

(2018) 04 CHH CK 0212
In the Chhattisgarh High Court
Case No : WPS No. 1333 of 2016

M/S. Shiv Roadways And Anr.

APPELLANT

Vs

State Of Chhattisgarh And Ors.

RESPONDENT

Date of Decision : 17-04-2018

Acts Referred:

Chhattisgarh Ashaskiya Shikshan Sanstha (Anudan Ka Pradaya) Adhiniyam, 1978 —
Section 2(c) , 2(b), 10

Citation : (2018) 04 CHH CK 0212

Hon'ble Judges : P. SAM KOSHY, J

Bench : Single Bench

Advocate : Vijay Mashrani, Shashank Thakur, Jitendra Pali, Harshad Vyas

Final Decision : Disposed of

Judgement

1. The Petitioner has sought for the relief of his being reinstated in service at the Gujrati Primary School and to pay the wages and other emoluments

from October 2015 till date, with cost also.

2. The Petitioner appeared in person and filed this writ petition in his individual capacity. The Petitioner basically is a primary teacher appointed by

Respondents No.5, 6 & 8 at Gujrati Primary School, Devendra Nagar, Raipur. The Petitioner by the present writ petition, is aggrieved by Annexure

P/1 dated 01.10.2015, whereby the District Education Officer, Raipur has inflicted the Petitioner with a punishment of stoppage of two increments

with cumulative effect and at the same time, has transferred the services of the Petitioner from the Gujrati Primary School, Devendra Nagar, Raipur

to the Vidhya Mandir Primary School, Parsada at Abhanpur, Raipur.

3. Though the Petitioner has made a voluminous petition with numerous documents repeatedly filed but the crux of the matter which could be

understood from the submissions is that the said order of the District Education Officer is without authority and power. He submits that under no

circumstances could the Petitioner, whose services were otherwise engaged by the private i.e. Gujrati Primary School, Devendra Nagar, Raipur could

have been transferred to a different private school run by an entirely different Management.

4. It was also the contention of the Petitioner that the order of the punishment imposed by the District Education Officer is without power and

authority as the rule does not empower the District Education Officer to act as the disciplinary authority or to impose any punishment. The authority to

impose any punishment is always the management concerned which had appointed the Petitioner, which in the instant case is the management of the

Gujrati Primary School, Devendra Nagar, Raipur.

5. Challenging the said order dated 01.10.2015 the contention of the Petitioner is that perusal to the order dated 01.10.2015, the Petitioner had gone

and reported for duty in school at Parsada, Abhanpur, Raipur on 12.10.2015 and continued to work in the said school till 08.01.2016. The Principle of

the Vidhya Mandir Primary School, Parsada, Abhanpur, Raipur vide order dated 08.01.2016 sent the services of the Petitioner back to the Gujrati

Primary School, Devendra Nagar, Raipur with a note that the Petitioner was never the employee of the Vidhya Mandir Primary School, Parsada,

Abhanpur, Raipur but was appointed by the Gujrati Primary School, Devendra Nagar, Raipur.

6. The Petitioner further had prayed for the relief of all consequential benefits as the Petitioner would be entitled for as if the order of transfer was

never issued i.e. the Petitioner has to be treated as an Assistant Teacher at the Gujrati Primary School, Devendra Nagar, Raipur right from

01.10.2015 till date and he should be given all the consequential benefits including the monetary benefits for the intervening periods.

7. The factual matrix is that the Petitioner, while working in the Gujrati Primary School, Devendra Nagar, Raipur was issued with a charge-sheet on

08.11.2013, wherein charges were leveled against him in respect of his conduct for which, after approval of the competent authority, a detailed

departmental enquiry was conducted and subsequently, enquiry report was also furnished by the enquiry officer to the management of the Gujrati

Primary School, Devendra Nagar, Raipur. The same was forwarded to the District Education Officer who subsequently had ordered on 30.03.2013

placing the Petitioner under suspension, accordingly the management of the Gujrati Primary School, Devendra Nagar, Raipur place the service of the

Petitioner under suspension from 02.04.2013 onwards. The said order was finally revoked vide impugned order dated 01.10.2015 and he was inflicted

with the punishment of stoppage of increment with cumulative effect and also simultaneously transferred from Gujrati Primary School, Devendra

Nagar, Raipur to Vidhya Mandir Primary School, Parsada, Abhanpur, Raipur. Record shows that vide the order dated 06.05.2015, the District

Education Officer has also ordered that the service of the Petitioner during the intervening i.e. the period of suspension from 02.04.2013 to 30.02.2015

should be treated as on duty and he also shall be entitled for the entire wages for the intervening period. According to the Petitioner, but no payment

has been made till date nor has he been taken in employment of the Gujrati Primay School, Devendra Nagar, Raipur.

8. The counsel appearing for the Respondents submits that the petition, so far as the punishment is concerned, the same has been passed after a

detailed departmental enquiry in respect of serious charges leveled against the Petitioner found to have been proved.

9. They further submit that the State Government, vide order dated 27.07.2013 has issued an instruction in the name of the Governor of the State

whereby District Education Officer has been empowered to transfer one teacher from 100% aided institution to a different aided institution within the

same City/District. According to the counsel of the Respondents, it is this power which have been conferred upon the District Education Officer

which was exercised while passing the impugned order Annexure P/1 and therefore, it cannot be said that District Education Officer was without

competence and power.

10. It was further submitted by the counsel for the Respondents that by virtue of the proved charges the services of the Petitioner was transferred to

different institution so as to maintain a cordial atmosphere in the school premises by the Gujrati Primary School, Devendra Nagar, Raipur. It was also

contended that since the Petitioner was transferred to the Vidhya Mandir Primary School, Abhanpur, Raipur and he has joined the said school and he

continued performing his duties till 08.01.2016 and thereafter, till date perform he is not performing his duties anywhere and therefore, the Petitioner is

not entitled for any monetary benefits that he would have been entitled to without discharging his duties during the intervening period.

11. At this juncture it would be beneficial to refer to the Act and the Rules governing the field in the instant case i.e. the Chhattisgarh Ashaskiya

Shikshan Sanstha (Anudan Ka Pradaya) Adhiniyam, 1978. The perusal of the entire Act would show that the District Education Officer has been

defined under Section 2(C) of the Act of 1978 and under Section 2(b) the â?? competent authorityâ? means an authority appointed by the State

Government, by notification for discharging the functions of competent authority. Section 10 of the said Act given the power to make rule in respect of

recruitment of teachers and other service condition the Act nowhere District Education Officer empower him to transfer the employee/teacher from

the private aided institution to different private aided institution.

12. It is also relevant at this juncture to refer to the Rules, 1983 framed by the State Government in this regard which is known as Chhattisgarh

Ashaskiya Shikshan Sanstha (Aadhyapakon Tatha Anya Karmachariyon Ko Padachyut Karne Sewa Se Hatane Sambandhi Prakriya) Niyam, 1983.

Part II of the said Rules of 1983 deals with procedure for imposing penalties on teachers and other employees. Rule 7 deals with appointment of an

enquiry officer, Rule 8 deals with the manner in which the enquiry has to be conducted, subsequently under Rule 9 the report of the enquiry officer

has to be prepared and submitted before the management under Rule 11. The management has to consider the record and enquiry report and final

decision has to be taken by the management under Rule 12. The complete reading of the aforesaid Rule 1983 itself equally reflects that the power to

take a decision in respect of the teacher of private aided institution is that on the management of the said school and the only requirement was the

decision of the school should have the approval of the competent authority under the Act 1978, that is the District Education Officer.

13. This does not in any manner mean that the District Education Officer would substitute itself as the disciplinary authority. The private aided

management would alone have the power to pass an order of punishment, given the aforesaid factual position as it stands under the Act and Rules

governing private aided institution. This Court thus has no hesitation in reaching to the conclusion that is firstly the State Government does not have the power to transfer an employee/teacher from one private aided institution to a different private aided institution.

14. The order dated 27.07.2017 referred by the State Government in this return does not seem to be an order passed by under any particular provision of the Act of 1978 or the Rules framed therein. Since the Rule 1983 clearly prescribes the authority to take decision in respect of an enquiry which was conducted against an employee/teacher of a private aided institution. The order dated 27.07.2017 referred to by the State Government in their return does not appear to have been passed invoking any powers, which have been conferred under a particular Act or Rule. The same seems to be a general instruction. It is settled position of law that executive instructions would not have an overriding effect over statutory provisions. The order dated 27.07.2017 is not an order which has been issued under the provisions of the Act of 1978 or the rules framed therein.

15. Another aspect which also has to be borne in mind is that the Rules of 1983 clearly prescribe the authority, who could take a decision in respect of an enquiry which was conducted against an employee/teacher of a private aided institution. The Rules of 1983 do not envisage a clause whereby the said power could be exercised by the District Education Officer. The Rules of 1983 also do not envisage a clause, whereby it provides for transfer of one employee/teacher from one private aided institution to another private aided institution. Though the Rules thus provide for and empower the District Education Officer to transfer an employee of a private aided institution having its establishment at different places to transfer an employee of the said private aided institution from one of their establishment to another establishment in the larger public interest, but that does not mean that the District Education Officer would also have the power to transfer an employee from one private aided institution to a different private aided institution, where the management of the two institutions also is entirely different. The impugned order Annexure P/1, therefore, is without authority and power, and the same, therefore, is not sustainable and deserves to be and is accordingly set aside/quashed.

16. Since this Court has struck down Annexure P/1 holding it to have been issued without authority and power and the same stands nullified, the effect

would be that the Petitioner would have to be treated for all practical purposes as an employee/teacher of the Gujrati Primary School, Devendra

Nagar, Raipur. Since this Court has set aside the impugned order of punishment and the impugned order of transfer, the management of the Gujrati

Primary School, Devendra Nagar, Raipur would have the liberty to take an appropriate decision in the departmental enquiry initiated against the

Petitioner on the basis of the enquiry report in accordance with the Rules of 1983. Since the impugned order has been held to have been issued

without authority of law, it would be an order ab initio void and as a consequence the Petitioner would be entitled for consequential benefits.

17. The writ petition thus stands allowed and disposed off.