
(2022) 09 OHC CK 0094
In the Orissa High Court
Case No : Writ Petition (C) No. 7944 of 2018

Manoj Kumar Jena

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 13-09-2022

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2022) 09 OHC CK 0094

Hon'ble Judges : Sashikanta Mishra, J

Bench : Single Bench

Advocate : S.B. Mohanty, S. Mohapatra, B.B. Mohapatra, R.N. Acharya

Judgement

Sashikanta Mishra, J

1. The petitioner was initially appointed as Education Volunteer and posted in Sanabrahmapur EGS Centre duly approved by OPEPA and selected by the District Selection Committee through the District Project Coordinator (DPC), Balasore by order dated 12.04.2007. The petitioner claims to be a graduate with extra qualification of Ratna in Hindi. He discharged duties in Sanabrahmapur EGS Centre duly signing in the attendance registers which were countersigned by the EGS committee. While he was continuing as such, the government of Odisha took a policy decision to abolish the EGS scheme under Sarva Shikhya Abhiyan and accordingly a letter of disengagement was issued to each Education Volunteer on 28.03.2008. After such abolition of the scheme, the Government issued a resolution on 16.02.2008 for engagement of the retrenched Education Volunteers as Gana Shikhyaks. The Block Resource Centre Coordinator, (BRCC), Balasore by letter dated 04.04.2008 instructed all District Inspectors of Schools and Block Development Officers to publish a draft merit list of Education Volunteers for their rehabilitation as Gana Shikhyaks. Pursuant to such letter a gradation merit list was prepared in which the petitioner's name found place at serial number 69. The Sanabrahmapur EGS Centre was being managed by an NGO named SPEED. By letter dated 23.04.2008 the Managing Director of SPEED

requested the BRCC to enlist the name of the petitioner and accordingly by letter dated 06.05.2008, BRCC recommended the name of the petitioner for enlistment to the DPC Balasore for inclusion in the list of Gana Shikhyak. Since such recommendation was not acted upon, the petitioner approached this Court in W.P. (C) No. 14791 of 2012 which was disposed of on 01.10.2012 with a direction to the Collector to look into the grievance of the petitioner as per resolution dated 16.02.2008. However, the Collector, Balasore, by order dated 22.12.2012 rejected the case of the petitioner on the ground that he was not engaged as Education Volunteer in Sanabrahmapur EGS. Challenging the order of the Collector, the petitioner again approached this Court in W.P.(C) No. 22964 of 2013 which was disposed of on 31.07.2017 directing the Collector to take into account the incumbency of the petitioner as an Education Volunteer and original scheme as per the report of BRCC dated 22.01.2009. The Collector, without considering the facts on record and the report of BRCC rejected the claim of the petitioner again by order dated 20.09.2017, which is impugned in the present writ application. It is stated that despite clear evidence that the roll strength of the EGS Centre in question was more than 40 which justified engagement of the second volunteer, the Collector mechanically rejected the claim of the petitioner without considering the said evidence. Being thus aggrieved, the petitioner has approached this court again in the present writ application seeking the following relief:

"It is therefore prayed that the Hon'ble Court may graciously be pleased :-

(i) To admit the writ petition;

(ii) To quash the order of Collector, Balasore dtd.20.09.2017 (Annexure-15).

(iii) To direct the opposite parties to give engagement to the petitioner as Gana Sikshayak in view of the resolution of the Govt. dtd.16.2.2008 and further resolution dtd.26.2.2009 read with clarificatory instruction of the Govt. dtd.28.4.2008 and taking into account the gradation list of the B.R.C.C., Soro vide Annexure-7 and recommendation of B.R.C.C. vide Annexure-11 of the Writ petition.

And may pass any other appropriate order/orders as deemed fit and proper.

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

2. A counter affidavit has been filed by the District Project Coordinator (DPC), SSA, Balasore (opposite party No. 3). It is stated that the EGS Centre at Sanabrahmapur was managed by the NGO SPEED in which one Krushna Chandra Behera was working as Education Volunteer with effect from 16.6.2003 against the role strength of 33. The engagement of the petitioner in the said centre against the said forces was not admissible as per the prevailing rules and such appointment was also not approved by the competent authority. Therefore, he is not eligible to be rehabilitated as Gana Shikhyak on the strength of the government resolution dated 16.2.2008. Since the EGS Centre had roll strength

below 40, the engagement of second Education Volunteer is not justified and the petitioner has made a claim only to derive the benefit of engagement as Gana Shikhyak. The Collector, Balasore after verifying the relevant records and after giving opportunity of hearing to the petitioner rightly rejected his claim for engagement as Gana Shikhyak.

3. The petitioner filed an additional affidavit disputing the averments of the counter filed by opposite party No.3. It is specifically stated that on enquiry by the DPC Balasore on 01.12.2008, the BRCC, Soro vide report dated 22.01.2009 intimated that the petitioner was engaged as second Education Volunteer due to increase of roll strength by Government Resolution dated 10.04.2003 and approved by letter dated 20.5.2003 in which he joined on 12.4.2007 and continued up to 31.3.2008. It is therefore clear that the petitioner was engaged as Education Volunteer and hence deserves to be rehabilitated as Gana Shikhyak as per government resolution.

4. Pursuant to direction issued by this court in course of hearing, the Block Education Officer, Soro has filed an affidavit specifically stating that from the students' attendance register for the period from 1.4.2007 to 31.3.2008 of classes I to V maintained in two registers, it is asserted that there were 42 students in the said classes during the period and that two teachers namely, Krushna Chandra Behera and Manoj Kumar Jena (petitioner) were working. The BRCC also appeared in person and produced the copies of the relevant attendance registers for perusal of the court.

5. Heard Mr. S.B. Mohanty, learned counsel for the petitioner and Mr. R.N. Acharya learned Standing Counsel appearing for the School and Mass Education Department.

6. Mr. Mohanty has argued that the impugned order was passed by the Collector without application of mind and consideration of the materials available on record. The subsequent letter of the M.D. of the NGO SPEED and enquiry report of the BRCC submitted to the DPC though available on record were not considered by the collector. On the contrary, the Collector took a rigid stand that the roll strength of the EGS Centre was less than 40 and therefore the engagement of the petitioner was not justified. This, according to Mr. Mohanty is entirely contrary to the materials on record for which the impugned order warrants interference.

7. Mr. R.N. Acharya on the other hand, argues that the roll strength at the relevant time has to be considered. During the so-called engagement of the petitioner the roll strength was less than 40 for which his engagement, if at all, as Education Volunteer was not permissible in law. Such engagement was also not approved by the Government. Therefore the Collector committed no error in rejecting his claim for rehabilitation as Gana Shikhyak.

8. It appears that originally, for the purpose of universalization of elementary education, Education Guarantee Scheme or EGS was made an integral part of

Sarva Shikshya Abhiyan and operationalized in Odisha from the year 2001-02. The centers were run by NGOs. The NGO, namely, Society for People's Integration Economics and Environment Development (SPEED) managed the EGS Centre at Sanabrahmapur. The petitioner was engaged as Education Volunteer in Sanabrahmapur EGS Centre as per appointment letter issued on 12.04.2007 by the President of the said centre. Of course, said appointment letter does not mention whether the engagement was as first or second Education Volunteer. Be that as it may, the petitioner was engaged and duly performed his duties as evident from his signatures endorsed in the attendance register. One Krushna Chandra Behera was engaged as the first Education Volunteer. It appears that EGS centers were upgraded to regular schools in course of time. This necessitated disengagement of the Education Volunteers engaged in the various EGS Centres across the state. This also necessitated rehabilitation of the Education Volunteers who were disengaged consequent upon abolition of the EGS scheme. The Government therefore came up with the resolution dated 16.2.2008 to rehabilitate such disengaged Education Volunteers in EGS Centres. It was provided that such disengaged Education Volunteers will be rehabilitated as Gana Shikhyaks under Sarva Shikshya Abhiyan. They will be engaged against the existing created vacancies of Shikshya Sahayaks and the consolidated remuneration etc will be borne out of SSA budget and that they will be engaged in the government primary schools. A gradation merit list of such Education Volunteers of Soro Block was published by the District Project Coordinator, SSA as per letter dated 04.04.2008 in which the name of the petitioner finds place at serial number 69. The secretary of the NGO SPEED submitted the required information to the BRCC, Soro Block regarding the petitioner and other Education Volunteers by his letter dated 23.4.2008 in which it was clearly mentioned that the petitioner was engaged as second Education Volunteer of Sanabrahmapur centre because the roll strength was increased to 43.

9. Originally by order dated 22.12.2012, the Collector rejected the claim for rehabilitation of the petitioner as Gana Shikhyak mainly on the ground that there was no material to show that the EGS Centre in question deserved second/more education volunteer. Since the said order has already been set aside by this court in WP (c) No. 22964 of 2013, it is no longer necessary to make any comment thereon. It would suffice to note that this court while quashing the said order of the Collector remitted the matter to him to rehear the representation of the petitioner taking into consideration the enquiry report submitted by the BRCC, Soro dated 22.01.2009 by affording opportunity of hearing to all the parties. Pursuant to such order the impugned order dated 20.9.2017 has been passed in rejecting the claim of the petitioner again.

10. Perusal of the order reveals that as directed by this Court, the Collector has indeed perused the report of BRCC, Soro dated 22.1.2009 to observe that the petitioner was engaged as Education Volunteer in the second post of the said centre after the increase in roll strength. However the Collector preferred to rely upon the report dated 3.3.2008 of the Secretary of NGO SPEED wherein it was

reported that one Education Volunteer was working in Sanabrahmapur EGS Centre against the children strength of 33. Accordingly the report of the BRCC was not considered to be true on the face of the report submitted by the organization running the centre. The correctness of the order passed by the Collector is the issue for consideration in the present application.

11. As already stated, in view of direction issued by this Court during hearing of the present application, the Block Education Officer, Soro, Balasore has filed an affidavit enclosing copies of the attendance register of the students of Class I to V for the period from 1.4.2007 to 31.3.2008. As per the said attendance registers the number of students reading in classes I to V during the relevant period was 42 and two teachers, including the petitioner were also working. The Block Resource Centre Coordinator also appeared personally before this court and produced the relevant attendance registers for perusal of this court. It is seen that the student strength was 42 during the relevant period. In the enquiry report dated 22.01.2009, submitted by the Block Resource Centre Coordinator (Annexure-17), it is mentioned as under:

" That I visited to Sanabrahmapur EGS Centre in Sajanpur G.P. under this Bock and collected the report regarding the engagement of Manoj Kumar Jena, 2nd Ev. of the said centre from Krushna Prasad Behera 1st Ev., Mr. Behera has report in written statement (see Annexure-1) that after increased the student strength for 2007-08, the committee was engaged Manoj Ku. Jena as per EGS guideline vide Resolution No.-24 dt.10.04.2008 (See Annexure-2) and approved vide letter no.-748 (50)/3 dt.20.5.03 of J.D. EGS/AIE Bhubaneswar and order No.-46(50)/03 dt.26.03.03 of the Secretary SPEED, Soro and he has joined on 12.04.2007 as 2nd EV. and continued up to 31.3.2008. The resolution register, attendance of EVS & students are verified. He was not paid his honorarium till date. Also I verified the records available at SPED and found that the Govt. was not released the funds for EVS for the period of 2007-08."

12. Therefore if the report of the BRCC is considered along with the copies of the attendance registers of the students during the relevant period and the affidavit sworn by the Block Education Officer before this Court, it would be clear that the number of students was more than 40 at the relevant time, which justified the engagement of a second Education Volunteer as per the scheme. As contrasted against the above tell-tale evidence, the Secretary of NGO SPEED in his letter dated 03.03.2008 has forwarded a proposal for release of Grant for the period 2007-08 wherein the number of children enrolled in respect of Sanabrahmapur is mentioned as 33. Surprisingly, again in his letter dated 23.04.2008, the very same Secretary of NGO SPEED has inter alia informed the BRCC, Soro Block as follows:

"Report as follows:-

1. Manoj Kumar Jena. That Manoj Kumar Jena was the 2nd E.V. of Sanabrahmapur E.G.S. Centre under Sajanpur G.P. was engaged by the V.E.C. of

concerned centre vide resolution 24 sitting dated on 12-04-2007 within the frame work of E.G.S. Guideline. As because the Roll strength was increased to 43.

Regarding the engagement of Manoj Kumar Jena as the 2nd EV. of above E.G.S. Centre was communicate to SPEED after the submission of E.V.S. status report which was submitted in the month of January. So we are unable to communicate his name as 2nd E.V. in the status report to S.S.A. Dist office Balasore, for enlistment as the continuing 2nd E.V. of the above E.G.S. Centre But latter on we have communicate his name to Dist office SSA for approval vide letter No.SPD/37a/08 Date 09-02-2008.

Therefore I am submitting herewith the following attachments for your kind perusal & appropriate necessary action. By which you may please be consider his name as 2nd E.V. of Sanabrahmapur E.G.S. Centre to become the Ganasikhyaka."

13. From the above narration, it is more than evident that the letter dated 03.03.2008 of the Secretary of NGO SPEED relied upon entirely by the collector by rejecting the report submitted by the BRCC was not proper at all. In view of the discrepancy pointed out above, the report of the Secretary of NGO SPEED dtd. 03.03.2008 could not have been taken into consideration at all, more so when the very same Secretary in a subsequent letter clearly mentions that the roll strength had increased to 43. Evidently, the Collector has lost sight of the above discrepancy. Even otherwise, the report of the BRCC and copies of the attendance registers of the students for the relevant period clearly reveal that the roll strength was more than 40. It must be kept in mind that the copies of the attendance registers have been enclosed to the affidavit sworn by the District Education Officer and this court finds no reason to doubt the authenticity thereof.

14. For the following reasons therefore, it is apparent that the collector has not considered the report of the BRCC in the proper perspective. If he had any reason to entertain doubt as regards the correctness of such report then he should have sought for other evidence such as the attendance registers etc to ascertain the roll strength of students during the relevant period. Instead of doing so the Collector has relied upon a communication made by the secretary of the NGO in which, for some strange reason, the number of children enrolled has been mentioned as 33. However in view of the subsequent communication made by the NGO clarifying the position in detail, the earlier communication dated 3.3.2008 loses its significance. In such view of the matter, this Court is of the considered view that the impugned order cannot be sustained in the eye of law and therefore, deserves to be interfered with.

15. In the result, the writ petition succeeds and is therefore, allowed. The impugned order dated 20.9.2017 passed by the Collector, Balasore is hereby quashed. The Collector is directed to verify the original attendance registers of the copies produced by the Block Education Officer, Soro, the report of the BRCC, Soro and the letter dated 23.04.2008 of the Secretary of NGO SPEED referred above, to determine the correctness of the claim that the roll strength was more

than 40 at the relevant time and to decide the matter afresh by granting opportunity of hearing to the petitioner and by passing a reasoned order in accordance with law. It goes without saying that if the Collector is satisfied with regard to roll strength of the centre at the relevant time being more than 40, he shall pass necessary order allowing the claim of the petitioner for being rehabilitated as Gana Shikhyak without any further delay.

16. The whole exercise should be concluded 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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