

(2003) 02 OHC CK 0033

In the Orissa High Court

Case No : O.J.C. No's. 7743 of 1995 and 3820 of 1998

Sri Amar Bilas Mohanty

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 19-02-2003

Acts Referred:

Citation : (2003) 02 OHC CK 0033

Hon'ble Judges : P.K. Mohanty, J;L. Mohapatra, J

Bench : Division Bench

Advocate : J.K. Rath, R.N. Mishra, for Petitioner 2 and S.K. Das, Debasis Panda and D. Pr. Dhal, for the Appellant; J.M. Mohanty, B.C. Das and D. Samal, J.K. Rath, N.C. Das, J.P. Pati, P.K. Das, B. Sarangi and S.N. Rath, for the Respondent

Final Decision : Dismissed

Judgement

1. The Petitioner in O.J.C. No. 7743 of 1995 calls in question the legality of the order passed by the Director, Higher Education, Orissa, in Annexure-14 rejecting the appeal of the Petitioner and confirming the order of the management terminating the services of the Petitioner.

The Petitioner in O.J.C. No. 3820 of 1998 calls in question the legality of the direction contained in Annexure-1 wherein it has been decided not to approve the post held by the Petitioner or release grant-in-aid in his favour till disposal of O.J.C. No. 8545 of 1994. Since the result of this writ application is dependent on the result of the O.J.C. No. 7743 of 1995 we proceed to first decide O.J.C. No. 7743 of 1995.

2. The case of the Petitioner in O.J.C. No. 7743 of 1995 is that Anchalika Mahavidyalaya, Udayapur is a recognised educational Institution. The institution had issued an advertisement on 17.8.87 for appointment to different posts of lecturer including that of Political Science. The Petitioner who had secured 59% of marks in the subject applied for the post and having been selected by the Governing Body joined as lecturer in Political Science in September 1987. While

continuing as such he was also kept in charge of the post of Principal of the College and continued as in-charge Principal till 26th February 1991. Due to personal difficulties and difference of opinion with the management, he resigned from the post of Principal and continued as Lecturer in Political Science. As per direction of the management he handed over charge of the office of the Principal to Anr. Lecturer of Oriya namely, Amulya Ghose. On 20th February 1992 he received a notice from the Secretary of the College to explain as to why disciplinary action would not be taken against him for his willful and deliberate long absence from the duty. After receipt of the notice the Petitioner submitted his reply in letter dated 21.2.92 denying the allegations. Again Anr. notice was issued to him on 29.10.92 asking him to explain as to why his services shall not be terminated on the allegation that he indulged in political activities and criticised the management and has also shown insubordination to the management. In reply to the said notice also the Petitioner submitted his explanation denying the charges. Again a third notice was issued on 19.11.92 by the management asking the Petitioner to explain as to why he would not be proceeded for gross negligence in duty and insubordination to the Governing Body. To this notice also the Petitioner replied stating that the allegations made therein were not correct. While the matter stood thus, the Petitioner received a letter from the Secretary of the Governing Body on 10.2.93 intimating the Petitioner therein that steps are being taken for issuing notice to him relating to termination of his services from the institution and ultimately by letter dated 18.3.93 the Secretary of the Governing Body intimated the Petitioner that his services were terminated with effect from the said date. Challenging such direction the Petitioner approached this Court in O.J.C. No. 8545 of 1994 and while disposing of the writ application this Court by order dated 6.3.95 directed the Petitioner to file an appeal before the Director, Higher Education. Pursuant to the said direction, the Petitioner filed an appeal and the appeal was dismissed in Annexure-14. Challenging the termination order of the Governing Body as well as the appellate order the present writ application has been filed.

3. Shri Rath the learned Counsel appearing for the Petitioner challenged the termination order as well as the order passed by the appellate authority basically on the following grounds:

(i) The Secretary of the Governing Body not being the appointing authority has no jurisdiction to pass the order of termination and Governing Body being the appointing authority is only authorised to terminate the services of the Petitioners.

(ii) The Petitioner having not been given opportunity of defending himself against the allegations made, there has been violation of principle of natural justice.

(iii) The appellate authority without going through the records and without assigning any reason dismissed the appeal and accordingly the same is not sustainable in law.

In support of his contention, Shri Rath referred to several resolutions and letters annexed to the writ application as well as counter affidavit which will be dealt with later on.

4. The Governing Body, Opposite party No. 3 has filed counter affidavit through its Secretary. In the said counter affidavit it is stated that while the Petitioner was kept in charge of the Principal of the college, he failed to discharge his duty properly and remained absent unauthorisedly and even also did not turn up on the reopening day. The college had to remain closed during the tenure of the Petitioner as in-charge Principal and while working in the institution the Petitioner also worked in Anr. college. Whenever the Petitioner was made aware of his conduct, he prayed to be excused and promised not to repeat such activities. Considering the above conduct of the Petitioners, the Governing Body after giving him due notice decided to terminate his services and therefore, there was no illegality in the order of termination.

5. Keeping in mind the case of the Petitioner as well as the stand taken by the Opposite party No. 3 in the counter affidavit, we think it proper to refer certain Annexures which relate to the grounds on which the Governing Body decided to terminate the services of the Petitioner. There is no dispute that the Petitioner had been duly appointed as a Lecturer in Political Science in the college and there is also no dispute that for certain period the Petitioner had been kept in charge of the post of Principal. It appears that the Secretary of the Governing Body on 20th February, 1992 issued a notice to the Petitioner asking him to explain as to why disciplinary action shall not be taken against him for his wilful and deliberate long absence from the duty in spite of previous warnings and he was also further asked to explain how he was attending Anr. institution expecting to be appointed there ignoring the duties and responsibilities of the institution where he was working. In reply to the said notice the Petitioner in Annexure-5 stated that he was absent due to his wife's ill health and assumed that he shall never commit such mistake again and maintain the sanctity and discipline of the institution. The relevant portion of the explanation which is stated to be an admission of the Petitioner about his conduct is quoted below.

I assure that, I shall never commit such mistake again. I also assure that, I shall, maintain the sanctity and discipline of the institution. I shall never neglect in duty and responsibility entrusted to me from time to time, I shall maintain Secrecy and identity of the institution as well as Governing Body and never be involved such activities which will defame the institution and the Governing Body.

6. From Annexure-6 it further appears that the Petitioner was given Anr. notice to show cause as to why his services shall not be terminated as he was found indulging himself in creating groupies with the help of some outsiders to work against the interest of the management. In reply to the said notice it is stated by the learned Counsel for the opposite parties that a similar explanation was given by the Petitioner stating that he would not commit such mistake in future. Three of the resolutions of the Governing Body were brought to the notice of the Court

by Shri Rath the learned Counsel appearing for the Petitioner stating that manipulation and interpolation were made in the said resolutions so far as termination of the Petitioner's service is concerned. After perusal of the xerox copies of the resolutions since we had some doubt in our mind, the Resolution Book had been called for. At the time of hearing of the writ application, the Resolution Book was placed before us by the learned Counsel for the Governing Body, Opposite party No. 3, Shri Rath had drawn our attention to the resolution dated 21.10.92 annexed as Annexure-2 and it was contended that the resolution relating to termination of the services of the Petitioner was subsequently inserted in the resolution dated 21.10.92. From the original Resolution Book we find that the relevant portion wherein the case of the Petitioner has been dealt with is a continuance of resolution dated 21.10.92 and there is no substance in the contention of the learned Counsel for the Petitioner that the said portion of the resolution had been subsequently inserted. Similarly in relation to resolution dated 12.4.93 it was contended by the learned Counsel for the Petitioner that the decision to terminate the services of the Petitioner as appearing in the said resolution had been interpolated later on which is evident from the resolution itself. After going through the entire resolution, we are of the view that even the said line with regard to the decision of the Governing Body to terminate the services of the Petitioner is taken out from the resolution, the decision of the Governing Body to terminate the services of the Petitioner is evident from the rest part of it. Therefore, we are of the view that even if the contention of the learned Counsel for the Petitioner that one line with regard to termination of the services of the Petitioner is inserted later on is accepted, the same makes no difference since the other portion of the resolution clearly indicates the intention of the Governing Body to terminate the services of the Petitioner.

7. Now coming to the conduct of the Petitioner, it appears from the notice issued by the Governing Body that the Petitioner was remaining absent unauthorisedly for a long period from the college and for a particular period he was attending some other college. In order to substantiate the said allegation, Shri Mohanty, the learned Counsel for the Governing Body referred to the explanations given by the Petitioner to the notice. On perusal of those explanations such as Annexure-5 and Annexure-K/3, it appears that the Petitioner never disputed the allegations made by the Governing Body but only stated that he would not commit such mistake in future. So far as attending Anr. college during his incumbency in this institution is concerned, though the Petitioner denied to have worked in such college, it appears that in Annexure-L/3 the Governing Body had sought for information from the Principal of the D.L. College, Bahalda as to whether the Petitioner was working there or not. In reply to the said query, the Principal of the D.L. College, Bahalda in Annexure-M/3 intimated that the Petitioner was working in that college for certain period. There is no reason to disbelieve the letter of the Principal D.L. College in Annexure-M/3 and from the said document it is clear that while serving in the college of Opp. Party No. 3 the Petitioner also served in Anr. college for a brief period. Through this aspect of the Governing

Body's case is seriously opposed to by Shri Rath referring to certain dates, after perusal of all the Annexures attached to the writ application, we are of the view that for a brief period the Petitioner served in the D.L. College. Bahalda without permission of the Governing Body. Various resolutions referred to by the learned Counsel for the parties also indicate that the Petitioner got himself indulged in the activities which are detrimental to the interest to the institution and for such activities of the Petitioner, the Governing Body had to pass resolution to terminate the services of the Petitioner. From the records, we find that several resolutions had been passed criticising the conduct of the Petitioners and several opportunities had been given to the Petitioner to improve. The Petitioner has been at least three times given notice to show cause as to why disciplinary action shall not be taken against him and therefore, it cannot be said that the principle of natural justice had been violated while terminating the services of the Petitioner.

8. Coming to the question as to whether the Secretary had jurisdiction to pass the order of termination, it appears that the Secretary only acted pursuant to the decision of the Governing Body in various resolutions. No decision was taken by the Secretary independently without the instruction of the Governing Body. On the other hand, from Annexure-6 it appears that the Governing Body had empowered the Secretary to terminate the services of the Petitioner for his negligence in discharging duty and responsibility as well as deliberate and wilful absence from duty. We are not in a position to accept the contention of Shri Rath, the learned Counsel appearing for the Petitioner that the Secretary had taken the decision to terminate the services of the Petitioner and accordingly did so. From the resolution as well as from Annexure-6, it is clear that the Secretary was acting on behalf of the Governing Body and on the instruction of the Governing Body.

9. So far as the appellate order is concerned, though the learned Counsel for the Petitioner Shri Rath may be correct in saying a detained discussions of the material available have not been discussed, we are also not in a position to accept the contention of the learned Counsel that no reason at all has been assigned by the appellate authority while dismissing the appeal. In paragraph-7 of the order, the appellate authority though has not given detailed reasons, has referred to certain irregularities committed by the Petitioner while working as lecturer in the college. Therefore we also do not find any infirmity in the order of the appellate authority.

10. In view of the reasons stated above, we do not find any merit in the writ application (O.J.C. No. 7743 of 1995) and the same stands dismissed.

11. So far as O.J.C. No. 3820 of 1998 is concerned, the case of the Petitioner therein is that the post of Junior Lecturer in Political Science was initially held by Amarbilash Mohanty (Petitioner in O.J.C. No. 7743 of 1995) who joined the post on 9.7.1987. The services of Shri Mohanty were terminated with effect from 18.3.1993 and in the resultant vacancy the Petitioner was offered appointment

and accordingly he joined on 7.5.1993. The further case of the Petitioner is that he is continuing in the said post and the Governing Body of the institution in its resolution dated 29.3.1993 approved his appointment. The grievance of the Petitioner is that though the institution was admitted to the grant-in-aid and the Governing Body had submitted the required records for verification and certain posts have been approved for the purpose of grant-in-aid, but the case of the Petitioner was not considered in view of the writ application filed by Shri Amarbilash Mohanty. The Petitioner approached this Court in O.J.C. No. 5891 of 1997 and by order dated 12.5.1997 this Court disposed of the writ application directing the Director, Higher Education to take a decision in the matter of approval and release of grant-in-aid in respect of the post held by the Petitioner within a specified time. Pursuant to the aforesaid direction, the Director, Higher Education has passed the impugned order stating that the post held by the Petitioner shall not be approved and grant-in-aid shall not be released till disposal of O.J.C. No. 8545 of 1994. From the records it appears that Amarbilash Mohanty whose services had been terminated and in the resultant vacancy the Petitioner was appointed had approached this Court in O.J.C. No. 8545 of 1994 challenging the order of termination. The said writ application was disposed of on 6.3.1995 directing him to approach the Director, Higher Education in appeal since the college at that appoint of time had not received aid. The Director having dismissed the appeal, Shri Amarbilash Mohanty filed O.J. C. No. 7743 of 1995 which has been taken up by us for hearing along with this case.

12. As is evident from the discussions made earlier, we did not find any merit in O.J.C. No. 7743 of 1995. In view of the dismissal of the aforesaid writ application there shall be no difficulty on the part of the Director, Higher Education to take a decision with regard to the approval of the post held by the Petitioner in this writ application as well as release of grant-in-aid.

13. We accordingly quash Annexure-1 and direct the Director, Higher Education to take a decision with regard to the approval of the post held by the Petitioner as well as release of grant-in-aid within a period of four months from the date of communication of this order.

P.K. Mohanty, J.

14. I agree.