

(1985) 12 OHC CK 0010

In the Orissa High Court

Case No : Original Jurisdiction Case No's. 197 and 1019 of 1984

Pitabas Sahoo

APPELLANT

Vs

The Managing Committee of Sahada N. N. M. E. School and
Others
 The Managing Committee of Sahada N. N. M.
E. School and Another Vs Pitabas Sahoo and Others

RESPONDENT

Date of Decision : 12-12-1985

Acts Referred:

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

Citation : (1986) 61 CLT 105 : (1986) 1 OLR 57

Hon'ble Judges : R.C. Patnaik, J;D.P. Mohapatra, J

Bench : Division Bench

Advocate : Pradip Mohanty, D.P. Ray, Ashok Mohanty and Sashi Das in O. J. C. 197/84 and B.K. Behara and Y.S.R. Murty in O. J. C. 1019/84, for the Appellant; Addl. Standing Counsel and B.K. Behura in O. J. C. 197/84 and Addl. Standing Counsel and Ashok Mohanty, Sashi Das and B.P. Das in O. J. C. 1019/84, for the Respondent

Judgement

R.C. Patnaik, J.—Sahada Netrananda M. E. School is a private Government aided educational institution in the district of Balasore. It has a duly constituted Managing Committee. Pitabas Sahoo was its Headmaster. For certain alleged commission and omissions, the Managing Committee of the School by resolution dated 13. 7. 1983 decided to suspend him. The Headmaster was placed under suspension with retrospective effect from 13. 7. 1983. He was asked to make over charge to Sri Kalicharan Panda, the senior most assistant teacher of the school. The District Inspector of Schools, Balasore Circle I, was informed about the arrangement and by letter dated 30. 8. 1983, he approved the arrangement "till the finalisation of the Case". On 6, 8. 1983 charge-sheet was served on the Headmaster. The Director, Elementary and Adult Education, Orissa, was requested to appoint an officer to enquire into the charges On 11 8. 1983, the Managing Committee resolved to renew the suspension of the Headmaster. The Managing Committee went on writing to the Director for appointment of an

enquiring officer and went on passing resolution extending the Headmaster's suspension from time to time. The resolutions of the Managing Committee extending the Headmaster's suspension are dated 7. 9 1983, 8.10.1983 and 9. 12. 1988 OIC No. 197 of 1984 was filed on 18.1.1984 by the Headmaster assailing the resolutions of the Managing Committee extending/renewing his suspension from time to time as contrary to the second proviso to Rule 2(2) of the Orissa Education {Recruitment and Conditions of Services of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974, hereinafter called "the Rules",

2. By resolutions of the Managing Committee the Headmaster's suspension was continued till 7. 5. 1984. By letter dated 21. 3. 1984, the District Inspector of Schools, Balasore Circle I, informed the Secretary of the Managing Committee that the suspension of the Headmaster was not approved and the approval of the arrangement of placing Kalicharan Parida in charge of the Headmaster of the school was withdrawn. The Managing Committee and its Secretary filed O. J. C. No. 1019 of 1984 impugning the said decision of the D. I. and seeking a mandamus to the Director for appointment of an enquiring officer.

3. Mr. Ashok Mohanty, the learned counsel on behalf of the Headmaster, has argued that having regard to the scheme and object of the second proviso to Rule 21 (2) of the Rules, the Managing Committee was incompetent and had no authority to continue the Headmaster's suspension beyond a period of 30 days unless the suspension was approved by the Inspector with the period. The resolutions of the Managing Committee subsequent to the first one dated 13-7-1983 either extending or renewing the Headmaster's suspension are invalid.

Mr. B. K. Behura, the learned counsel appearing for the Managing Committee and its Secretary, has submitted that the second proviso to Rule 21 (2) is ambiguous and great injury would be caused to discipline and administration of Government aided schools unless it is held that the Managing Committee has authority to extend or renew the suspension of the employee if the resolution is not approved by the Inspector within 30 days. He further submitted that the second proviso is relatable to the first proviso and does not deal with suspension in contemplation of or pending disciplinary proceeding. He has referred us to 44 (1977) C. L. T. 323 (Managing Committee, Ranihat High School v. Inspector of Schools Circle-I, Cuttack and another) and Mr. Mohanty has relied on 56 (1983) CLT 239 (Abhimanyu Nayak v. State of Orissa and others). Mr. Behura contends that the second proviso is relate to the first proviso, pending...

4 Rule 21 reads as under :

"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 Committee 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 2D may be imposed__

a) in respect of a lower grade employee, by the Headmaster or the Principal as the case may be;

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

Provided that in case of suspension of employee falling under Clauses (a) and (b) the prior approval of the Inspector in respect of an employee serving in a school and of the Director in relation to any other employee is obtained:

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."

Sub-rule (1) authorises the Director to initiate disciplinary proceeding and impose penalty in the event of default, either by refusal or by neglect, of the Managing Committee or the Governing Body to take disciplinary action against an employee, Clause (a) of Sub-rule (2) confers authority on the Headmaster or the Principal, as the case may be, to impose penalty on lower grade employee. Clause (b) authorises the Managing Committee or the Governing Body, as the case may be, to impose penalty on any other employee. The first proviso prescribes obtaining or prior approval of the Inspector or the Director, as the case may be, if the penalty proposed is one of suspension. The first proviso has no application to suspension pending enquiry. This aspect is no more res integra (See-Ranihat High School's case).

5. The second proviso was inserted with effect 10.12.1981. It provides that the Managing Committee, or the Governing Body, as the case may be, may pending approval by the inspector or the Director, as the case may be, place an employee under suspension for a period of 30 days at the initiation of the disciplinary proceeding. Mr. Behura contends that the second proviso is relatable to the first proviso, i. e., pending approval of suspension as a measure of penalty by the Inspector or the Director, as the case may be, the management by virtue of the second proviso may place an employee under suspension for a period not

exceeding 30 days. The difficulty, however, lies in the use of the expression "at the initiation of the disciplinary proceeding in the second proviso. If his contention is accepted. we have to redraft the second proviso by substituting the words "on the completion of the disciplinary proceeding" in place of the initiation of disciplinary proceeding". Such a course is not permissible.

6. His alternative contention, therefore, is that the management shall have the authority to renew or extend the suspension from time to time until the decision of the Inspector or the Director, as the case may be, approving or disapproving the suspension is communicated.

The first proviso relates to suspension as a penalty in a disciplinary proceeding, whereas the second proviso relates to suspension at the initiation of the disciplinary proceeding. Some arguments have been advanced as to the meaning of the expression "at the initiation of the disciplinary proceeding" in the second proviso. Suspension in contemplation of or pending disciplinary proceeding is well known. An employer has the inherent power to suspend a delinquent employee. Section Ranihat High School's case where the decisions of "the Supreme Court in T. Cajee Vs. U. Jormanik Siem and Another, R.P. Kapur Vs. Union of India (UOI) and Another, and Balvantray Ratilal Patel Vs. The State of Maharashtra, were referred to). The power may be regulated by law. The second proviso regulates the said power of the employer. The expression would, therefore in the context mean in contemplation of, at the initiation of or pending disciplinary proceeding. The second proviso, therefore, authorises the Managing Committee or the Governing Body, as the case may be, if the circumstances so warrant to place the teacher under suspension and seek approval thereof from the prescribed authority. If the suspension is disapproved within the period of 30 days, there is end of the matter. Where, however, the approval is not received within a period of 30 days, the suspension lapses with the lapse of the period of 30 days. The moot question is : Does the second proviso debar the Managing Committee or the Governing Body, as the case may be, from passing a fresh resolution suspending the teacher when no communication is received either approving or disapproving the suspension from the prescribed authority ? The second proviso does not expressly prevent the Managing Committee or the Governing Body, as the case may be, from passing a fresh resolution suspending a teacher. To hold that the Managing Committee or the Governing body is debarred by implication from passing a fresh resolution suspending the teacher would also be productive of injustice in some cases. For example, where suspension of the teacher is eminently desirable because of his delinquency, conduct or character, yet the prescribed authority does not take a decision within the period of 30 days. If we prevent the Managing Committee or the Governing Body in such a case from passing a fresh resolution suspending the teacher, it might give rise to a chaotic condition in the institution. We have looked to the interest of both the sides the institution as well as the teacher. For the inaction of the prescribed authority the institution cannot and should not suffer. Law expects the prescribed authority to act within the prescribed period. If he fails to act or if

for some reason he cannot take a decision, e. g., he may need further materials or clarifications etc., an undesirable teacher should* not be thrust upon the institution, by reading into the second proviso a prohibition which is not there expressly or by implication.

7. Having regard to the purpose and object of the second proviso, the instrumentalities, namely, the Inspector or the Director, as the case may be, must realise his responsibility that the law has cast on him. His decision has far-reaching consequences vis-a-vis the employee and the institution, He is, therefore, obligated as soon as he receives the resolution for his approval to the suspension of the teacher, to take a decision within the period prescribed. Where the suspension is unwarranted disapproval should forthwith be communicated so that the employee does not unjustifiably suffer. Similarly where suspension is called for, he should not sit over the matter and allow time to roll on. That would be an act prejudicial to the institution. The rule-maker has granted the prescribed authority adequate time to take a decision one way or the other. Sitting over the matter would be a grave delinquency on his part.

8. Though the suspension of the petitioner was renewed from time to time, by letter dated 21-3-1984 (Annexure-26 in O.J. C. No. 1019/34), the District Inspector of Schools withdraw his approval stating that since suspension of the petitioner, the Headmaster of the School, had not been approved, his office letter dated 10-8-1983 approving the Managing Committee resolution dated 28-7-1983 keeping Sri Kali Charan Parida in charge of the Headmaster of the School was withdrawn.

9. The decision was taken by the District Inspector of Schools after the filing of the writ application (O. J. C. No. 197 of 1984) on 18-1 1984. There was some confusion in the statement of law. Hence, in the facts and circumstances, we quash the order of suspension (though in fact suspension has been disapproved by the prescribed authority). But in view of the statement of the law we have given, it shall be open to the Managing Committee to consider if suspension of the Headmaster is warranted. In case such a decision is taken and it is forwarded to the prescribed authority for approval, the prescribed authority would convey his decision approving or disapproving the suspension within the statutory period of 30 days. As regards the relief sought in O. J. C. No. 1019 of 1984 filed by the Managing Committee, we note that by order dated 20-4-1984, we directed the Director to take a decision regarding appointment of an enquiring officer. It has been stated that charges have already been communicated to the Director. If the enquiring officer has been appointed, the proceeding should be closed as soon as possible.

10. With these observations and directions, the writ applications are disposed of. There would be no order as to costs.

D.P. Mohapatra, J.

11. I agree.