
(1997) 02 OHC CK 0021

In the Orissa High Court

Case No : Original Jurisdiction Case No. 4017 of 1997

Nabakishore Mohapatra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 05-02-1997

Acts Referred:

Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 — Rule 21(2)

Citation : (1997) 2 OLR 470

Hon'ble Judges : Susanta Chatterji, J;Dipak Misra, J

Bench : Division Bench

Advocate : K.K. Swain, for the Appellant; Additional Government Advocate for Opp. parties 1 and 2 and M.K. Mohanty, for Opp. party No. 3, for the Respondent

Final Decision : Allowed

Judgement

Susanta Chatterji, J.—Having heard Mr. Swain for the petitioner and Mr. M.K. Mohanty for the opposite party No. 3, Governing Body of Sri Dhabaleswar Mahavidyalaya in presence of Mr. B.P. Das, learned Addl. Govt. Advocate, we find a short point arises in this case relating to the order of suspension of the petitioner, the Principal of the college.

2. The petitioner has mainly challenged the order as per Annexure -4 made by the President of the Governing Body of Sri Sri Dhabaleswar Mahavidyalaya placing the petitioner under suspension. The impugned order refers to Cuttack Vigilance P.S. Case No. 9 dated 31.1.1995 u/s 13(2) read with Section 13(1) and Section 7 of the P.C. Act against the petitioner and others. It is stated that pursuant to a letter dated 2.3.1996 of the Director, Higher Education, Orissa, the petitioner was placed under suspension with immediate effect. The letter of the Director dated 2.3.1996 is annexure - 3 to the writ application in which the Deputy Director (N.G.C.II) has indicated that the Sub-Collector-cum-President, Governing Body of the College was requested vide Directorate's letter No. 16892 dated 18.5.1995 to take necessary action against the petitioner Principal and

another Sri Pabitra Mohan Sahani, Junior Clerk of the college and to place them under suspension with immediate effect but no action might have been taken in the matter as no reply had been received by the Directorate. A copy of the Government letter No. 11892/HE dated 29.3.1995 was enclosed to this letter of the Deputy Director and the President of the Governing Body was requested to take immediate action in the matter and report compliance for information of Government.

3. Mr. Swain draws attention of the Court to the order of suspension Annexure-4 and submits that the same cannot be sustained in law in view of the ratio of the decision reported in 1990 (I) OLR 234 (Adikanda v. State) where Rule 21(2). Second Proviso 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") has been interpreted. The said rule has been considered and it has been held that the Managing Committee or Governing Body has no unlimited power to place an employee under suspension unless it is made at the initiation of a disciplinary proceeding.

4. Rule 21(2), Second Proviso indicates inter alia :

"Provided further that the Managing Committee, or the Governing Body, as the case may be, may place an employee under suspension at the initiation of disciplinary proceedings for a period of thirty days, pending approval of Inspector or the Director, as the case may be."

5. It is argued that the impugned order of suspension was made for contemplation of any disciplinary proceeding against the petitioner. There was already final report in the Vigilance Case against the petitioner. Mere mention of the fact of the institution of Vigilance Case against the petitioner would not entitle the Governing Body to pass an order of suspension and the decision in Adikanda Jena case (supra) is squarely applicable to the present case.

6. Mr. Mohanty on behalf of the Governing Body submits that the impugned order does not suffer from any inherent defect, illegality or irregularity, necessitating interference by this Court. In support of his contention he argues inter alia that every employer has the inherent power of putting any employee out of employment when he is implicated in a criminal charge. This suspension is not by way of punishment but as a consequence of involvement in criminal offence. He refers to Short Note No. 32 of 47 (1979) CLT 19 (Governing Body of Asika Science College v. State of Education Tribunal) (O.J.C. No. 1382/78). In the said writ application, a Division Bench constituted by Hon'ble R.N. Mishra and Hon'ble P.K. Mohanty, JJ. (as Their Lordships then were) held that against a suspension simpliciter made on account of involvement in criminal offence no appeal lay under the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of Staff of Aided Educational Institutions) Rules, 1974. At that relevant point of time the Second Proviso to Rule 21(2) was introduced or added. Be that as it may, Mr. Mohanty has drawn attention of the Court to a Full

Bench decision reported in Jogeswar Bera and Hrudayananda Ojha Vs. The State of Orissa and Others, where the Court considered Rule 21(2), Second Proviso of the aforesaid 1974 Rules and held that power under this provision can be invoked when the disciplinary proceeding is under contemplation. In para - 4 of the said judgment the Full Bench recorded:

"In so far as the facts of the present cases are concerned, we are really not called upon to decide whether during the pendency of any criminal proceeding suspension can be ordered in exercise of the powers conferred by the second proviso to Rule 21(2) of the Rules. We have said so because the two suspension orders at hand clearly state that the suspension shall remain in force till the civil proceedings that would also be drawn up are finalised. Now, though the orders have spoken about "civil proceedings", we have no doubt that the authority passing the orders had in mind "disciplinary proceedings" as mention has been made about drawing up of the proceedings. Had it been that filing of civil suit would have been in contemplation, mention would not have been made about drawing up of a proceeding."

7. It is clear, unambiguous and unequivocal that if there is no statutory requirement in the order of suspension as envisaged under Rule 21(2), Second Proviso, nothing can be added or subtracted and this Court as a creature of law cannot imagine something nor the parties can be permitted to offer any surmises to construe a different legal meaning strictly on a point of law. We do not appreciate that the Director's subsequent mentioning as to approval of the order of suspension and the contemplated disciplinary proceeding would justify the order of the Governing Body. If the action of the Governing Body is bad in law, no approval thereof can ratify the same. We have tried to appreciate the submissions of Mr. Mohanty who tried his best to convince us that the impugned order is in fact in contemplation of disciplinary proceeding. Unfortunately we do not find any mention as to any contemplated proceeding or any civil proceeding whatsoever in the impugned order Annexures-3 and 4 if read together, we are fully convinced, would clearly show that the impugned order of suspension suffers from such wrong that it cannot be sustained following the ratio of the decision in Adikanda Jena case (supra).

8. Regard being had to the points at issue, we find that the impugned order of suspension cannot be sustained and accordingly we quash the same. We make it clear that this judgment shall not prevent the Governing Body to pass any fresh order of suspension if it is thought fit and proper relating to any disciplinary proceeding. No cost.

Dipak Misra, J.

9. I agree.