunity before passing the impugned order vide Annexure-5. Thereby, there is violation of the statutory provision which is mandatory.

2. To substantiate his above submissions, the petitioner also relied on three (3) decisions of this Court as follows:

(i) 2006 (Supplementary-II) OLR 839 (Raj Kumar Biswal vs. Sarpanch, Julunda Grama Panchayat and others)

(ii) Suresh Chandra Dash Vs. State of Orissa and Others,

(iii) Dava Gram Panchayat Vs. Pandeswar Sahu and Others,

3. Shri Das appearing for the State, while admitting that there is no counter affidavit at the instance of the opposite parties, supported the decision of the Government in the impugned order on the ground that there is no violation of any statutory provision in passing the impugned order vide Annexure-5. He further submitted that the impugned order is justified as the Gram Panchayat is empowered to adopt such resolutions and the resolution terminating the services of the petitioner is a valid one.

4. Before proceeding further, it is necessary to peruse Rule 216 (a) of the Orissa Gram Panchayat Rules which is reproduced as herein.

"The Gram Panchayat may remove the Secretary of the Grama Sasan from services if he willfully omits or refuses to carry out the duties and functions entrusted to him under the provisions of the Orissa Grama Panchayats Act, 1964 and the rules or orders made thereunder abuses the powers, rights and privileges vested in him or acts in a manner prejudicial to the interest of the Grama Sasan or by his action causes loss to the Grama Sasan or has been convicted of any offence:

Provided that no order of removal shall be passed by the Grama Panchayat without giving him a reasonable opportunity of showing cause. The grounds on which he is proposed to be removed shall be reduced to the form of definite charge or charges which shall be communicated to him in writing. He shall be required to submit his explanation in writing within a reasonable time.

The Gram Panchayat shall take a decision in the matter after having considered

the explanation of the Secretary, if any, and having heard him, if he has so desired and thereafter may remove him."

5. A perusal of the proviso of Rule 216(a) of the Orissa Gram Panchayat Rule shows that the order of removal against the Secretary cannot be passed without giving him a reasonable opportunity to show cause against the proposed action. In the instant case, the document at Annexure-4 is a document adopting the proposal of the Gram Panchayat in the matter of termination of the petitioner as Secretary. Next document available on the record is, final decision of the District Panchayat Officer approving the aforesaid resolution of the Gram Panchayat. I do not see any material establishing an opportunity of hearing as required under Rule-216(a) of the Orissa Gram Panchayat Rules asking the petitioner to show cause before the order under Annexure-5 was passed. I also find the submission of the petitioner gets the support from at least 1st two decisions relied on by the petitioner supra. The last limb of Rule 216(a) of the rules further provides that the Gram Panchayat shall take a decision in the matter after considering the explanation of the Secretary if any, and having heard him if he so desired and thereafter remove him. Thus, I have no hesitation to hold the impugned order under Annexure-5 bad, being contrary to the whole provision contained in Rule 216(a) of the Orissa Gram Panchayat Rules. In view of the above, the writ petition is allowed. The impugned order dtd. 29.01.1998 vide Annexure-5 terminating the services of the petitioner from the post of Secretary is set-aside. He should be deemed to be continuing in service without any break and he is also entitled to all consequential benefits on account of the above which shall be calculated and paid to the petitioner within a period of three months from the date of this Judgment. However, there shall be no order as to costs.