
(2023) 12 OHC CK 0145
In the Orissa High Court
Case No : Writ Petition (C) No.9343 Of 2014

Sumati Das

APPELLANT

Vs

State Of Orissa And Others

RESPONDENT

Date of Decision : 22-12-2023

Acts Referred:

Citation : (2023) 12 OHC CK 0145

Hon'ble Judges : G. Satapathy, J

Bench : Single Bench

Advocate : S.K. Das, D. Mohapatra, J. Biswal

Final Decision : Dismissed

Judgement

G. Satapathy, J.

1. The petitioner by filing this writ has prayed to quash the order passed on 24.04.2014 by the learned District Education Officer, Balasore vide Annexure-14 holding her to have no right to continue as a teacher at all in the B.K. SC/ST Girls' High School Badapadhiaripur.

2. Facts in precise leading to filing of the writ by the Petitioner is that B.K. SC/ST Girls' High School, Badapadhiaripur is an unaided recognized High School within the meaning of Sec. 3(P) of the Odisha Education Act, 1969 (In short the "Act") and the petitioner having M.A. B.Ed qualification was appointed as an Assistant Teacher against the Trained Graduate Post and she being the senior most teacher of the School was allowed to continue as Headmistress in charge by the Managing Committee (MC) vide an order dated 20.06.2001 and the Petitioner joined in the School on 30.06.2001. While continuing as such, the Petitioner met with an accident on 05.04.2011 and was admitted to hospital and for such illness, the Petitioner was on leave till 11.08.2012 and she joined on duty on 12.08.2012, but during the period of absence of the Petitioner, the MC appointed OP No.5 as a teacher against the leave vacancy of the Petitioner, however, OP No.5 was only simple Arts Graduate without having any training qualification and

no procedure of appointment was followed in appointing OP No.5 in the School and, thereby, OP No.5 being appointed against leave vacancy, her appointment to the post was automatically terminated on rejoining of the Petitioner on 12.08.2012. After joining of the Petitioner, she was issued with an Identity Card by the Board of Secondary Education(BSE), Odisha to discharge duties of Headmistress of the School and to receive the pass certificate and other documents of the students. Accordingly, the Petitioner was discharging her duties in terms of the order of Authorities under Annexure-6 and 7, but surprisingly OP No.5 by impersonating herself as Headmistress of the School took away the DR of the School from Zonal Office of the Board at Balasore in the month of November, 2013 and she, thereby, claimed to be the Headmistress of the School and coming to know about this fact, the Petitioner immediately approached the Board Authorities on 23.11.2013 and accordingly, the Additional DEO, Balasore in his letter No. 23354 dated 27.11.2013 reported to the Deputy Secretary, BSE Odisha by recognizing the Petitioner as the Headmistress of the School, but OP No.3 issued letter vide Annexure-10 directing the Petitioner and OP No.5 to attend his Office on 18.02.2014 to substantiate their claim to the post of Headmistress and in response to such order, the Petitioner personally appeared before OP No.3 and submitted records/documents in support of her claim, but OP No.3 misbehaved the Petitioner and the Petitioner was constrained to institute a complaint against him in 1CC Case No.221 of 2014 in the Court of SDJM, Balasore which was registered as Sahadevkhunta PS Case No. 73 of 2014 and thereafter, OP No.3 reported against the Petitioner to the Director who without accepting the report of OP No.3 directed OP No.3 again to submit a report on the issues with regard to MC and genuineness of appointment of the Petitioner as Headmistress, but OP No.3 submitted a report to the Director vide Annexure-14 without affording any opportunity of being heard to the Petitioner by holding the Petitioner to have no right to continue as a teacher in the School. Hence, the Petitioner by way of this writ prays to quash the order at Annexure-14 and direct OP No.3 not to interfere in the smooth functioning of the Petitioner in the School.

3. In response to the notice of the writ, OP No.3 filed his counter supported with an affidavit denying all the allegations made against it by inter-alia averring that the Petitioner and OP No.5 had issued letter on 11. 12.2013 and 30.11.2013 respectively by claiming individually as the Headmistress in-charge of the School, but they being appointed by two rival Management Committees were claiming as such and accordingly, OP No.3 directed both Petitioner and OP No.5 to remain present on 18.02.2014 to attend an enquiry, but in such enquiry, the Petitioner failed to produce any authenticated records in support of her claim as Headmistress in-charge of the School and accordingly, the DEO withdrew the Identity Card of the Petitioner for receiving Board Certificate from BSE, Odisha vide Annexure A/3 and thereafter, OP No.3 was constrained to make an order authorizing OP No.5 to officiate as Headmistress in-charge to run the School activities only. It is also claimed by OP No.3 in the counter that the Petitioner had also tendered resignation on 06.04.2011 in the School pad to the Secretary of

MC on her ill health ground vide Annexure-C/3 and accordingly, the MC vide resolution dated 06.04.2011 had resolved to accept the resignation of the Petitioner which was confirmed on 09.04.2011 vide Annexure D/3. OP No.3 has further stated in the counter that since the Petitioner misbehaved the then DEO on 19.02.2014 in his chamber, an FIR was lodged against her vide Annexure-E/3 and the Petitioner not having requisite qualification of B.Ed, her appointment as TGT in the School was under questioned and accordingly, OP No.3 has also submitted report in this regard to the Joint Director, RDE, Bhubaneswar. OP No.3 has accordingly, by filing this counter claims that the writ is not maintainable. No rejoinder to counter of OP No.3 has been filed by the Petitioner.

4. Heard, Mr. S.K. Das, learned counsel for the Petitioner, Mr. D. Mohapatra, learned ASC appearing for OP Nos. 1 to 3 and Mr. J. Biswal, learned counsel appearing for OP No.5, but none appears for OP No.4 so also the so called intervener.

5. In the course of argument, Mr. Das has claimed that the Petitioner being appointed on 20. 06.2001 as Assistant Teacher Joined in the School on 30.06.2001 and her joining report was accepted vide Annexure 2, but the Petitioner unfortunately being met with an accident, was forced to take leave since 05.04.2011 and during the leave period till 11. 08.2012, OP No.5 was appointed against leave vacancy of the Petitioner and, thereby, the appointment of OP No.5 was valid for a period of one year or rejoining of the Petitioner in terms of order under Annexure-3 and soon after joining of the Petitioner on 12.08.2012, the service of OP No.5 was automatically terminated which is evident from Annexures- 6 and 7 by which the Petitioner was issued with Identity Card as Headmistress of the School, but subsequently Petitioner came to know that the OP No.5 has unauthorizedly received the DR of the School, and thereby, claimed illegally herself to the Post of Headmistress of the School, but the claim of the Petitioner was subsequently substantiated and recognized vide letter issued by Additional DEO, Balasore under Annexure 9, wherein the Petitioner has been described as genuine Headmistress in-charge of the School, however, ignoring these documents and facts, OP No.3 has issued Annexure-14 only to satisfy his grudge because the Petitioner has lodged a criminal case against the then OP No.3 and thereby, the order issued by OP No.3 under Annexure-14 being illegal is required to be set aside and the Petitioner may kindly be allowed to continue as a teacher in the School.

6. In reply Mr. D. Mohapatra, learned ASC appearing for OP Nos. 1 to 3 has submitted that the Petitioner has clearly resigned from the service which was accepted by the MC, but subsequently manipulating some records, the Petitioner claimed to be the Headmistress of the School which was negated in the enquiry conducted by OP No.3. Mr. Mohapatra, has also submitted that since the Petitioner has misbehaved the then DEO, an FIR was also being lodged against her and the Petitioner having voluntarily tendered her resignation which was accepted by MC, her claim to the post subsequently cannot be considered.

Accordingly, Mr.D.Mohapatra has prayed to dismiss the writ.

7. Mr. J. Biswal, learned counsel appearing for OP No.5 while reiterating the fact of resignation of the Petitioner has submitted that at present the Petitioner is also not coming to the School, whereas OP No.5 is continuing in the Post which is evident from the instruction received by this Court on 15.11.2013. Mr. Biswal, accordingly, has prayed to dismiss the writ.

8. Admittedly, Petitioner and OP No.5 claim to the post of Headmistress, but the Petitioner claims herself to have been appointed to the Post on 20.06.2001 and joined in the service on 30.06.2001, however, according to the Petitioner, she met with an accident on 05.04.2011 and was hospitalized and, therefore, she availed leave till 11.08.2012. It is not in dispute that no document has been filed by the Petitioner to evidence that she was allowed leave from 05.04.2011 to 11.08.2012 which she claimed. On the contrary, OP No.3 has produced documents vide Annexure C/3, wherein the Petitioner in clear terms has tendered resignation on 06.04.2011 on account of her ill health and Diabetes and the same was accepted by the MC in their resolution dated 09.04.2011, but the Petitioner could not dispute these two documents either filing by rejoinder to the counter of OP No.3 or producing any independent document. Besides, this Court by an order passed on 03.11.2023 has asked the learned ASC to produce the report of concerned DEO as to the present status of the Petitioner and OP No.5 by indicating therein as to who is continuing in the school and accordingly, the learned ASC has produced the written instruction received from the concerned DEO on 15.11.2023 in which the DEO vide letter No. 13176 dated 13.11.2023 has clearly indicated that during his visit to School on 11.11.2023, he found OP No.5 to be working as a Headmistress in-charge of the School, whereas Petitioner is not coming to the School. Moreover, the DEO, Balasore vide Office order No. 1317 dated 20.02.2014 has passed the following order:

"The controversy regarding genuineness of the Headmistress, B.K.S.C.S.T. Girls' High School, Badapadhiaripur, Basta has been continuing for some time past. In order to settle the matter, both the claimants namely Smt. Sumati Das and Smt. Ranjita Mohanty were called to attend an enquiry on 18.02.2014 to produce records in favour of their claims. The relevant records and files of the office were also referred.

But, Smt. Sumati Das failed to produce any records in support of her claim for the post of Headmistress of B.K. S.C.S.T. Girls' High School, Badapadhiaripur, Basta Block.

Previously she misrepresented the facts and managed to obtain an identity card to enable her to receive admit cards, H.S.C. certificates etc; from the Board. On the other hand, it is seen that such identity card had already been issued in favour of another person.

In view of the above facts, it is clear that, Smt. Sumati Das failed to prove herself as the genuine Headmistress of B.K.S.C.S.T. Girls' High School,

Badapadhiaripur, Basta. Therefore, the intimation/letter of Authority issued earlier in her favour vide this office letter No. 23354 dtd 27.11.2013 regarding the name of genuine Headmistress vide letter No.742 dtd. 18.01.2013 for issue of Identity Card are hereby withdrawn and simultaneously issue of Identity Card for receipt of Board certificate etc. issued vide SL.No.18729 of the "Dy. Secretary, Board of Secondary Education (O), Balasore Zone and attestation of signature of Smt. Sumati Das is hereby cancelled.

However, the admit cards for the ensuing A.H.S.C. Examination-2014 for the candidates of the said school may be handed over to the Centre Superintendent, Headmaster, R.N. High School, Paunsakuli, where such candidates shall appear in the said Examination-2014".

9. It is, of course, found from the record that the Petitioner as well as OP No.3 had lodged FIR against each other for matters relating to their allegation against each other, but that document would not be enough to override the resignation tendered by the Petitioner and when the Petitioner has herself tendered resignation, she cannot blame others. Besides, the Petitioner also claims that OP No.5 is not eligible to hold the post, but when she appears to have tendered resignation, how come she would have any authority to challenge the qualification of other Candidates which has been considered by the MC. It is also not disputed that OP No.5 was appointed by the MC. When the Petitioner could not able to produce a single scrap of paper to the effect that she was allowed to avail the leave, how come she claimed to the post of Headmistress in-charge subsequently after a gap of 1 year 4 months without leave being sanctioned and if these facts are considered on the backdrop of resignation letter dated 06.04.2011 by the Petitioner herself addressing to MC of the School which was not disputed, and the letter having endorsed by the Secretary of the School as well as attested by OP No.5 and when such resignation of petitioner was also accepted by the MC vide their resolution dated 09.04.2011, the claim of the Petitioner cannot be considered to be the Headmistress of the school and thereby, the order passed by the OP No.3 vide Annexure-14 cannot be considered as illegal or arbitrary.

10. On a conspectus of the admitted averments of the writ petition and the counter affidavit of OP No.3 together with the documents produced by both the parties, the claim of the Petitioner cannot be considered, especially when she has tendered resignation voluntarily and, therefore, the writ petition merits no consideration.

11. In the result, the writ petition stands dismissed on contest, but in the circumstance, there is no order as to costs.

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