

(2024) 03 OHC CK 0147
In the Orissa High Court
Case No : Writ Petition (C) No. 23146 Of 2011

Kanakalata Pradhan

APPELLANT

Vs

Director, Secondary Education, Odisha And Others

RESPONDENT

Date of Decision : 18-03-2024

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Orissa Education Act, 1969 — Section 10A

Citation : (2024) 03 OHC CK 0147

Hon'ble Judges : Sashikanta Mishra, J

Bench : Division Bench

Advocate : B.K. Mohanty, J. Sahoo, N.K. Das, A.R. Dash, B.D. Satapathy, S.B. Satapathy, B.N. Parida, S.S. Samantaray

Final Decision : Allowed

Judgement

Sashikanta Mishra, J.

1. The petitioner was appointed as a Hindi Teacher in Sri Jagannath High School at Odopainga in the district of Jagatsinghpur on 01.08.1988 by order of management of the said School. She continued as such till the year 1995 when the Secretary, allegedly intending to give appointment to the wife of one Prasanta Kumar Swain, abruptly prevented her from putting her signature in the attendance register, even though she was discharging her duties as before. Ultimately, she was prevented from discharging her duties from the first week of October, 1996. An advertisement was issued in newspaper by the School Management for appointment of Hindi Teacher on 20.10.1996. The petitioner approached this Court challenging such advertisement in OJC No. 12669 of 1996. By order dated 19.11.1996, a Division Bench of this Court passed an interim order directing the petitioner to take part in the interview scheduled to be held on the next date (20.11.1996) without prejudice to her case and that the result of the interview shall not be declared without leave of the Court. It is alleged that being fully aware of the proceeding before this Court, the School Management

issued appointment order in favour of one Sanghamitra Nayak, the present opposite party No.4 showing the same to have been issued prior to 19.11.1996. The aforementioned writ application was ultimately heard and disposed of by order dated 27.01.2003 granting liberty to the petitioner to approach the Director, Secondary Education by way of an appeal in terms of the 1983 Circular. The following order inter alia was passed.

"xx xx xx

In view of the pleadings of the parties, since disputed question of facts arise for consideration and the School in question is purely a private, un-aided School, we think it appropriate that if the petitioner approaches the Director, Secondary Education by way of an appeal in terms of 1983 Circular, the Director will be in a better position to enquire into the matter and resolve the dispute.

xx xx xx"

Pursuant to such order of this Court, the petitioner filed an appeal before the Director, Secondary Education, Odisha being Appeal Case No. 8 of 2003.

The petitioner took a specific stand that she was not allowed to put her signature in the attendance register in the year 1995 and was prevented from discharging her duties from the first week of October, 1996, which amounts to termination of service. It was further alleged that such termination of service not having been done in adherence to the principles of natural justice, is bad in law. It was specifically alleged that the Management had not initiated any proceeding against her nor sought for her explanation nor issued any show cause notice or order of termination. As such, according to the petitioner, the principles of natural justice were grossly violated.

The appellate authority directed the Inspector of Schools, Jagatsinghpur to cause an enquiry and to submit report whether any show cause notice and order of termination was communicated to the petitioner by the School Management. The Inspector of Schools did not cause any enquiry but collected some affidavits of different persons and produced the same before the appellate authority stating that notices were served on the petitioner through post and peon of the School. The appellate authority took note of the report including the affidavits produced by the Inspector of Schools, Managing Committee resolutions, attendance registers etc. and held that notices of the Managing Committee/Headmaster of the School were served on the petitioner including the order of termination. As such, it was held that the petitioner was terminated from service by following due procedure and the appeal was therefore, dismissed. Assailing the order of the appellate authority, copy of which has been enclosed as Annexure-10, the petitioner has approached this Court in the present application seeking the following relief;

"Under the above circumstances, it is therefore humbly prayed that this Hon'ble Court would be graciously pleased to admit the Writ application and issue notice

to the opposite parties filed their show cause, if the opposite parties fails to file their show cause or to files in sufficient cause then shall be pleased to issue of certiorari and to quash the impugned order dated 13.06.2011 vide Annexure-10 and to declare that the prohibition/termination of the petitioner from discharging her duties as illegal and to direct the opposite parties to treat the petitioner as regular employee of the School in the post of Hindi Teacher and to declare that the appointment of the opposite party No.4 in the post of the Petitioner is ab-initio, void and illegal;

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

2. Counter affidavit has been filed on behalf of the School Management (opposite party No.3) refuting the averments made in the writ application. It is stated that the status of the school was changed from recognised high School to aided high school with effect from 01.01.2004 under the Odisha Education (Payment of Grant-in-aid) to High Schools, Upper Primary Schools, etc. Order, 2004 and therefore, alternative remedy exists under Section 10-A of the Odisha Education Act. It was further stated that the petitioner was appointed by the unapproved Managing Committee having no requisite qualification and continued up to 03.05.1994 and thereafter remained unauthorisedly absent. The Managing Committee therefore issued three show cause notices, to which she did not reply, for which a decision was taken unanimously vide Resolution No. 10 dated 30.09.1996 to terminate her services and to publish advertisement to fill up the post of Hindi Teacher. The opposite party No.4 having requisite qualification was duly selected and appointed as Hindi Teacher and her appointment was approved by the Inspector of Schools, Jagatsinghpur by order dated 27.02.2012. The petitioner, it is alleged, filed the earlier writ application (OJC No. 12669/1996) deliberately mentioning the date of interview as 20.11.1996 even though the same was conducted on 16.11.1996, i.e. 3 days prior to the passing of the interim order. Being directed by the Division Bench, the petitioner preferred appeal before the Director, who rightly rejected the same holding that the management had given sufficient opportunity to the petitioner prior to termination of her service basing on the relevant documents and after hearing the parties.

The petitioner has filed a rejoinder refuting the averments made in the counter affidavit mainly stating that the school was not an aided educational institution at the relevant time and hence, Section 10-A of the Odisha Education Act has no application. Further, the opposite party No.4 having been appointed despite interim protection granted by this Court, the same has no binding effect on the petitioner.

3. Heard Mr. B.K.Mohanty, learned counsel for the petitioner; Mr. A.R.Dash, learned Additional Government Advocate for the State; Mr. B.Satapathy, learned counsel appearing for opposite party No.3; and Mr. S.S.Samantray, learned counsel appearing for opposite party No.4.

4. Mr. Mohanty would argue that the appellate authority was required to examine whether on the face of the record the principles of natural justice had been followed or not but said authority exceeded his brief by calling for evidence through the Inspector of Schools and utilised them against the petitioner. This procedure, according to Mr. Mohanty, is unknown to law. He further submits that the petitioner took a specific stand that no show cause notice or copy of the order of termination was ever served upon her and the Management, despite sufficient opportunity could not prove the same. That apart, the stand taken by the Management regarding service of notice is, on the face of it, unacceptable, inasmuch as, if according to it, the petitioner was unauthorisedly absent from 03.05.1994 why were notices issued one year after such date i.e., on 27.06.1995, 13.07.1995 and 31.07.1995. The Management never proved that such notices were issued through registered post and if refused, why were the notices not published in the newspaper. The Inspector of Schools obtained affidavits of one Babulal Mallick, the school peon, according to whom notices were served on the petitioner but she refused to accept the same. This, according to Mr. Mohanty amounts to gathering evidence by the Inspector on behalf of the Management and thereby revealing a completely biased and prejudiced approach. The appellate authority mechanically accepted the report of the Inspector and wrongly held that sufficient opportunities had been granted to the petitioner before her termination from employment. As such, the impugned order cannot be sustained in the eye of law.

5. Mr. A.R. Dash, learned Additional Government Advocate submits with reference to the impugned order that the Inspector of Schools being a Government Servant, the Director committed no illegality in relying upon his report. Moreover, two notices having been issued through ordinary post and two through the school peon could only have been proved by the affidavits sworn by the concerned persons. Sri. Dash therefore submits that no illegality was committed by the Appellate Authority in relying upon the report of the Inspector.

6. Mr. B.Satapathy, learned counsel appearing for the School Management has supported the findings of the appellate authority and submits that the Managing Committee issued as many as four notices to the petitioner i.e. on 27.06.1995 and 13.07.1995 through post and 31.07.1995 and 28.08.1995 through the school peon. The petitioner did not respond at all to any of the notices. The Management was therefore left with no other option than to resolve in its seventh meeting held on 12.11.1995 unanimously to terminate the petitioner from service and accordingly as per Resolution passed in the 12th meeting, she was terminated. Mr. Satapathy further submits that from the affidavits enclosed to the report of the Inspector of Schools, it is evident that the petitioner received the notices, read and understood the same and thereafter, returned them to the school peon. This amounts to sufficient service of notice as reported by the Inspector of Schools and rightly accepted by the appellate authority. According to Mr. Satapathy, therefore, the impugned order warrants no interference.

7. Mr. S.S. Samantray, learned counsel appearing for the private opposite party, while adopting the arguments made by Mr. Satapathy as above further submits that the private opposite party was validly appointed by the Management after undergoing due process of selection pursuant to advertisement and has been continuing in service since then. Moreover, he has received the benefit of grant-in-aid as per Grant-in-aid Order, 1994.

8. Having heard learned counsel for the parties at length and on perusal of the materials available on record it is seen that the claim of the petitioner of being appointed as Hindi Teacher in the School w.e.f. 01.08.1988 and of her continuing at least till 03.05.1994 is not disputed. The Management claims that the petitioner was unauthorisedly absent thereafter. Nothing is forthcoming from the record in support of such allegation. The first of the four show cause notices allegedly issued to the petitioner was sent on 27. 06.1995, which is quite surprising considering the stand taken by the Management that she was absent from 03.05.1994. Be that as it may, a Division Bench of this Court, as already stated, granted liberty to the petitioner to prefer an appeal in terms of the 1983 Circular. For immediate reference, the circular dated 27.03.1983 is quoted hereunder;

"Letter No. 13585(2) EYS Dt. 27.03.1983 from Govt. of Orissa Education and Y.S. Department addressed to the D.P.I.(S) H, Orissa.

Sub:- Service Protection to the employees of unaided recognized education institutions.

I am directed to say that it has been brought to the notice of Government that in some private unaided educational institutions the service of the employees are being terminated arbitrarily without assigning sufficient reasons and following the principles of natural justice. Such employees are not entitled to get protection under the Orissa Education Act, 1969. Though the employees of unaided recognized private educational institutions do not have any statutory right of appeal before any authority. Government feel that illegal termination of service in unaided recognized private educational institution should be stopped.

It has, therefore been decided by Govt. that if an employee of any unaided recognized private educational institution feels that this services have been terminated arbitrarily, he may file an appeal before the Director of

Public Instruction, ()HE" Orissa in the case of employees of unaided recognized Private Colleges, Director of Public Instruction (s), Orissa in case of unaided recognized private high schools and concerned Circle Inspector of Schools in case unaided recognized private M.E. Schools within a period of one month from the date of termination who will dispose of it finally.

This matter may be brought to the notice of all concerned."

9. It is well evident that the scope of adjudication in the appeal contemplated under 1983 Circular is limited to examining whether sufficient reasons were

assigned and the principles of natural justice were followed or not before terminating the services of the petitioner. Thus, what is envisaged under the circular is that the appellate authority is to examine the materials available on record to be produced by both sides in support of their respective stands and decide whether sufficient reasons justifying the termination were ascribed and whether natural justice was followed or not. Both are to be satisfied failing which the order of termination would be rendered arbitrary. In the instant case, the petitioner appears to have taken a specific stand, as evident from the written submission filed by her before the appellate authority (copy enclosed as Annexure-8), that no notice or order of termination had ever been served upon her. Since there was otherwise nothing on record to show the opposite, the burden was cast upon the Management to prove its assertion that the notices and the order of termination had in fact been served upon the petitioner. As it appears from reading of the impugned order, the management did precious little to prove its assertions as above. The appellate authority, instead of deciding the case on such basis, directed the Inspector of Schools to conduct an enquiry and to submit a report. The Inspector of Schools went a step ahead and collected evidence regarding service of notice on the petitioner by obtaining affidavits from the so called concerned persons. Even more surprisingly, the appellate authority took into account such 'evidence' and adjudicated the appeal.

9. As already stated, the 1983 Circular places an obligation on the appellate authority to examine whether natural justice was followed or not. It does not contemplate gathering of evidence by the appellate authority as it would destroy his neutrality which is the very foundation of its authority. It would have been a different matter had the affidavits in question been otherwise part of record being executed contemporaneously. Certainly, the affidavits having been executed during pendency of the appeal itself could not have been utilized. In the process, the very sanctity of the appeal proceeding was lost. Highlighting the need to maintain independence in adjudication, the Supreme Court in the case of *State of UP vs. Saroj Kumar Sinha* (2010) 2 SCC 772 held that the enquiry officer is in the position of an independent adjudicator and not a representative of the Government or the authority concerned. Though said finding was rendered in a case involving disciplinary enquiry yet the underlying principle would be applicable to the present case also. From what has been narrated hereinbefore, the appellate authority, who is supposed to be an independent adjudicator, has apparently acted as a representative of the School Management by relying upon evidence gathered during the hearing of the appeal and that too, on his own direction.

10. In the case of *Niranjan Das vs. State of Odisha & Others* WPC(OA) No. 588 of 2018, decided on 11th August, 2022., this Court taking note of a similar situation and placing reliance of the decision of the Supreme Court in the case of *Saroj Kumar Sinha* (supra) held that such action destroys the very sanctity of the proceeding and is a defect which goes to the very root of the matter. In the instant case, this Court is constrained to observe that the impartiality of the

appellate authority in adjudicating the appeal is of paramount importance, but as already stated, same is not to be seen in the instant case.

11. As a natural corollary, the matter has to be remitted to the appellate authority to decide the appeal afresh. Of course, this Court is conscious of the fact that the appeal was decided way back in the year 2011 involving an order of termination that was supposedly passed in the year 1996, yet in the peculiar facts and circumstances as narrated above, there is no other option than to remit the matter as this Court sitting in writ jurisdiction obviously cannot adjudicate disputed questions of fact.

12. For the foregoing reasons therefore, the writ petition is allowed. The impugned order under Annexure-10 is hereby quashed. The Director, Secondary Education is directed to hear the appeal afresh after granting opportunity of hearing to all concerned strictly on the basis of available records. Needless to mention, the report of the Inspector of Schools and the affidavits enclosed thereto shall be ignored by the appellate authority. It is further directed that the appeal shall be heard and disposed of as expeditiously as possible and in any case, within a period of two months from the date of communication of this order or on production of certified copy thereof by the petitioner.

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