
(2010) 02 OHC CK 0047
In the Orissa High Court

Saroj Kumar Nayak

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 22-02-2010

Acts Referred:

Citation : (2010) 109 CLT 865 : (2010) 1 OLR 737

Hon'ble Judges : B.N. Mahapatra, J;A.S. Naidu, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A.S. Naidu, J.—The petitioner seeks to assail the order dated 28.7.2008 (Annexure-11) passed by the Deputy Director, NGC-II suspending him from service in exercise of the powers conferred upon him under Sub-rule (1) of Rule 21 of the Orissa Education (Recruitment and Conditions of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974, in short, "1974 Rules" contemplating initiation of a proceeding, mainly on the ground that the said order not only suffers from lack of jurisdiction but also is otherwise unjust, illegal and contrary to law.

2. To understand the inter se disputes, it would be prudent to refer to state the case of the petitioner.

"Brundaban Subudhi College" situated at Daspalla in the district of Naygarh was established in the year 1977 and was recognized the prescribed authority as Intermediate Arts College in the year 1978. In the year 1981 the Governing Body of the said college decided to introduce "Education" as an optional subject. After receiving concurrence, steps were taken to fill up the said post. However, considering the financial position, the Governing Body decided to fill up the post on temporary basis for the time being. At the relevant time petitioner, who possessed M.A.Ed. qualification, was working as Headmaster of Patpurapatana U.G.M.Ed. School. He was requested to join as guest faculty in the college and teach Education. He accepted the offer subject to payment of Rs. 200/- per

month towards conveyance allowance. Accordingly, he took education classes in the morning hours i.e. between 7.30 A.M. to 9.30 A.M. After few years, it became difficult for the petitioner to serve as Headmaster in UGME School and also teach Education in the college. Consequently, the petitioner left the job of Headmaster with effect from 18.6.1987, joined the college permanently and received his salary month after month. The petitioner's services were approved by the Director, Higher Education by order dated 6.10.1989 and received 1/3rd grant-in-aid towards salary cost with effect from 1.3.1988. While working as Lecturer in B.S. College, Dasapalla, the petitioner was transferred to Rajsunakhala College and joined there on 20.7.1999 and continued till 30.6.2000. Thereafter he was again transferred to B.S. College, Dasapalla and joined there on 1.7.2000. Being the senior most lecturer, the Director, Higher Education by his order dated 22.2.2006 approved the petitioner as Principal-in-charge-cum-Secretary of B.S. College, Dasapalla vide Annexure-3.

3. In the year 2007 certain allegations were levelled against the petitioner with regard to the irregularities and financial embezzlement. He was called upon to show cause. The Governing Body of the College in its meeting held on 19.10.2007 came to the conclusion that the petitioner had neither committed any irregularities nor had suppressed any fact during his tenure of service and took a resolution to that effect on 19.10.2007 vide Annexure-7. While the matter stood thus, a report was received from the office of the Lokpal calling upon the petitioner to explain certain allegations levelled against the petitioner. After receipt of the notice, petitioner submitted his show cause. It is alleged that without affording any opportunity of hearing and without observing the principles of audi alteram partem, the Lokpal passed certain orders on 28.12.2007. After receipt of the report, it is alleged, the Director by order dated 28.7.2008 (Annexure-11) suspended the petitioner. The said order, as stated earlier, is assailed in this writ petition.

4. Mr. Rath, learned Counsel appearing for the petitioner forcefully submitted that the Director not being the appointing authority lacked the initial jurisdiction to suspend the petitioner from service and on that ground alone the order of suspension should be quashed.

5. Learned Counsel for the State on instruction submitted that in consonance with the observations made by the Lokpal in Case No. 873-LY(A), as the Governing Body did not take any action, the Director invoked the jurisdiction conferred upon him under Sub-rule (1) of Rule 21 of the 1974 Rules and passed the order of suspension. According to Mr. Mishra, learned Addl. Government Advocate, Rule 21 (1) of 1974 Rules empowers the Director to suspend a lecturer of aided educational institution, if the Governing Body failed to do so and as such, the order dated 28.7.2008 (Annexure-11) suffers from no infirmity.

6. Chapter VI of 1974 Rules deals with disciplinary action. Rule 20 stipulates different punishments to be imposed on an employee of aided educational institution. Rule 20(e) is the penalty of suspension. Rule 21, on the other hand,

deals with authority which may initiate a proceeding and impose punishment. It stipulates that in respect of lower grade employees, the punishment can be imposed by the Headmaster or the Principal, as the case may be, and in respect of any other employee, by the Managing Committee or Governing Body, as the case may be. Rule 21(1) is however is an exception. The said Rule reads 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 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 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;

Provided that in case of suspension of employees failing under Clauses (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:

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-rule (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.

(emphasis supplied)

7. The first proviso to Rule 21 of the 1974 Rules makes it clear that the Director shall have the power to imposes any of the punishments specified under Rule 20 only if the Managing Committee or the Governing Body, as the case may be, refuses or neglects to take disciplinary action against an employee.

8. In the case in hand, as would be evident from Annexure-11, contemplating to initiate a disciplinary proceeding against the petitioner in exercise of the powers conferred under Sub-rule (1) of the 1974 Rules he was placed under suspension. The order dated 28.7.2008 (Annexure-11) does not specify that the Director at

any time had called upon the Governing Body of the College to initiate any disciplinary proceeding and that the said Governing Body failed/refused or neglected to initiate such disciplinary action against the petitioner. In absence of the aforesaid contingency, the Director cannot exercise the power conferred upon him under Rule 21(1) of the 1974 Rules and suspend an employee.

9. In the counter affidavit filed by opposite party No. 2, however, a stand has been taken to the effect that the Governing Body was called upon to initiate a proceeding, but as no action was taken against the petitioner, consequently, the Director invoked the power under Rule 21(1) of the Rules, 1974.

10. A rejoinder affidavit has been filed by the petitioner denying the allegations made in the counter affidavit. It is stated that after receiving the communication from the Director, in fact the Governing Body called upon the petitioner to show cause. After perusal of the show cause and after conducting preliminary enquiry, the Governing Body was satisfied that the petitioner has neither suppressed any fact nor has committed any illegality or irregularity and the allegations levelled were baseless. On the basis of such satisfaction, the Governing Body decided not to take any coercive action against the petitioner as he was not found guilty. As stated earlier, the proviso to Rule 21 stipulates that the Director can initiate a disciplinary proceeding only if the Governing Body refuses or neglects to take disciplinary action against the employee concerned and not otherwise.

1. In the case in hand, as would be evident from the facts and circumstances and the pleadings, the Governing Body has neither refused nor neglected to take any action against the petitioner. On the contrary, the Governing Body after receipt of the communication from the Director, initiated a proceeding, called upon the petitioner to show cause, perused the materials available on record and arrived at a conclusion that the allegations made bear no truth and the petitioner was found to be not guilty of the charges.

12. In the case of *Ananta Charan Tripathy v. State of Orissa and Ors.* 67 (189) CLT 377, it has been held by this Court that the Director cannot on his own accord or straightway initiate any disciplinary proceeding. Furthermore, only in the event, the Governing Body is found to have neglected or failed to give effect to the direction issued by the Director or failed to discharge the duties imposed under the Education Act, then only the powers available to the Director can be exercised. Law requires that the Director can invoke the jurisdiction u/s 21 only if the Governing Body refuses or neglects to take disciplinary action. It is well settled that the provisions of the Act and Rules are to be complied in letter and spirit and not otherwise. In the case in hand, it clearly appears that on receipt of the information from the Director, the Governing Body initiated a proceeding, conducted an enquiry and found the petitioner not guilty and did not incline to initiate any disciplinary proceeding. Thus, the requirement of law is not satisfied and it cannot be presumed that the Governing Body refused or neglected. That apart, it appears that the petitioner retired from service on attaining the age of superannuation, only two days after, the order of suspension was passed. Thus,

contemplating to initiate a proceeding at the fag end of his career that too without following the mandatory requirements of law, cannot be sustained.

13. In view of the aforesaid facts, the order dated 28.7.2008 (Annexure-11) suspending the petitioner two days before he retires on attaining the age of superannuation without following the mandatory requirements of Rule 21(1) of 1974 Rules cannot be sustained and this Court therefore, has no hesitation to set aside the same. Accordingly, the impugned order dated 28.7.2008 (Annexure-11) is set aside and the writ petition is allowed.

B.N. Mahapatra, J.

14. I agree.