
(1969) 07 OHC CK 0040
In the Orissa High Court
Case No : O.J.C. No. 137 of 1965

Sankarsan Sarangi

APPELLANT

Vs

Chairman, Zilla Parishad and Others

RESPONDENT

Date of Decision : 18-07-1969

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1969) 35 CLT 1276

Hon'ble Judges : G.K. Misra, C.J; R.N. Misra, J

Bench : Division Bench

Advocate : R.C. Ram, for the Appellant; S. Mohanty, for Opp. Party No. 1, for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, J.—The Petitioner was serving as a Primary School teacher under the control of the Zilla Parishad, Puri, and at the relevant time was attached to the Damasahi U.P. School under the Ranpur Panchayat Samiti in that district. The Chairman of the Zilla Parishad visited the school on 24-1-1964 when Borne people of the locality represented to him against the Petitioner's conduct. The said Chairman directed that the Petitioner should be suspended from service and formal charges should be framed against him by the concerned Block Development Officer which should be disposed of in due course. The Block Development Officer, Ranpur, however, did not frame any charges, but forwarded to the Petitioner a copy of the Minutes drawn up by the Chairman, and directed the Petitioner to hand over charge to the assistant teacher of the school where he was serving.

2. The Petitioner submitted an explanation (Annexure B) on 12-3-1964 wherein he denied the allegations completely and requested that there be a formal enquiry and the order of suspension which, according to him, was not proper, should be recalled and he should be taken back to service. In the meantime there was an enquiry by some local people at the instance of the Chairman of the

Panchayat Samiti who came to a finding that the allegations made against the Petitioner were without basis. By an order dated 9-11-1964 the Chairman of the Zilla Parishad found the Petitioner guilty of grave misconduct and directed his discharge from service with retrospective effect from the date of his suspension (vide Annexure G). Being aggrieved by the said order of discharge, the Petitioner has moved this Court under Article 226 of the Constitution of India.

3. The Chairman of the Zilla Parishad alone entered appearance in this case and filed a counter affidavit accepting the basic allegations in the petition. It was however indicated in the counter affidavit that in respect of another allegation against the Petitioner at the instance of one Satyabadi Sahu a report was submitted by the Chairman, Panchayat Samiti. Odgan finding the Petitioner guilty of the accusations. The enquiry by the Chairman of the said Panchayat Samiti had been made in presence of the Petitioner and he had been" given opportunities to refute the allegations so made. The order of discharge was therefore justified according to the Chairman of the Zilla Parishad. The said report is Annexure 1 to the counter affidavit. The relevant portion thereof reads as follows:

The teacher Sri Sarangi being asked admitted that he himself gave a belt to the student taking price from the student. The matter was confronted with the Petitioner and Judhisthira Sahu who totally refused the versions of the teacher. Then the teacher was thoroughly examined who partly admitted the offence committed by him. The teacher gave some defence witnesses who were duly examined in presence of other gentlemen of the village. It is ascertained that the statements of his witnesses are not in favour of the teacher. Some persons supported the teacher. However, I find that the teacher is not free from doubt for which he deserves punishment. In my opinion he may be transferred to some other Samiti, with a fine equal to one month's pay.

4. The enquiring officer did not categorically record a finding of guilt so far as the Petitioner was concerned. Besides, in the absence of any material on record, the statement that the teacher had admitted certain facts before the enquiring officer or that the evidence recorded did not support the teacher's defence could not be accepted. We therefore caned upon the Chairman of the Panchayat Samiti to produce the records of the enquiry, referred to above, conducted by the Chairman, Panchayat Samiti, Odgan. In spite of adequate opportunities being given and the matter having been adjourned to enable the said Chairman to produce the records of such enquiry, the papers were not produced. In the circumstances, it is difficult to rely upon the conclusion indicated in the report referred to above. There is no material on record to show that the rules of natural justice were followed in the said enquiry.

5. The position that emerges out of the aforesaid discussion comes to this. In respect of the allegations made against the Petitioner in the order of the Chairman dated 24-1-1904, DO enquiry seems to have been made. Though the said order of the Chairman directed that the Block Development Officer was to

draw up proceedings against the teacher, obtain explanation from him and send the same to the Zilla Parishad with the comments of the Chairman of the Panchayat Samiti, those directions were not complied with. In respect of the enquiry conducted by the Chairman, Panchayat Samiti, Odgan, necessary materials were not placed on record to help us to conclude that the Petitioner had been given adequate opportunities to deny his guilt and establish his innocence. In the circumstances the report of the Chairman. Panchayat Samiti, Odgan cannot form the basis of the order of discharge which has been impugned before us in the writ application. The order of discharge also does not refer to the enquiry report of the Chairman, Panchayat Samiti, Odgan. That report is dated 11-12-1963, while the present order of discharge seems to have been based on the initial direction given on 21-1-1964. The order of discharge refers to the unsatisfactory character of the Petitioner's explanation. Therefore, it appears to us that the impugned order of discharge was made not on the basis of the report of the Chairman, Panchayat Samiti, Odgan said to be in the connected proceeding, but was on the basis of the proceedings drawn up on 24-1-1964.

6. During the pendency of this application, Mr. Mohanty appearing for the Chairman, Zilla Parishad (opposite party No. 1) brought to our notice that the Zilla Parishad constituted under Orissa Act VII of 1960 was not functioning and its management had vested in the Collector of Puri. The Petitioner thereupon made an application to implead the Collector of Puri as an opposite party and by our order dated 14-7-1969 the said application was allowed. Thereafter the learned Standing Counsel entered appearance on behalf of the Collector.

7. A similar matter came up for examination before this Court in *Udayanath Sahu v. Chairman, Zilla Parishad* 1967 C.L.T. 171 disposed of on 6-9-1966, wherein a teacher of an U.P. School under the control of the Zilla Parishad, Puri had been discharged from service. Two questions arose for consideration before this Court in the said application, namely, (1) was the impugned order of discharge valid, even though principles of natural justice were violated as no reasonable opportunity was given to the Petitioner to defend himself and (2) Was the impugned order liable to be quashed in exercise of the jurisdiction under Article 226 of the Constitution? The Court found that the order of discharge, without an enquiry and observing the principles of natural justice, was vitiated and was liable to be quashed. While considering the second point referred to above, the Court came to the conclusion that the Chairman of the Zilla Parishad was a public functionary and if he failed to observe the principles of natural justice in discharge of his public duties, this Court can quash such order in exercise of its power under Article 226 of the Constitution. For the reasons indicated in the said judgment, we come to hold that the impugned order of discharge is not sustainable in law and is therefore liable to be quashed, and that the Petitioner is entitled to invoke the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution to have the said illegal order quashed.

8. In the circumstances, the order dated 15-9-1964 passed by the Chairman,

Zilla Parishad, Puri is liable to be quashed. A writ of certiorari be issued quashing the impugned order and a writ of mandamus also be issued against the opposite parties directing them to treat the Petitioner to be still in service. This writ application is allowed with costs. Hearing fee of Rs. 100/- (one hundred).

C.K. Misra, C.J.

9. I agree.