

(2025) 11 OHC CK 1896
In the Orissa High Court
Case No : Writ Petition (C) No. 24111 Of 2023

Tapaswini Pattnaik

APPELLANT

Vs

State Of Odisha & Others

RESPONDENT

Date of Decision : 13-11-2025

Acts Referred:

Constitution Of India, 1950 — Article 14
Transfer Of Property Act, 1882 — Section 52

Citation : (2025) 11 OHC CK 1896

Hon'ble Judges : Dixit Krishna Shripad, J

Bench : Single Bench

Advocate : S.K. Mishra, B.P. Pradhan, S.B. Mohanty, S.S. Pratap, G.C. Paikaray

Final Decision : Allowed

Judgement

Dixit Krishna Shripad, J

1. Petitioner is invoking writ jurisdiction of this Court seeking quashment of the order dated 28.07.2023 passed by OP No.2 at Annexure-9. The relevant part of the said order reads as under:

"In such view, I am of the opinion that there is no dispute that, Smt. Tapaswini Pattnaik was appointed in the college as a Lect. In Sanskrit Vyakaran. But due to her long absence since October, 2002, the managing committee of the college vide G.B. Resolution 47 dated 09.03.2003 and G.B. Resolution 48 dated 28.06.2003 unanimously terminated her service which was communicated to her vide the college letter no. 195(A) dated 29.06.2003 with prior notice vide letter No. 85 dated 15.04.2002 and appointed Ms. Saralabala Nanda against the vacancy arose due to Smt. Pattnaik's long absence. Ms. Nanda has been working sincerely in the college since her joining till date. Therefore, the claim of Smt. Tapaswini Pattnaik in W.P. (C) No. 17833/2018 to implement the erstwhile DHE(O) Order No. 25884 dated 19.07.2018 and allow her to resume her duty in the College as usual in her original post is rejected being devoid of any merit. On

the other hand, Ms. Saralabala Nanda is allowed to continue her duties against the 2nd post of Lecturer in Sanskrit Vyakarana in the college.”

2. Brief facts of the case:

2.1. Petitioner joined service as Lecturer in Sanskrit Vyakarana vide letter of appointment dated 15.04.1998. Petitioner was prevented from discharging the duties w.e.f. 16.03.2004. She had filed appeal before the Director-OP No.2 that was kept unconsidered. A co-ordinate Bench of this Court in her WP(C) No. 11860 of 2010 disposed off on 26.07.2010 directed consideration of the appeal. Accordingly, the Director on 19.07.2018 allowed the appeal and instructed Sub-Collector to permit petitioner to rejoin her duties in the College. Petitioner reported for duty on 20.07.2018.

2.2. OP No.5 filed WP(C) No.16089 of 2018 challenging appeal order dated 19.07.2018 made by the Director. Petitioner too filed WP(C) No.17833 of 2018 seeking implementation of said order. Both the petitions were heard and disposed of by a Co-ordinate Bench of this Court vide common order 22.07.2022, whereby matter was remitted back for de novo consideration. The Director, vide order dated 28.07.2023, having considered the matter, rejected petitioner’s claim and favoured that of OP No.5. He further instructed the Governing Body of the Institution to submit papers for approval of her appointment. Aggrieved thereby, petitioner has filed this petition.

3. Submission of counsel for petitioner:

3.1. Learned counsel for the petitioner argued that:

(i) There is no reason or rhyme for his client to abandon the job, that too in these difficult days of employment; petitioner was appointed after due selection. Her appointment was ratified by the Governing Body, vide Resolution dated 31.05.1998. She was forcibly prevented from discharging her duties w.e.f. 16.03.2004 and this act on the part of Management amounted to removal from service vide *Narendra Kumar Choudhury v. State of Orissa*, 1994 (II) OLR 218.

(ii) The extant Government Circular provides for departmental appeal and accordingly petitioner’s appeal in terms of this Court’s intervention, as mentioned above, came to be allowed on 19.07.2018 instructing the Sub-Collector to permit her to rejoin duty. Petitioner submitted joining report on the following day. However, as already mentioned, WPs of OP No.5 and of petitioner came to be disposed off by a common order dated 22.07.2022 remanding the matter for fresh consideration after hearing both the parties. The Director, without any reason or rhyme, favoured claim of OP No.5 for approval of her appointment and rejected petitioner’s appeal.

(iii) There is abundant material to demonstrate that petitioner’s appeal was meritorious, and therefore ought to have been allowed. As a consequence, the claim of OP No.5, that she has been appointed to the eventual vacancy of petitioner, ought to have been rejected. In fact, OP No.5 was appointed to

another post much before the so called eventual vacancy that arose allegedly because of petitioner's termination. In fact, the said OP was allegedly appointed much before such termination.

(iv) At no point of time, petitioner was issued any call notice nor anybody from the Management contacted the petitioner or her father, to secure her back to the portals of employment. A copy of notice, which OPs are harping upon, was never served on the petitioner and thus impugned action is violative of principles of natural justice.

4. Submission of learned AGA appearing for official OPs, and learned counsel representing private OPs.

(i) Petitioner has not filed any appeal under the extant Government Circular and therefore the finding of the Director to the same effect is unassailable. He has misled the co-ordinate Bench in securing an order for remand & reconsideration.

(ii) OP No.5 was selected for appointment to the vacancy which the petitioner was holding before abandoning the job, and that petitioner having unauthorizedly remained absent, she has been rightly discharged from service.

(iii) Having abandoned the job with no justification whatsoever and having not responded to the call notice, the termination of petitioner and consequential direction for approval of appointment of OP No.5 cannot be faltered with in exercise of writ jurisdiction, especially when the authorities having examined all aspects have rejected petitioner's claim.

5. Having heard learned counsel for the parties and having perused the petition papers, this Court is inclined to grant indulgence in the matter as under and for the following reasons:

5.1. The first contention of the petitioner, that she was prevented from discharging her duties and that eventually amounted to removal from service, is substantially established. For filing an appeal, there need not be a positive order of removal, and that unlawfully preventing an employee from discharging his/her duties amounts to removal vide *Narendra Kumar Choudhury supra*. No explanation is offered by the other side as to why a person, having been selected in the open competition followed by regular appointment order dated 15.04.1998 and having put in about 14 years of continuous & spotless service, would one fine day disappear from employment. In these hard days of unemployment, more particularly for women, there has to be a strong case made out that the employee has abandoned the job. It is not the case of other side that petitioner had got alternate means of livelihood with honour and therefore, having been attracted to other means, she had quit the job. This aspect of the matter has not been reflected in the impugned order and that constitutes the first legal infirmity from which the impugned order suffers.

5.2. The vehement contention of learned advocate appearing for OP No.5, that at least the petitioner ought to have turned back to the precincts of employment

once the call notice was issued by the Management, is liable to be rejected for more than one reason: The so called notice dated 20.10.2003, whereby petitioner is said to have been called back to report for duty, is not shown to have been served on her. Who carried this notice, on whom & when it was served have not been pleaded, much less proved by placing on record any evidentiary material either before the Director or before this Court. Abandonment of service cannot be readily inferred, especially when the service of call notice, if any, is not substantiated. An argument to the contrary would imperil persons in employment, by placing them at the whims & fancies of unscrupulous employers, whose number may be small; however, such employers do obtain in all sectors, needs no research.

5.3. The vehement contention of learned counsel appearing for OP No.5 that there was no appeal filed by the petitioner again does not gain acceptance. Firstly, when the Director, vide order dated 19.07.2008, had directed Sub-Collector to take the petitioner back to duty, no such observation is made. Had there been no appeal, the Co-ordinate Bench would have straightway dismissed petitioner's WP(C) No. 11860 of 2010. Secondly, no such contention was taken by the other side and no such thing can be inferred merely because the learned Co-ordinate Judge had directed the petitioner to file inter alia a copy of appeal memo with the Director. It hardly needs to be stated that the Government Circular providing for departmental appeal does not prescribe any form of appeal and therefore, even if a representation is filed, the same has to be treated as an appeal in terms of said Circular. In department appeal what one has to see is not the form but the substance, inasmuch as form follows the substance.

5.4. Once abandonment of employment is not substantiated, then case of the petitioner travels to the realm of principles of natural justice, which are held to be a part of Article 14 jurisprudence. In a society like ours, job is the means of livelihood and tool of dignity. At times, the employee happens to be the breadwinner of the family. Snatching job of a duly selected & employed person after years of employment, sans a reasonable opportunity of hearing, is grossly violative of these sacrosanct principles. Even God is said to have given an opportunity of hearing to Adam & Eve for consuming the proscribed fruit in the Eden Garden. Then what justification can lie for mortal men not to follow the suit ? No plausible explanation is offered to this point, passionately urged by petitioner's counsel. The Apex Court's observations made in this regard in *S.L. Kapoor v. Jagmohan*, AIR 1981 SC 136 would come to the aid of petitioner.

5.5. The passionate submission of learned counsel appearing for the Management & OP No.5, that to the vacancy created by the alleged abandonment of job, OP No.5 has been appointed, is an academic question in the light of whatever has been observed above and therefore, would pale into significance. When a person is appointed to a particular vacancy created by removal of the incumbent, such an appointment is always subject to outcome of the challenge to such removal. A kind of doctrine of *lis pendens* (Sec.52 of the

Transfer of Property Act, 1882) would come into play. Otherwise, even if a person succeeds in challenge to his removal, he cannot be reinstated, and that runs counter to the norms of service jurisprudence. This is not to say that the new person appointed, i.e., OP No.5 cannot be accommodated in some other place. In fact, it is the case of petitioner that the said OP gained entry to the service much before she was removed, and that the said OP had held some other post. It appears to be that way, regardless of the contentions taken up by the other side in the course of legal battle.

5.6. The impugned order has been made very casually and without ascertaining the factuals from record and sans drawing appropriate inferences from the demonstrable facts. Such a simple case of termination has taken years, three rounds of legal battle, i.e., WP(C) No. 11860 of 2010, WP(C) No. 17833 of 2018 & WP at hands. At least, as a concession to the shortness of human life and the miseries which the life put as challenges, the legal battle should have been over long long ago. Why the appeal on remand took three more years at the hands of the Director, is un-understandable to any sensible mind. In disputes of removal, be it by way of dismissal or otherwise, the authorities should make all endeavours to resolve on a war footing, since it involves the means of livelihood. At the same time, it needs to be borne in mind that remand after remand would not augur well to the aggrieved citizens. The powers of the Writ Court are ordinarily coextensive with that of the authority whose proceedings are called in question for judicial review.

Thus, what order the Director ought to have passed, the Writ Court can justifiably pass.

In the above circumstances, this petition succeeds. A Writ of Certiorari issues quashing the impugned order and a consequential Writ of Mandamus issues directing petitioner's reinstatement in service forthwith and in any circumstances within eight (8) weeks with continuity of service, but sans back wages. OP No.4- Managing Body shall pay to the petitioner a cost of Rs.20,000/- (rupees twenty thousand) only within eight

(8) weeks, failing which it shall pay additional amount of Rs.100/- (one hundred) only per day of delay.

Web copy of judgment to be acted upon by all concerned.