

---

**(2008) 09 OHC CK 0085**  
**In the Orissa High Court**  
**Case No : Writ Petition (C) No. 8009 of 2007**

|                            |    |            |
|----------------------------|----|------------|
| Panchanan Sethi            | Vs | APPELLANT  |
| State of Orissa and Others |    | RESPONDENT |

---

**Date of Decision :** 15-09-2008

**Acts Referred:**

Education Act, 1969 — Section 7(6)  
Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 — Rule 20, 20(1), 20(3), 20(4), 21

**Citation :** (2009) 1 OLR 490 Supp

**Hon'ble Judges :** R.N. Biswal, J; B.P. Das, J

**Bench :** Division Bench

**Final Decision :** Allowed

---

## Judgement

1. Heard Mr. P.K. Mohapatra, learned Counsel for the Petitioner, Mr. R.N. Acharya, learned Additional Government Advocate for O.Ps.1, 2 and 4 and Mr. S.P. Mishra, learned Counsel for O.P.3.

2. The Petitioner, who is working as Jr. Clerk in Jashipur College, Jashipur in the district of Mayurbhanj, has filed this writ petition challenging the order dated 23.6.2007 passed by the principal, Jashipur College placing him under suspension, vide Annexure-11.

3. The undisputed fact is that the Governing Body of Jashipur College has been dissolved by virtue of the notification dated 10.6.2004 issued under the provision of Sub-Section 6 of Section 7 of the Education Act, 1969 by the Commissioner-cum-Secretary to Government, Department of Higher Education. The Additional District Magistrates are to take over as President of Governing Body of the District Headquarters and the Sub-Divisional Officers are to take over as President of Governing Body of the rest of the colleges within their respective jurisdiction. Accordingly, O.P.4 - Sub-Collector, Panchpir, is the President of the Governing Body and O.P.3- Principal of Jashipur College functions as Secretary.

4. The main ground of challenge of the Petitioner is that the order of suspension dated 23.6.2007 is not in terms of Rule 21 of the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974.

5. According to Mr. Mohapatra, learned Counsel for the Petitioner, the Governing Body has not suspended the Petitioner but it is the Principal who has suspended him and later on the order of suspension has been ratified by the Director, Higher Education.

6. In this regard, initially an affidavit was filed by the Sub-Collector-cum-President, Governing Body of Jashipur College. As the said affidavit did not disclose the fact whether the S.D.O. while exercising the power of the Government Body, had ever issued any order of suspension against Petitioner, this Court directed the S.D.O. to file an additional affidavit clearly indicating the position. Today, Gangadhar Das, Sub-Collector, Panchpir, Karanjia-cum-President, Governing Body of Jashipur College, appears in person and files an affidavit, in paragraph-2 of which it is stated as follows:

2. That the deponent humbly submits that being the President of the Governing Body of the College has not issued any order to the opp. party No. 3 (Principal, Jashipur College, Jashipur) to place the Petitioner under suspension. There is neither G.B. resolution nor the Principal has consulted with the present deponent for placing the Petitioner under suspension.

7. Mr. S.P. Mishra, learned Counsel for O.P.3, submits that after due consultation with the Sub-Collector, Panchpir, Karanjia-cum-President, Governing Body of Jashipur College, the Principal-cum-Secretary placed the Petitioner under suspension in contemplation of the disciplinary proceeding and subsequent approval of the Director, Higher Education, gives a seal of approval to the actions taken by O.P.3- Principal, which should not be interfered.

8. Our attention was drawn to Rule-21 of Chapter-VI 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 "1974 Rules), which deals with disciplinary action of the disciplinary authorities and the same runs as follows:

21. Disciplinary authorities - (1) The Director may impose any of the penalties specified in Rule 20 on any employee:

Provided that the Director shall not initiate any disciplinary proceeding unless the Managing director or the Governing Body, as the case may be, refuses or neglects to take disciplinary action against any employee.

(2) Without prejudice to Sub-rule (1) but subject to the provisions of Sub-rules (3) and (4) any of the penalties specified in Rule 20 may be imposed -

(a) in respect of a lower grade employee, by the Headmaster or the Principal, as

the case may be; and

(b) in respect of any other employee, by the Managing Committee or the Governing Body, as the case may be:

1 [Provided that in case of suspension of employees failing under Clause (a) and (b) the prior approval of the Inspector in respect of any employee serving in a School and of the Director in relation to any other employee is obtained:]

2[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.]

(3) No penalty shall be imposed on any employee by an authority other than the authority mentioned in Sub-rules (1) and (2) hereinafter referred to as the disciplinary authority.

(4) No penalty shall be imposed on a person appointed to any post in an aided institution on deputation from the Government except in accordance with the provisions of Rule 25.

Case Law: Where a suspension case is pending for enquiry the proviso is not applicable: Managing Committee, Ranihat High School and Others Vs. Inspector of Schools, Circle-I and Another, .

9. Rule 20 of the 1947 Rules deals with the nature of penalties that may be imposed on an employee of an aided educational institution. Sub-rule 1 of Rule 21 authorises the Director to impose any of the penalties specified in Rule 20 on any employee.

10. The proviso to Sub-rule 2 of Rule 21 provides that prior approval of the Director is required for suspension of the employees to the category the Petitioner belongs. Reading of the subsequent proviso would show that the Managing Committee or the Governing Body, as the case may be, is empowered to place the employee under suspension at the initiation of disciplinary proceedings for the period of thirty days, pending approval of Inspector or the Director, as the case may be.

11. In this case within thirty days, the Director has approved the order of suspension issued by the Principal. But there is nothing on record to show that the Sub-Collector being the President of the Governing Body of Jashipur College has ever passed any order placing the Petitioner under suspension. This position has also not been denied by any of the parties.

12. In view of such, as the order of suspension passed by the Principal, who has no authority to pass such an order, cannot withstand the judicial scrutiny of this Court, we have no hesitation to set aside the impugned order dated 23.6.2007 in Annexure-11. Accordingly, we do so. However, it is open to the Sub-Collector, Jashipur, O.P.4 to proceed with the matter in accordance with law, if it is required

that the Petitioner should be kept under suspension during pendency of disciplinary proceeding, if any.

13. The writ petition is allowed to the aforesaid extent.