

(2023) 12 OHC CK 0094

In the Orissa High Court

Case No : Writ Petition (C) Nos.2639 & 21180 of 2017

Ramakanta Swain

APPELLANT

Vs

State Of Odisha & Others

RESPONDENT

Date of Decision : 13-12-2023

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Orissa Education Act, 1969 — Section 7(6)

Citation : (2023) 12 OHC CK 0094

Hon'ble Judges : Biraja Prasanna Satapathy, J

Bench : Single Bench

Advocate : U.K. Samal, S. Naik, S.P. Patra, B.S.Das, C.D. Sahu, P.K. Mohapatra, B. Dash, C. Mohanta, B. Routray, S.K. Samal

Final Decision : Disposed Of

Judgement

Biraja Prasanna Satapathy, J.

1. Since both the writ petitions have been filed inter alia challenging the order dtd.02.02.2017 so passed by Addl. District Magistrate, Keonjhar in Misc. Case No.17 of 2016, both the matters were taken up analogously for hearing at the stage of admission with the consent of the learned counsel appearing for the Parties and disposed of by the present common order.

2. W.P.(C) No.2639 of 2017 has been filed by the Petitioner-Ramakanta Swain inter alia with the following prayer:-

"i) Admit the Writ Petition

ii) Call for the records;

iii) Issue Rule Nisi calling upon the Opp. Parties to show cause as to why the order dtd.13.05.2015 and order dtd.14.05.2015 under Annexure-6 and 7 and its consequential order dtd.24.10.2016 under Annexure-8 and order dtd.02.02.2017 under Annexure-13 shall not be quashed and the Governing Body shall not be

reconstituted within a reasonable time limit;

And if the Opp. Parties do not file show cause or show insufficient cause, the rule may be made absolute;

And further be pleased to direct the Opp.Party No.2 to continue the Petitioner as Principal-in-charge of Pateswar Degree Mohavidyalaya, Suakati in the district of Keonjhar in the interest of justice.

And further be pleased to pass any other order/orders, direction/directions as would be deemed fit and proper under the circumstances;

And for this act of kindness the petitioner shall as in duty bound ever pray”.

3. It is the case of the Petitioner- Ramakanta Swain that while continuing as Principal-In-Charge of Pateswar Mohavidyalaya, Suakati in the district of Keonjhar, the Governing Body of the said College, in its proceeding dtd.14.07.2003 under Annexure-1, decided to start +3 degree wing in the College. While taking such a decision to start the +3 wing, the Governing Body resolved to allow Sri Ramakanta Swain to continue as Principal-In-Charge of the +3 Wing and to take charge from the Secretary of the College in question.

3.1. It is contended that in terms of the decision taken by the Governing Body in its proceeding dtd.14.07.2003, Petitioner-Ramakanta Swain in addition to his work as Principal-In-Charge of the +2 wing also discharged the duties of the Principal-In-Charge of +3 wing of Pateswar Degree Mohavidyalaya, Suakati. However, while the matter stood thus, the terms of the Governing Body of the College though expired and no proposal for reconstitution the Governing Body since was made, Opposite Party No.3-Regional Director of Education vide his order dtd.12.05.2015 appointed one Dr. Kartik Chandra Mishra as Special Officer to exercise the Administrative and financial Power of the Governing Body until further orders.

3.2. It is contended that on being so appointed to function as Special Officer of the Governing Body vide order dtd.12.05.2015, the said Special Officer-Opposite Party No.4 issued a letter on 14.05.2015 by appointing – Opposite Party No.5 as Principal-In-Charge of the +3 wing of Pateswar Degree Mohavidyalaya, Suakati Opposite Party No.5 vide the said letter was also allowed to exercise the administrative and financial power as per rules subject to approval of special officer. But prior to allowing Opposite Party No.5 to function as Principal-In-Charge of the +3 wing, Opposite Party No.4 vide letter dtd.13.05.2015 under Annexure-6, requested Petitioner-Ramakanta Swain to remain present in the College on 14.05.2015 and to hand over the charge to the new Principal In-charge i.e. Opposite Party No.5.

3.3. It is contended that Petitioner-Ramakanta Swain being aggrieved by such action of the Special Officer in allowing Opposite Party No.5 to function as In-Charge Principal of the +3 wing and directing the Petitioner-Ramakanta Swain to hand over the charge to Opposite Party No.5, approached this Court in W.P.(C)

No.9807/2015. This Court vide order dtd.21.05.2015 passed an order of status quo with regard to continuance as against the post of Principal In-Charge of the Degree wing.

3.4. It is contended that in the meantime, Opposite Party No.3 vide letter dtd.24.05.2016 bifurcated +2 and +3 wing of Pateswar Degree Mohavidyalaya, Suakati w.e.f. 01.07.2016. However, this Court vide order dtd.17.10.2016 when vacated the interim order so passed on 21.05.2015, Opposite Party No.3 vide letter dtd.24.10.2016 under Annexure-8 to the writ petition directed Opposite Party No. 5 to act and discharge the duties of the Principal In-Charge of the +3 wing of Pateswar Degree Mohavidyalaya, Suakati with immediate effect in terms of the order of appointment issued in her favour on 14.05.2015 under Annexure-7.

3.5. It is also contended that intervention-application filed by the present Opposite Party No.6 in W.P.(C) No.9807 of 2015 was also not entertained by this Court. However, challenging the order dtd.17.10.2016 so passed by this Court in W.P.(C) No.9807 of 2015, Petitioner-Ramakanta Swain filed W.A. No.494 of 2016. But the said writ appeal was disposed of with liberty to approach the learned Single Judge for expeditious disposal of W.P.(C) No.9807 of 2015. Similarly, challenging the rejection of the application for intervention, Petitioner in the connected writ petition in W.P.(C) No.21180 of 2017, approached this Court in W.P.(C) No.19123/2016, challenging the order dtd.13.05.2015, 14.05.2015 as well as 24.10.2016. But, in the meantime vide officer order dtd.04.11.2016, Opposite Party No.3 appointed ADM, Keonjhar as Special Officer of Pateswar Degree Mohavidyalaya, Suakati in place of Dr. Kartik Chandra Mishra, who was earlier appointed vide office order dtd.12.05.2015.

3.6. It is contended that W.P.(C) No.9807 of 2015 and W.P.(C) No.19123 of 2016 were disposed of by this Court vide a common order dtd.07.11.2016. This Court vide the said order granted liberty to the Petitioner of both the cases to approach A.D.M., Keonjhar for consideration of their grievances.

3.7. It is contended that in terms of the order passed by this Court on 07.11.2016, Petitioner- Ramakanta Swain, moved a detailed application before Opposite Party No.4 under Annexure-10 and with a prayer to allow him to continue as Principal In-Charge of the +3 wing of Pateswar Degree Mohavidyalaya, Suakati till grant-in-aid is released in favour of the College. However, A.D.M, Keonjhar without proper appreciation of the claim raised by the Petitioner-Ramakanta Swain in his representation under Annexure-10 and so also the representation made by the Petitioner of the connected writ petition in W.P. (C) No.21180 of 2017, rejected the claim of both the Petitioners' vide the impugned order dtd.02.12.2016. Vide the said order, A.D.M, Keonjhar -cum-Special Officer, Pateswar Degree Mohavidyalaya, Suakati, while was not inclined to interfere with the order of Opposite Party No.3 in appointing Opposite Party No.5 as Principal-In-Charge of Pateswar Degree Mohavidyalaya, Suakati also held that Opposite Party No.5 is senior to Opposite Party No.6. While holding so,

A.D.M, Keonjhar directed Petitioner-Ramakanta Swain to hand over the detailed charges of the degree college to Opposite Party No.5 within a period of seven days for smooth functioning of the College.

3.8. It is contended that challenging the order dtd.02.12.2016 so passed by the ADM, Keonjhar, Petitioner in the connected writ petition / Opposite Party No.6 approached this Court in W.P.(C) No.21457 of 2016. The said writ petition was disposed of by this Court on 09.12.2016 by granting liberty to Opposite Party No.6 to make a fresh representation before A.D.M, Keonjhar for consideration of his grievance. Pursuant to the said order, Opposite Party No.6 made a further grievance before Opposite Party No.4, which was registered as Misc. Case No.17/2016. In the Misc. Case so registered, the Petitioner in the connected writ petition along with petitioner Ramakanta Swain and Opposite Party No.5 were given opportunity of hearing. But A.D.M, Keonjhar vide the impugned order dtd.02.02.2017 declared Opposite Party No.5 as Principal-In-Charge of the Pateswar Degree Mohavidyalaya, Suakati with immediate effect. While holding so Petitioner Ramakanta Swain was directed to hand over the charge of Pateswar Degree Mohavidyalaya, Suakati in favour of Opposite Party No.5 within seven days.

3.9. Challenging the order dtd.02.02.2017, Petitioner-Ramakanta Swain while filed W.P.(C) No.2639 of 2017, Opposite Party No.6 also filed a Writ Petition in W.P.(C) No.21180/2017.

3.9. W.P.(C) No.21180 of 2017 has been filed by the Petitioner there in inter alia with the following prayer:-

"It is, therefore prayed that, this Hon'ble Court may be graciously pleased to consider the above facts and circumstances, issue notice to the Opp. Parties, calling upon them to file counter and on hearing from both sides, be pleased to quash the order dated 02.02.2017 under Annexure-1 and order dated 14.05.2015 under Annexure-4 and order dated 24.10.2016 under Annexure-6 making it clear that, the petitioner being senior to O.P. No.5 is entitled to remain as Principal In-charge of Pateswar Degree Mahavidyalaya, Suakati in the district of Keonjhar till regular Principal is posted in the said college;

And further be pleased to pass any other order/orders as may be deemed fit & proper for granting complete relief to the petitioner in the present facts and circumstances of the case in the interest of justice'

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

3.10. It is the case of the Petitioner-Ramakanta Swain in W.P.(C) No.2639 of 2017 that since the Petitioner Ramakanta Swain was allowed by the Governing body of the College in its proceeding dtd.14.07.2003 to discharge the duty of Principal In-Charge of the +3 wing in addition to his work as Principal-In-Charge of the +2 wing, there was no occasion on the part of the Special Officer to appoint Opposite Party No.5 as Principal In-Charge of the Degree wing vide order

dtd.14.05.2015 under Annexure-7 and directing the petitioner- Ramakanta Swain to hand over the charge in favour of Opposite Party No.5.

3.11. It is also contended that since Petitioner Ramakanta Swain was permitted by the duly constituted Governing body of the College to act as Principal-In-Charge of +3 wing, the Special Officer so appointed by Opposite Party No.3 had no occasion to allow Opposite Party No.5 to function as Principal In-Charge vide order dtd.14.05.2015 under Annexure-7. Because of such illegal order issued by the Special Officer, dispute arose with regard to functioning of the degree wing. Even though pursuant to the order passed by this Court, Petitioner in both the cases moved the ADM by raising their respective claim, but ADM, Keonjhar- Opposite Party No.4 without proper appreciation of the pleas raised and the effect of the resolution passed by the Governing Body under Annexure-1 and the fact that +3 wing is an unaided College, rejected the prayer of the Petitioner- Ramakanta Swain to continue as Principal-In-Charge of the College vide the impugned order dtd.02.02.2017. It is accordingly contended that the order passed by Opposite Party No.4 in his capacity as ADM, Keonjhar on 02.02.2017 is not sustainable in the eye of law and it requires interference of this Court.

4. Learned counsel for the Petitioner in the connected W.P.(C) No.21180 of 2017 on the other hand contended that the College in question got the permission from the Government to open +3 Arts stream from the academic Sessions 2003-04 on 26.09.2003.

4.1. It is contended by the Petitioner- Rudra Narayan Barik that he was appointed as Lecturer in Anthropology in the +3 wing vide Resolution dtd.21.11.2013 of the Governing Body. Opposite Party No.5-Bishnu Priya Mohanta was also so appointed as Lecturer in Sanskrit in terms of the Resolution dtd.21.11.2003. Both Petitioners-Rudra Narayan Barik and Opposite Party No.5-Bishnu Priya Mohanta though joined on 15.12.2003, but taking into account the fact that the Petitioner-Rudra Narayan Barik is senior to Smt. Mohanta in his age, ADM, Keonjhar should have held Rudra Narayan Barik as senior to Bishnu Priya. But while dealing with the matter with passing of the impugned order on 02.02.2017, though Opposite Party No.4 came to a finding that the Petitioner-Rudra Narayan Barik is senior to Smt. Mohanta because of his date of birth, but without any reason or basis held Opposite Party No.5 as senior to the Petitioner Rudra Narayan Barik and while holding so allowed Opposite Party No.5 to discharge the duty of Principal In-Charge of +3 degree wing.

4.2. It is contended that since while considering the claim with regard to the seniority of the Petitioner Rudra Narayan Barik vis-à-vis Bishnu Priya Mohanta, ADM, Keonjhar came to a conclusion that both of them have joined on 15.12.2003, taking into account the date of birth of Rudra Narayan Barik as 15.07.1975 vis-à-vis the date of birth of Smt. Mohanta as 29.05.1977, basing on the order issued by the Government on 21.10.1982, the inter se seniority in such cases is to be fixed in accordance with the date of birth. But on the face of such finding given by the ADM, Keonjhar, Opposite Party No.5 was illegally held as

senior to the Petitioner Rudra Narayan Barik in the impugned order dtd.02.02.2017.

4.3. It is contended that since both the Petitioners-Rudra Narayan Barik and Smt. Bishnu Priya Mohanta joined on 15.12.2003 which is not disputed, in view of the Govt. order issued on 21.10.1982, Petitioner-Rudra Narayan Braik is senior to Opposite Party No.5. The order passed by ADM, Keonjhar by declaring Opposite Party No.5 as senior to the Petitioner-Rudra Narayan Barik is therefore not sustainable in the eye of law and requires interference of this Court.

5. Mr. Budhadev Routray, learned Senior Counsel appearing for the Smt. Mohanta in both the cases along with Mr. B. Dash made his submission basing on the stand taken in the counter affidavit so filed by her.

5.1. Learned Senior Counsel appearing for Opposite Party No.5 contended that Pateswar Degree Mohavidyalaya, Suakati got the permission of the Government to open +3 Arts Stream during the Academic Sessions 2003-04. After getting such permission and in terms of the resolution issued by the Governing Body on 21.11.2003, Opposite Party No.5 along with Petitioner-Rudra Narayan Barik in the connected case were appointed as Lecturers in Sanskrit and Anthropology respectively.

5.2. While Opposite Party No.5 joined as Lecturer in Sanskrit in the +3 wing on 15.12.2003, Petitioner in the connected cases Rudra Narayan Barik joined as such on 18.12.2003. Petitioner- Ramakanta Swain who was acting as the Principal College of the +3 degree wing in terms of the resolution issued by the Governing Body under Annexure-1 also accepted the date of joining of Opposite Party No.5 as 15.12.2003 and that of Rudra Narayan Barik as 18.12.2003. Since Opposite Party No.5 joined in the College in +3 wing on 15.12.2003 and Sri Rudra Narayan Barik joined on 18.12.2003, so admitted by the Petitioner-Ramakanta Swain while acting as Principal In-Charge of the College, the said fact was also taken into consideration by the ADM while deciding the seniority of Opposite Party No.5 vis-à-vis Rudra Narayan Barik.

5.3. Even though Opposite Party No.4 considering the submissions of Rudra Narayan Barik gave a finding that seniority has to be maintained as per the date of birth if both the incumbents join on a particular date, but in view of the admission made by the Petitioner Ramakanta Swain regarding joining of the Opposite Party No.5 as 15.12.2003 and that of Opposite Party No.6 as 18.12.2003, ADM, Keonjhar rightly declared Opposite Party No.5 as senior to Sri Barik in order dtd.02.02.2017.

5.4. With regard to the claim of the Petitioner-Ramakanta Swain to continue as Principal-In-Charge of the College, learned Senior counsel appearing for Opposite Party No.5 contended that even though this Court passed an interim order on 21.05.2015 directing maintenance of status quo with regard to continuance of Principal In-Charge of the degree wing in W.P.(C) No.9807 of 2015, but the said interim order was vacated by this Court on 17.10.2016. After vacation of the

interim order, Opposite Party No.3 vide his order dtd.24.10.2016 when directed the Petitioner-Ramakanta Swain to hand over the charge of the Principal-In-Charge of the College, the matter was again challenged before this Court in W.A. No.494/2016. The said writ appeal was disposed of at the request of the Petitioner Ramakanta and liberty was granted to approach the learned Single Judge for expeditious disposal of W.P.(C) No.9807 of 2015. The order dtd.17.10.2016 was also challenged by the Petitioner of the connected writ petition in W.P.(C) No.19123 of 2016. Both the writ petitions in W.P.(C) No.9807 of 2015 and 19123 of 2016 were disposed of by this Court vide order dtd.07.11.2016. Vide the said order both the Petitioners in the present two writ petitions were permitted to make their grievance before the ADM, Keonjhar.

5.4. Pursuant to the said order, Petitioners in both the cases moved the ADM, Keonjhar by filing their respective representations. ADM, Keonjhar by order dtd.02.12.2016 when rejected the claim of both the Petitioners, the order dtd.02.02.2016 was challenged by the Petitioner in the connected writ petition in W.P.(C) No.21547/2016. This Court vide order dtd.09.12.2016 again permitted Opposite Party No.6 to make a fresh application before ADM, Keonjhar for its consideration. In terms of the order dtd.09.12.2016, Petitioner Rudra Narayan Barik in the connected writ petition made his application before ADM, Keonjhar, which was registered as Misc. Case No.13 of 2016. In the said Misc. Case, ADM, Keonjhar by giving opportunity of hearing to all concerned passed the order on 02.02.2017 by directing the Petitioner-Ramakanta Swain to hand over the charge of the Principal In-Charge of +3 wing in favour of Opposite Party No.5. In the said order, ADM, Keonjhar also rightly held Opposite Party No.5 as senior to Opposite Party No.6 i.e. Petitioner-Rudra Narayan Barik in the connected writ petition.

5.5. Learned Senior Counsel further contended that this Court while dealing with both the writ petitions passed an order on 17.05.2018 to the following effect:-

"Heard.

This Court after hearing the matter in detail for judging legality and propriety of the order passed by the Addl. District Magistrate, Keonjhar dated 2.2.2017 passed in Misc. Case No.17 of 2016, whereby and where under, this Court has directed the petitioner to hand over the charge in favour of Smt. Bishnupriya Mahanta, Lecturer in Sanskrit (O.P. No.5) who will function the Principal-in-charge, Pateswr Degree Mahavidyalaya, Suakati.

The petitioner has challenged the aforesaid order on the ground that he cannot be asked to hand over the charge in favour of Smt. Bishnupriya Mahanta who is the opposite party no.5, reason being that he is working as Principal-in-charge by the decision taken by the Governing Body, although after the status of the College has come under the fold of +2 and +3 courses but at the time when the institution in question was under the composite fold, the duly constituted Governing Body has appointed him to act as Principal-in-charge with the

proposal to constitute fresh Governing Body for the Degree College, which is lying pending before the competent authority, hence during pendency of the said proposal before the competent authority directing him to hand over charge in favour of opposite party no.5 is absolutely illegal.

Mr. Budhadev Routrary, learned Senior Counsel appearing for opposite party no.5 and also Mr. Amit W.P. (C) No.2639 of 2017 Pattnaik, learned counsel for the State, both have submitted that the proposal submitted by the petitioner is beyond the statutory period of 90 days, as such the same cannot be acted upon by the competent authority and moreover in pursuance of the power conferred under Section 7(6) of the Orissa Education Act, 1969, the Addl. District Magistrate has been empowered to function as the President of the Governing Body, hence the petitioner ought to have handed over the charge in favour of the ADM who happens to be the President of the Governing Body.

Further contention has been raised which is with respect to the dispute in between the opposite parties 5 and 6. The opposite party no.5, in whose favour the order has passed to hand over the charge since he will function as Principal-in-charge while the opposite party no.6 (Rudranarayan Barik) is contesting the case on the ground that the date of joining of the opposite party nos.5 and 6 are same i.e. 15.12.2003 but on the basis of the age, opposite party no.6 is senior, as such he is entitled to hold the post of Principal-in-charge.

Learned counsel appearing for opposite party no.5 has raised serious dispute regarding the date of joining of the opposite party no.6. According to him his date of joining is 18.12.2003, which has been taken note of by the ADM in the impugned order but no final decision has been taken to that effect.

This Court, after hearing the learned counsel for parties, so far as claim of the petitioner-Ramakanta Swain is concerned, who is holding the post of Principal-in-charge by virtue of the decision taken by the Governing Body, which is no more in existence and also on the basis of the interim order passed in this case on 22.02.2012, but according to my considered view when the competent authority has conferred power upon the ADM to act as the President of Governing Body and as per the judgment rendered by this Court in the case of Anil Kumar Mohanty vrs. State of Orissa & others passed in W.P.(C) No.8065 of 2013, whereby and where under the proposition has been laid down that even though the junior colleges/Secondary College (+2) and Colleges (+3) Degree continuing under one roof and one place with one campus that ipso facto cannot entitle them to claim 'composite' status rather they are to be regulated under the separate rules and separate Acts governing the field.

The aforesaid judgment has been passed on the basis of various judgments rendered by the Hon'ble Supreme Court as referred therein and also in an order passed by this Court in the case of Governing Body of Dola Gobinda Braja Kishore Mohavidyalaya vrs. State of Orissa and others passed in OJC No.1486 of 1996.

In view thereof, when the status of the institution in question is not in dispute that there is two wing i.e. +2 and +3, as such the same person cannot be allowed to function as Principal-in-charge, rather in view of the observation made at para-16 in the case of Anil Kumar Mohanty (supra), whereby and where under this Court has directed the Sub-Collector, the President of the Governing Body to issue necessary direction to the Principal -in -charge-cum- Secretary of the Regional Junior Colleges, Rambag (+2) wing to hand over the charge but Promod Kumar Mohanty so far as Regional Degree College, Rambag (+3) Wing is concerned.

According to my considered view, since the ADM is functioning as the Chairperson of the Governing Body, hence applying the ratio laid down in the case of Anil Kumar Mohanty (supra), the continuation of the petitioner as Principal-in-Charge in the Degree College will not be proper.

In view thereof, the interim order dated 22.2.2017 is recalled by directing the petitioner to hand over the charge to the ADM, Keonjhar forthwith. So far as the dispute related to date of joining of opposite party no.6 is concerned, this Court in order to ascertain the factual aspect, has directed Mr. Amit Pattnaik to come with the record lying in the office of the Regional Director and also Director, since according to the opposite party no.5, the petitioner, who in the capacity of Principal-in-charge has accepted the joining of both i.e opposite party no.5 and 6 and in the joining acceptance report when the details is being furnished before the competent authority for seeking recognition under the statutory provision, the details of all the staff including the petitioner, who has furnished wherein the date of joining of opposite party no.6 is disclosed as 18.12.2003, which would be evident from the running page 88 and 91 and the same record is lying with the original record of the Regional Director but in the record which has been brought from the office of the Director, the date of joining of opposite party no.6 is dated 15.12.2003, the said document has been submitted by the petitioner on his own handwriting.

Thus, there is difference in the date of joining in the record lying with the office of the Director, the date of joining on the basis of the document submitted by the petitioner is 15.12.2003, while record lying with the office of the Regional Director the date of joining is dated 18.12.2003 furnished by the petitioner-Principal namely Ramakanta Swain under the seal and signature while declaring the staff position of the Degree College on 20.06.2007 and 20.05.2015.

Now opposite party no.6 is relying upon the date of joining as on 15.12.2003 and taken aid of the documents lying with the office of the Director, while the opposite party no.5 is relying upon the date of joining which has been furnished by the petitioner on his own handwriting before the competent authority while giving declaration regarding the staff position. The ADM although has taken note of regarding the date of joining of opposite party no.6 is 18.12.2003 but no finding has been given to that effect, as such the order passed by the ADM is inconclusive, so far as this contention is concerned.

This Court has got two divergent date of joining of the opposite party no.6, hence accordingly in the prima facie view of this Court there is some manipulation in the record, hence before taking final decision with respect to the claim of the opposite party no.5 and 6, the definite conclusion has to be arrived at, with respect to the date of joining reason being that if the date of joining of opposite party no.6 would be 18.12.2003 as furnished by the petitioner himself, then opposite party no.5 would be senior and she will be entitled to be posted as Principal-in-charge but when the date of joining of opposite party no.6 would be 15.12.2003 as per the record of the Director then by virtue of the more aged than opposite party no.5, opposite party no.6 will be entitled to hold the post of Principal-in-charge, if he is otherwise eligible.

Learned counsel for the petitioner, now in course of argument submits that the date of joining of O.P.No.6 is 18.12.2003 as recorded by him is a wrong committed by him rather his date of joining is 15.12.2003, to substantiate, he has place Attendance Register.

Mr. Amit Pattnaik, learned Addl. Govt. Advocate at this juncture submits that some mischief prima facie seems to have been committed as such matter may be referred before the Crime Branch for enquiry, which has not been objected by the other side including the petitioner.

Hence, in order to ascertain this aspect of the matter, this Court thinks it proper to refer the matter before the Crime Branch of the State to investigate the matter by calling upon the records lying in the concerned College, office of the Regional Director and the office of the Director to ascertain the date of joining of opposite party no.6.

Accordingly, the Director General of Police is directed to look into the matter and refer the matter before the Crime Branch to be investigated by the Officer not less than the rank of Dy. S.P. to submit the report preferably within eight weeks from the date of receipt of copy of this order.

Accordingly, list this case on 16.08.2018.

It is made clear that the Director, Regional Director and the Governing Body of the College will co-operate in the investigation in this case”.

5.6. It is contended that in terms of the order passed by this Court on 17.05.2018, the matter was enquired into by the Crime Branch and a report has been submitted by the Crime Branch on 12.06.2018 so obtained by Opposite Party No.5 under the RTI Act. In the said report, Deputy Superintendent of Police CIDCB, Orissa, Cuttack after due verification of the records has come to a conclusion that Petitioner Rudra Narayan Barik joined in the degree college on 18.12.2003 and Opposite Party No.5 joined as a Lecturer in Sanskrit on 15.12.2003. The Crime Branch also found that even though the Petitioner Rudra Narayan Barik joined on 18.12.2003 but by manipulating the record, he has shown his date of joining as 15.12.2003.

5.7. It is accordingly contended that since in terms of the order passed by this Court on 17.05.2018 a report has already been submitted by the Crime Branch regarding the date of joining of Opposite Party No.5 as 15.12.2003 and that of Opposite Party No.6/Petitioner in the connected writ petitions as 18.12.2003, there is no illegality or irregularity with the finding of the ADM, Keonjhar in order dtd.02.02.2017 by holding Opposite Party No.5 as senior to Sri Rudra Narayan Barik.

5.8. Learned Senior Counsel also contended that challenging the order dtd.17.05.2018 so passed in W.P.(C) No.2639 of 2017, Petitioner Ramakanta Swain approached this Court in W.A. No.301/2018. In course of hearing of the said writ appeal, Petitioner Ramakanta Swain clearly admitted that she has handed over the charge of the Principal In-Charge of the College in favour of Opposite Party No.5 in terms of the order dtd.17.05.2018. The order passed by this Court on 25.07.2022 in Writ Appeal No.301 of 2018 is reproduced hereunder:-

"1. This matter is taken up through hybrid mode.

2. Heard Mr. U.K. Samal, learned counsel appearing for the Appellant.

3. This is an intra-court appeal against the order dated 17.05.2018 passed in W.P. (C) No. 2639 of 2017 by the learned Single Judge of this Court.

4. The grievance of the Appellant is two-fold viz. (i) he has been directed to hand over the charge of the principal of the degree college and (ii) the direction that has been issued on the Director General of Police that the questioned document shall be investigated by an Officer of the Crime Branch, Government of Odisha, not below the rank of the Deputy Superintendent of Police. It has been also directed to submit the report of the investigation preferably within eight weeks from the date of receipt of the copy of that order.

5. So far as the issue of recalling the order is concerned, Mr. Samal, learned counsel has fairly submitted that since the appellant has handed over the charge of the principal to the Addl. District Magistrate, Keonjhar in terms of the order dated 17.05.2018, the challenge in that regard has become infructuous. The impugned order dated was passed on 17.05.2018 and the direction on the Director General of Police was that the Crime Branch should file the report to this Court within eight weeks from the date of receipt of the copy of the order.

6. None of the Counsel for the parties could shed light on whether such report has been filed or not.

7. Be that as it may, what we observe in the circumstances of the case is that even if the report is filed, no further action be taken by the learned Single Judge till the matter is finally decided. If any report is filed, we direct the Director General of Police, Odisha not to act further, unless the writ petition is finally disposed of on merit.

8. We would request the learned Single Judge to expedite the hearing of the matter. 9. In terms of the above, this appeal stands disposed of. 10. Mr. B. Routray, learned Senior Counsel, assisted by Mr. B. Dash, learned counsel has appeared for the Respondent No.5. 11. Mr. S.K. Swain, learned counsel has appeared for the Respondent No.6.

Urgent certified copy of this order be granted as per rules”.

5.9. It is contended that the Petitioner Rudra Narayan Barik also was a party to Writ Appeal No.301 of 2018 and he also accepted the submissions of the Petitioner - Ramakanta Swain regarding handing over the charge of the Principal-In-Charge by the Petitioner Ramakanta Swain in favour of Opposite Party No.5.

5.10. It is also contended that the order passed by this Court on 17.05.2018 was never assailed by the Petitioner –Rudra Narayan Barik and in the alternate he supported the submission of the Petitioner-Rudra Narayan Barik regarding handing over the charge of the Principal In-Charge of the +3 wing in favour of Opposite Party No.5 in terms of the order dtd.17.05.2018.

5.11. It is also contended that since Opposite Party No.6 never challenged the order dtd.17.05.2018, he cannot challenge the report submitted by the Crime Branch in terms of the said order.

5.12. It is also contended that the order passed on 17.05.2018 has been affirmed by this Court while disposing Writ Appeal No.301 of 2017 vide order dtd.25.07.2023.

5.13. Learned Senior Counsel accordingly contended that in view of the stand taken by the Petitioner- Ramakanta Swain in W.P.(C) No.2639 of 2017 and the report submitted by the Crime Branch in terms of the order dtd.17.05.2018, the date of joining of Opposite Party No.5 being 15.12.2003 and the date of joining of Opposite Party No.6/Petitioner in the connected writ petition being 18.12.2003, Opposite Party No.5 has been rightly declared as senior to Opposite Party No.6 in the impugned order dtd.02.02.2017 so passed by ADM, Keonjhar.

5.14. It is accordingly contended that the order dtd.02.02.2017 requires no interference as it has been rightly passed. It is also contended that Opposite Party No.5 after taking charge acting as Principal-In-Charge of the +3 wing and in view of the same, the prayer made in W.P.(C) No.2639 of 2017 has become infructuous.

6. To the submissions made by Mr. B. Routray, learned Senior Counsel, Mr. U.K. Samal, learned counsel in W.P.(C) No.2639 of 2017 contended that even though the terms of the Governing body has since expired, but no step is being taken to reconstitute the Governing Body of the College in question. This Court when sought for instruction from the learned State Counsel, instruction provided by the Department vide letter dtd.24.11.2023 be kept in record. From the said instruction it is found that the Department will take step for formation of the Governing Body after disposal of W.P.(C) No.2639/2017. The instruction provided

by the Department on 24.11.2023 is reproduced hereunder:-

"From

Sri Suryanarayn Mohapatra

Additional Seretary to Govt.

To

The Advocate General

Odisha, Cuttack

Sub:- Instruction in WP(C) NO.2639/2017 filed by Shri Ramakanta Swain Vrs-
State of Odisha and Others

Sir,

Apropos the subject cited above, I am directed to submit the following facts which may please be treated as instruction in the WP(C) No.2639/2017 filed by Shri Ramakanta Swain Vrs-State of Odisha and Others:-

1. That, the petitioner has filed this writ application making a prayer to quash the Letter dated 13.05.2015, 14.05.2015 of District Level Consultant, Keonjhar and

24.10.2016 of the erstwhile Regional Director of Education, Bhubaneswar. (now Regional Director of Education, Balasore) under Annexure-6,7 & 8 respectively regarding the Principal ship of Pateswar Degree College, Suakati in the district of Keonjhar.

2. That, the Additional District Magistrate, (ADM) Keonjhar was intimated that, he is functioning as Principal and Special Officer of Pateswar Degree Mahavidyalaya, Suakati, Dist. Keonjhar as per the orders dated 17.05.2018 of the Hon'ble High Court passed in W.P.(C) No.2639/2017. He had also intimated that, the ADM being the Administrative Officer of the district remains busy with different work and finds little time to look after the development work of the college. And also reported that it is high time for the constitution of the Governing Body of the college to look after the betterment and development of the institution vide his Letter No.120 dated 27.04.2023. He had also requested the Higher Education Department vide his dated 27.04.2023 to take necessary steps for the issue of a direction to the Regional Director of Education, Balasore to take steps for the constitution of the Governing Body of the college keeping in view the orders of the Hon'ble High Court in the interest of the college itself.

3. That, after examining the report of ADM, Keonjhar, the Regional Director of Education, Balasore has been requested vide this Department letter dated 23.006.2023 to take suitable action as per Orissa Education Act, 1969, Orissa Education (Establishment, Recognition and Management of Private Colleges) Rules, 1991 and subsequent amendment Rules, 2020 for the constitution of Governing Body of Pateswar Degree Mahavidyalaya, Suakati, Dist. Keonjhar

keeping in view the kind orders of the Hon'ble High Court passed in W.P.(C) No.2639/2017 or any other orders of any Hon'ble Court under intimation to this Department.

4. That, the Regional Director of Education, Balasore vide his letter dated 26.07.2023 has intimated that the Additional District Magistrate, Keonjhar is acting as Principal-in-Charge of the Pateswar Degree Mahavidyalya, Suakati, Dist. Keonjhar in pursuant to the kind orders dated 17.05.2018 of the Hon'ble High Court passed in W.P.(C) No.2639 of 2017 and due to a dispute on the seniority of two senior most teaching staff member of the college.

5. That, formation of the Governing Body of the College, the Principal in charge happens to be the Ex-officio Secretary and the senior most teaching staff becomes the member. And the same is under dispute and sub-judice before the Hon'ble High Court in WP(C) No.2639 of 2017

In view of absence of regular Principal-in-charge in the +3 degree wing of the college, the full-fledged Governing Body has not yet been formed. After disposal of WP(C) No.2639/2017, steps will be taken for formation of Governing Body for the college taking into account the Principal-in-charge of the college who will act as Secretary of the Governing Body.

The above matter may please be apprised to the Hon'ble Court".

7. To the submissions made by the learned Senior Counsel, Mr. S.K. Swain, learned counsel appearing for the Petitioner-Rudra Narayan Barik contended that though in terms of the order dtd.17.05.2018, Crime Branch has submitted a report by taking the date of his joining as 18.12.2003 and that of Smt. Mohanta as 15.12.2003, but the said report is not final in the eye of law and it is subject to challenge to be made by the Petitioner-Rudra Narayan Barik.

8. Having heard learned counsel for the Parties and after going through the materials available on record vis-à-vis the submissions made by the learned counsels appearing for the respective parties in both the writ petitions, it is found that +3 degree wing of the College was opened during the Academic Sessions 2003-2004 in terms of the permission accorded by the Government on 26.09.2003. The +3 wing of the College having been so opened during the academic sessions 2003-04, Petitioner Ramakanta Swain in W.P.(C) No.2639/2017 was allowed to discharge the duty of the Principal In-Charge of the +3 degree wing by the Governing Body of the College in its proceeding dtd.14.07.2003.

8.1. It is found from the record that after expiry of the term of the Governing Body, one Dr. Kartik Chandra Mishra was appointed as the Special Officer to discharge the duties of the Governing Body vide order dtd.12.05.2015 so issued by Opposite Party No.3. On being so appointed as Special Officer of the Governing Body Dr. K.C. Mishra vide order dtd.13.05.2015 requested the Petitioner-Ramakanta Swain to remain present on 14.05.2015 in order to hand

over the charge of the Principal In-charge of the +3 degree wing in favour of Opposite Party No.5. Vide another order so issued by the Special Officer on 14.05.2015, Opposite Party No.5 was appointed as Principal In-Charge of the +3 wing. As per the admission made by the Petitioner Ramakanta Swain in W.A. No.301 of 2018, it is found that he has already handed over the charge of the Principal In-Charge of the College in favour of Opposite Party No.5 in terms of the order dtd.17.05.2018 passed in W.P.(C) No.2639 of 2017.

8.2. It is also found that in terms of the order dtd.17.05.2018, not only the Petitioner Ramakanta Swain handed over the charge of +3 wing in favour of Opposite Party No.5, but also in terms of the said order a report has been submitted by the Crime Branch by holding the date of joining of Opposite Party No.5 as 15.12.2003 and that of the Petitioner-Rudra Narayan Barik in connected writ petition as 18.12.2003.

8.3. It is also found from the record that even though the terms of the Governing Body has since expired, but no step has been taken to reconstitute the Governing Body of the College.

8.4. In view of such position and considering the submissions made, both the writ petitions are disposed of inter alia with the following directions:-

(i) Opposite Party Nos.1 to 3 i.e. State in the Department of Higher Education, Director Higher Education and Regional Director of Education are directed to take effective steps for reconstitution of the Governing Body of Pateswar Degree Mahavidyalaya, Suakati in accordance with the relevant provisions contained under the Odisha Education (Establishment, Recognition and Management of Private Colleges) Rules, 1991;

(ii) For re-constitution of the Governing Body for such purpose, Opposite Party No.3 is directed to issue a direction on ADM, Keonjhar -cum-Special Officer, Governing Body of Pateswar Degree Mahavidyalaya to submit a proposal for such reconstitution within a period of two(2) weeks from the date of receipt of this order in accordance with the provisions contained under the aforesaid 1991 Rules.

(iii) ADM, Keonjhar-cum-Special Officer, on being so directed will submit a proposal for reconstitution of the Governing Body as provided under 1991 Rules within a period of four (4) weeks from the date of receipt of the direction.

(iv) Regional Director of Education after receipt of such proposal from the ADM-cum-Special Officer shall take effective step for reconstitution of the Governing Body with due approval within a period four(4) weeks from the date of receipt of such proposal.

(v) Reconstituted Governing Body after taking charge of the Management of Pateswar Degree Mahavidyalaya shall take a final decision with regard to the claim of inter se seniority in between Opposite Party Nos.5 and Opposite Party No.6/Petitioner in W.P.(C) No.21180 of 2017.

(vi) Reconstituted Governing Body while taking a decision on the question of seniority of Opposite Party No.5 and 6, shall take into consideration the relevant records available in the College and the report submitted by the Crime Branch in terms of the order passed by this Court on 17.05.2018 and by providing due opportunity of hearing to both Opposite Party Nos.5 and 6.

(vii) Till a fresh decision is taken by the reconstituted a Governing Body and in view of the admission made by the Petitioner- Ramakanta Swain that he has handed over the charge of Principal In-Charge of Pateswar Degree Mahavidyalaya in favour of Opposite Party No.5 in terms of order dtd.17.05.2018, Opposite Party No.5 will be allowed to continue as Principal In-Charge of the College till the seniority of Opposite Party No.5 vis-à-vis Opposite Party No.6 is so determined.

9. With the aforesaid observations and directions, both the Writ Petitions stand disposed of.

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