

(2024) 05 OHC CK 0064
In the Orissa High Court
Case No : Writ Petition (C) No. 25231 Of 2014

Nandita Sutar

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 01-05-2024

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2024) 05 OHC CK 0064

Hon'ble Judges : Sashikanta Mishra, J

Bench : Single Bench

Advocate : J.K. Khuntia, K. Ray, H.S. Deo, S.N. Patanaik

Final Decision : Dismissed

Judgement

Sashikanta Mishra, J.

1. The petitioner has filed this writ petition with the following prayer:-

"It is therefore prayed that this Hon'ble Court may graciously be pleased to call NISI calling upon the opp. parties to show cause as to why the impugned order dated 21.11.2022 shall not be quashed and why the service of the petitioner shall not be regularized from 05.01.2010 to 11.02.2015 for 936 days with all consequential service benefits including salary for that period and if the opp. parties fail to show cause or show insufficient case the Hon'ble Court may be pleased to quash the impugned order under Annexure - 6 and regularize the service of the petitioner from 25.01.2010 to 11.02.2015 with all service benefits including arrear salary, as per order dated 24.4.12 passed in W.P.(C) No. 18110/09 vide Annexure -4.

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

2. Facts of the case, shorn of unnecessary details, is that the petitioner joined as the trained graduate teacher in Kamala Model High School, Ayatan, as per appointment order dated 08.08.1991. By order of the Secretary issued on

09.01.1992, she was allowed to remain as in-charge Headmistress of School. After receipt of Grant-in-Aid, the post of the petitioner was approved as Headmistress-in-Charge of the school along with Ex-Officio Secretary of the Managing Committee. Subsequently, the Managing Committee of the school was reconstituted and received approval by order dated 15.11.2008. While working as such, the petitioner received notice in W.P.(C) No. 18110 of 2009, filed by the present Opposite Party No.5, wherein several allegations were made against her with prayer to re-constitute the Managing Committee with her being the Secretary instead of the petitioner. Originally, the writ petition was disposed of on 04.01.2010 but being challenged in Writ Appeal No.13 of 2010, was remanded for fresh disposal. By order dated 24.04.2012, the writ petition was again disposed of by directing the authorities to transfer the petitioner from the present school to some other school. With regard to her arrear salary, the question was left open with liberty being granted to her to re-agitate after reconstitution of the Managing Committee. The petitioner challenged the order in Writ Appeal No.271 of 2012 but the same was dismissed on 20.08.2014. The petitioner claims to have attended the school everyday, but the Headmistress did not allow her to join and sign in the attendance register. Further, the order passed in the writ application was not complied with till 11.02.2015, when she was deputed to Nikirai Girls High School, Nikirai. The petitioner repeatedly requested the Opposite Parties-Authorities for release of her salary for the period from January, 2010 to 11.02.2015 but no action was taken.. On such facts, the petitioner has filed the present writ application.

3. The State has filed a counter and an additional counter stating therein that the petitioner was transferred to Nikirai Girls High School pursuant to order passed by this Court in W.P.(C) No.18110 of 2009. It is stated that during pendency of the writ petition, order dated 21.11.2022 was passed by District Education Officer regularizing the break period of her service from 25.01.2010 to 11.02.2015, i.e., a period of 963 days but without entitlement to salary cost and GIA, but the period was to be counted as qualifying service for other purposes. Further, it was informed that she had absconded from the earlier school from 25.01.2010 on several dates and had been paid her due salary for the period during which she had attended her duties. She never approached the Managing Committee for release of her arrear salary and instead, she filed the present writ petition.

4. As regards the allegation that she had not been allowed to join in her duties, it is stated that though she claims to have submitted several representations, yet she did not think it proper to bring it to the notice of this Court in the earlier writ application. As regards the delay in complying with the order, it is stated that the same was caused because of pendency of the litigation before this Court. In any case, the break in her service for 963 days, i.e. from 25.01.2010 to 11.02.2015 has been regularized, but as per government norms, it is without entitlement to salary cost GIA but qualifies for counting of service for other purposes.

5. Heard Mr. J.K. Khuntia, learned counsel for the petitioner and Mr.S.N. Patanaik, learned Additional Government Advocate for the State.

6. Mr. Khuntia would argue that despite clear direction of this Court in the earlier writ petition, the Opposite Party –Authorities delayed the matter without any justified reason for as long as three years. In the meantime, the petitioner was not allowed to perform her duties in the earlier school. Her repeated complaints submitted in this regard fell on deaf ears. She is therefore, entitled to full salary cost for the period during which she was illegally kept out of employment. Therefore, according to Mr. Khuntia, though the break period in her service has been regularized belatedly yet, non-payment of salary cost GIA to her is wholly unjustified and not tenable in the eye of law.

7. Mr. S.N. Patanaik, learned State Counsel, on the other hand, would submit that the order in the earlier writ petition was passed on 24.04.2012. The petitioner herself challenged said order in the Writ Appeal which came to be disposed of on 20.08.2014 confirming the order passed in the writ petition. The petitioner was transferred to Nikirai Girls High School with effect from 11.02.2015, which is within a reasonable period after disposal of the Writ Appeal. Further, if the petitioner was prevented from attending her service for as long as five years, it amounts to termination of service. Since the litigation was pending till 20.08.2014, she should have brought such fact to the notice of this Court or independently challenged the same before the appropriate authority. But not having done so, she cannot raise any claim for salary cost for the period during which, she evidently did not render any work to the institution.

8. It is borne out from the pleadings of the parties that this Court by order dated 24.04.2012 passed in W.P.(C) No.18110 of 2009, directed the petitioner to be transferred to any other school. The petitioner challenged the said order in Writ Appeal, being W.A. No.271 of 2012, which was ultimately dismissed confirming thereby the order of the Single Judge. The order in the Writ Appeal was passed on 20.08.2014 whereupon the order passed in the writ application was complied by transferring the petitioner to Nikirai by order dated 11.02.2015. In view of the fact that the litigation was pending, it cannot be said that there was any unreasonable delay on the part of the Authorities in complying with the order directing transfer of the petitioner to any other school.

9. In the earlier writ application, liberty was granted to the petitioner to agitate her claim of arrear salary after reconstitution of the Managing Committee. The petitioner, on the other hand, claims to have been prevented from performing her work in the school and from signing in the attendance register. She further claims to have submitted repeated complaints in this regard to the Inspector of School, i.e. on 03.05.2010, 11.05.2010, 30.07.2010, 20.08.2010, 06.12.2010, 05.02.2011, 30.03.2011, 01.04.2011, 02.05.2011, 27.07.2011, 28.10.2011, 14.12.2011, copies of which are collectively enclosed as Annexure-8 series to the writ petition. The petitioner however, chose not to bring the above facts to the notice of this Court even though the earlier writ application was

pending at the relevant time till 24.04.2012. It is also trite law that multiple representations alleging the same issue without challenging the action before the appropriate forum is of no avail. That part, it is well settled that refusal of employment amounts to termination, which as already stated, the petitioner never challenged. It has been contended that the petitioner remained absent for a long time, i.e. on 25.01.2010 to 11.02.2015 and then she was transferred to Nikirai Girls High School. In view of the fact that the petitioner has never challenged the so called refusal of employment or the inaction of the concerned authorities on her repeated representations, it cannot be construed that she had rendered any work to the establishment during the relevant period or that she was unlawfully prevented from doing so. Notwithstanding the above, the government has been magnanimous enough to regularize the long break in her service notionally for other purposes. From what has been stated hereinbefore, there is nothing to find fault in such decision taken by the government.

10 For the foregoing reasons therefore, this Court finds no reason to interfere with the impugned order dated 21.11.2022. Resultantly, the writ petition is found to be devoid of merit and is therefore, dismissed but in the circumstances without any costs.

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