

(1976) 11 OHC CK 0022
In the Orissa High Court
Case No : O.J.C. No. 1067 of 1976

Managing Committee, Ranihat High School and Others	APPELLANT
Vs	
Inspector of Schools, Circle-I and Another	RESPONDENT

Date of Decision : 05-11-1976

Acts Referred:

Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 — Rule 20, 20(1), 20(3), 20(4), 21

Citation : (1977) 44 CLT 328

Hon'ble Judges : R.N. Misra, J; N.K. Das, J

Bench : Division Bench

Advocate : Government Advocate, for the Appellant; R. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, J.—Petitioners before us are the Managing Committee of Ranihat High School, an aided educational institution within the meaning of Orissa Education Act of 1969, and the members constituting the Committee. Opposite party No. 2 was serving as an assistant teacher under the School. The Managing Committee at its meeting held on 29-8-1976 resolved to initiate a disciplinary proceeding against the said teacher and pending investigation into the charges to be framed in the proceeding, it directed that the teacher may be suspended from the employment. On the authority of the resolution in Annexure- 1, the Secretary of the Managing Committee of the School communicated the formal order under Annexure-2 dated 13-9-1976. On being approached by opposite party No. 2, the Inspector of Schools, opposite party No. 1, passed an order in terms of Annexure-3 declaring the order of suspension and void and requiring the School to allow the opposite party No. 2 to continue in his post. The Inspector of Schools was asked to review his order on several grounds and when he declined to interfere, this writ application has been filed for quashing his order annulling the suspension and restoring opposite party No. 2 to service. It is contended on

behalf of the management of the School that the stand of the Inspector of Schools is not tenable and the order is bad in law.

2. Opposite parties 1 and 2 have filed separate counter affidavits, but at the hearing of this application, counsel for the Opposite party No. 2 does not appear. In the counter affidavit of the Inspector of Schools, reliance has been placed in support of his order on Rule 21 of the Orissa Education (Recruitment and Conditions of Service of teachers and members of the Staff of Aided Educational Institutions) Rules, 1974 (hereinafter referred to as "the Rules"). Mr. Mohanty for the Petitioners contends that the said Rule has no application at all to the facts of this case and on the basis that every employer is entitled to keep delinquent employee off duty pending investigation of misconduct, the management was justified in suspending the Opposite Party No. 2 and the Inspector of Schools and no authority to intervene. In support of this stand reference has been made to Rules 20 and 21 of the Rules and we think it appropriate to extract both the Rules as far as relevant to see whether the contention is justified.

20(1) The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on an employee of an aided educational institution, namely:

x x x

x x x

(e) suspension;

x x x

x x x

21(1) The Director, may impose any of the penalties specified in Rule 20 on any employee ;

Provided

(2) Without prejudice to Sub-rule (1) but subject to the provisions of Sub-rule (3) and (4) any of the penalties specified in Rule 20 may be imposed:

(a) in respect of a lower grade employee, by Headmaster or the Principal, as the case may be, and

(b) in respect of any other employee, by the. Managing Committee or the Governing body, as the case may be;

Provided that in case of suspension of employees falling under Clauses (a) and (b) the prior approval of the Inspector in respect of an employee serving in a School and of the Director in relation to any other employee is obtained,

x x x

x x x

The Inspector of Schools relies on the proviso and Mr. Mohanty relies on the word "Penalties" occurring in Sub-rule (1) to keep out of the application of the proviso. Undoubtedly Rule 20 deals with the very form of penalties which will be available to be imposed at the end of a disciplinary proceeding and there can be no dispute also that Sub-rule (1) of Rule 20 while referring to penalties refers to penalties which come at the end of the disciplinary proceeding. The suspension which is in issue here is not a penalty because the disciplinary proceeding is yet to begin. As we have already indicated the Petitioner has been suspended to face a proceeding which the Managing Committee decided to initiate.

3. There is no dispute by learned Government Advocate to the position that it is inherent power of every employer to suspend a delinquent employee and this position has been accepted by the Supreme Court in the cases of T. Cajee Vs. U. Jormanik Siem and Another, , R.P. Kapur Vs. Union of India (UOI) and Another, , and B.R. Patel v. State of Maharashtra AIR 1963 S.C. 800. The only question that has to be considered now is whether exercise of this power of suspension which is inherent in the employer is subject to the proviso in Rule 21(2) of the Rules. In the setting in which the proviso occurs and keeping the language of the two rules in view, without any further discussion, we are prepared to indicate that the proviso is not applicable to a case of suspension pending enquiry. The very foundation upon which the Inspector of Schools acted, is therefore, not attracted and no fault could have been found with the management for not having taken the prior approval of the Inspector of Schools for keeping the opposite party No. 2 off duty.

4. We are also inclined to agree with Mr. Mohanty that when the Inspector of Schools passed the order it was appropriate that the management of the School was heard. In fact, if this hearing had been given in the instant case, there would have been no occasion for the writ application to be filed because the management would have been in a position to point out that there was another view available to be considered and if the present stand of the management had been before the Inspector of Schools, he would not have made the order by taking a wrong view of the situation. Even when the management approached the Inspector he stuck to his earlier view without affording any opportunity to the management of being heard. If on this occasion he had done it there would have been no occasion to stick to a view which is erroneous. Public Officers are expected to exercise their powers in keeping with the spirit of the law and we are sorry to find that the Inspector of schools took an one-sided view without affording an opportunity to the management to place its case before him.

5. The writ application is allowed and the impugned order under Annexure-3 is quashed. We have, however, no doubt that the Inspector of Schools acted bonafide though he made a wrong order. We exonerate him from costs of the proceeding.

N.K. Das, J.

I agree.

Application allowed.