

(2001) 03 OHC CK 0042

In the Orissa High Court

Case No : O.J.C. No"s. 5226 of 1996 and 17277 of 1997

Manasi Manjari Mohapatra

APPELLANT

Vs

State of Orissa and others

RESPONDENT

Date of Decision : 05-03-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 3
Constitution of India, 1950 — Article 226, 227
Orissa Education (Establishment, Recognition and Management of Private Junior Colleges/Higher Secondary Schools) Rules, 1991 — Rule 28
Orissa Education Act, 1969 — Section 3, 7, 7

Citation : (2001) 91 CLT 528

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : M/s K.K. Swain, P. Choudhury, P.N. Mohanty and M.K. Sahoo, M/s S.N. Satpathy, B.K. Parida and R.K. Parida, for the Appellant; Addl. Government Advocate and M/s V. Prithviraj, P.K. Nayak and B.K. Nayak-3, for the Respondent

Final Decision : Allowed

Judgement

L. Mohapatra, J.—The petitioner challenging the order of suspension passed by the Secretary of the Managing Committee of Satyasai Vidya Vihar in the district of Dhenkanal has filed O. J C. No. 5226 of 1996 and challenging the authority of the Managing Committee in initiating the disciplinary proceeding against her has filed O. J. C, No. 17277 of 1997.

2 The case of the petitioner is that she was appointed as a Hindi Teacher in Satyasai Vidya Vihar on 21-9-1992 by the Managing Committee of the said institution. She joined in the post on 22-9-1992 and continued to discharge her duties till the order of suspension was passed. The school in question was notified by the State Government to receive grant-in-aid with effect from 1-6-1994 and became an aided educational institution within the meaning of section 3(b) of the Orissa Education Act, 1969. After the school was notified by the State Government to receive grant-in-aid, the Inspector of Schools called

upon the Headmaster of the institution to submit the staff position for approval and accordingly the staff position was submitted by the Headmaster in which the name of the petitioner finds place as a Hindi Teacher. After receipt of the staff position by office order dated 20-9-1995 the Inspector of Schools approved the services of all the members of the staff excluding the petitioner. Subsequently by order dated 1-11-1995 the petitioner's appointment was approved as Hindi Teacher with effect from 1-6-1994. Shri Swain, learned counsel appearing for the petitioner, submitted that with the change of status of the school which became an aided one with effect from 1-6-1994, the Managing Committee which was constituted for the unaided educational institution became defunct in the eye of law, as under rule 28 of the Orissa Education (Establishment, Recognition and Management of Private High School) Rules, 1991 after a school is declared to be an aided one, the Managing Committee is required to be reconstituted. Since no proposal was sent for reconstitution of the Managing Committee as provided under rule 28 of the aforesaid Rules, under the direction of the Director, the Inspector of Schools was kept in charge of the management of the said institution. When the Inspector of Schools was in charge of the institution, the ex Secretary of the Managing Committee vide order dated 4-12-1995 placed the petitioner under suspension pending drawal of the disciplinary proceeding against her. The said order is under challenge before this Court in O.J C. No. 5226 of 1996 Challenging the authority of the ex Managing Committee in initiating a disciplinary proceeding against the petitioner, O. J. C. No. 17277 of 1997 has also been filed. Shri Swain submitted that in view of appointment of the Inspector of Schools by the Director for management of the institution and in view of the fact that the school became an aided one, the previous Managing Committee of the unaided institution had become defunct and had no authority to take any disciplinary action against the petitioner and as such the orders of suspension and initiation of disciplinary proceeding at the instance of the ex Managing Committee was not legal and therefore, not sustainable in the eye of law.

3. No counter has been filed by the State in O. J. C. No. 5226 of 1996. In the counter filed by opposite party No. 4 it is stated that the Managing Committee of the institution having not been made a party to the writ application, the same should be dismissed for non-joinder of necessary party. In the counter the opposite party No. 4 who is the Headmaster of the institution has further stated that since the Managing Committee had put the petitioner under suspension, he had no authority to allow the petitioner to continue in spite of repeated orders passed by the educational authorities. He has also stated in the counter that the Managing Committee was approved by opposite party No. 3 on 1-9-1995 for a period of three years and the school became an aided one on 25-10-1995. Since the approved Managing Committee had placed the petitioner under suspension and has taken necessary steps for initiation of the disciplinary proceeding against the petitioner and in absence of the new Managing Committee, it was not open for him to disobey the orders of the ex-Managing Committee.

4. In O.J.C. No. 17277 of 1997 a similar counter has also been filed by the

Headmaster of the institution. A counter has been filed on behalf of the State through the Inspector of Schools--opposite party No. 3. In the said counter it is submitted that as per rule 28 of the 1991 Rules after the school became an aided one, the Managing Committee is required to be reconstituted. Accordingly the Headmaster incharge was intimated to submit the proposal for reconstitution of the Managing Committee as per rule 28 of the amended Rules of 1994 on 13-11-1995. The senior-most teacher in-charge of the Headmaster submitted a proposal on 16-2-1996 which was received in the office and after examination of the same by letter dated 24-10-1996 the Headmaster in-charge was directed to apprise the Sub-Collector, Kamakhyanagar requesting him to nominate another person to act as the President of the Managing Committee. The order of suspension issued by the ex-Managing Committee was sent to the State Government for approval. But the same has been turned down by opposite party No. 3 because prior permission was not taken by the Secretary of the Managing Committee before placing the petitioner under suspension and the Managing Committee of the institution had not been reconstituted and approved and the ex Managing Committee was not competent to pass such orders.

5. The first question that has been raised by Shri Swain is with regard to competence of the ex Managing Committee in passing an order of suspension. As it appears from the averments made in the writ application as well as counter and rejoinder, the Managing Committee of the institution when it was not an aided one, had been constituted and approved by opposite party No. 3 on 1-9-1995 for a period of three years. The school became an aided educational institution on 25-10-95 with effect from 1-6-1994, Under rule 28 of the 1991 Rules the Managing Committee of an aided high school shall be reconstituted in the manner prescribed in the said Rules. Relying on the said provision Shri Swain submitted that the moment a school becomes an aided one, the Managing Committee is required to be reconstituted and obviously means that the previous Managing Committee becomes defunct. The learned counsel has also referred to sections 7 and 7-A of the Orissa Education Act, 1969 and submitted that the State Government was competent to appoint the Inspector of Schools to remain in charge of the institution pending reconstitution of the Managing Committee under rule 28 of the 1991 Rules. In terms of the aforesaid provisions the Inspector of Schools was kept in charge of the institution by order of the Director. After the petitioner was put under suspension by the ex Managing Committee, which was not in management of the institution after the school became an aided one, an order was passed by the Inspector of Schools on 5-1-1996 directing the Headmaster of the school to allow the petitioner to join her duties forthwith. After the aforesaid order was passed, the petitioner submitted the joining report on 11-1-1996. On 13-1-1996 the Headmaster of the institution intimated the petitioner that since the order of suspension passed by the Secretary of the ex-Managing Committee has not been withdrawn he cannot accept the joining report. It appears from the record that several orders were passed directing the Headmaster to allow the petitioner to join, but she was not

allowed to join. There is no dispute over the proposition of law that as soon as the institution became an aided one, under rule 28 of the 1991 Rules the Managing Committee of the institution was required to be reconstituted and as a matter of fact a proposal was submitted for reconstitution of the Managing Committee and the question of reconstitution was being considered by the competent authority. Pending reconstitution of the Managing Committee the Inspector of Schools was kept in charge of the institution and there is no dispute about the said fact also. There is also no dispute that under the provisions of the Orissa Education Act, 1969, the State has the authority to keep the Inspector of Schools in charge of the institution in absence of the Managing Committee. Therefore, in view of rule 28 of the 1991 Rules, the moment the educational institution became an aided one, the ex-Managing Committee which had been constituted for the unaided institution became defunct and cannot pass any order with regard to management of the institution as well as the teaching and non-teaching staff working in the said institution. Moreover the order of suspension passed by the ex Managing Committee had not been approved by the State Government on the very same ground. I, therefore, hold that the ex Managing Committee had absolutely no jurisdiction to function as the Managing Committee after the school became an aided one, and pass orders. It was the Inspector of Schools alone who had the authority to take disciplinary action against the employees of the institution and no such action having been taken by the Inspector, the order passed by the Secretary of the Managing Committee is wholly without jurisdiction. Since the ex Managing Committee had no power left with it to pass any order relating to management of the institution as well as its employees, not only the order of suspension but also direction for initiation of a disciplinary proceeding are without jurisdiction and authority.

6. Shri V. Prithviraj, learned counsel appearing for the Headmaster of the institution submitted that in absence of the Managing Committee, the writ application is not maintainable and should be dismissed for non-joinder of necessary party. I am of the view that such contention has no force as the moment the institution became an aided one, the ex-Managing Committee became non-existent in the eye of law and the Headmaster of the institution in his counters filed in both the cases has also tried in support the action of the Managing Committee. Therefore, I am of the view that non-impletion of the ex Managing Committee in the writ application does not affect the maintainability of the writ application.

7. I, therefore, allow both the writ applications and quash the order of suspension under Annexure-4 in O. J. C. No. 5226 of 19% and quash the inflation of the disciplinary proceeding against the petitioner and the consequential orders passed in the said disciplinary proceeding, if any.

8. Writ applications allowed.