
(1966) 09 OHC CK 0017
In the Orissa High Court

Udayanath Sahu

APPELLANT

Vs

Zilla Parishad (by Chairman) and Others

RESPONDENT

Date of Decision : 06-09-1966

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1967) 33 CLT 171 : (1967) 2 LLJ 572

Hon'ble Judges : Barman, Acting C.J.;G.K. Misra, J

Bench : Division Bench

Judgement

G.K. Misra, J.—The petitioner was the head teacher In Manibandha upper primary school within the Jurisdiction of Panchayat Samiti, Bolgarh, In the district of Purl. Eight charges were levelled against him on 18 May 1964 by Sri C.S. Pattnayak, Chairman, Bolgarh Panchayat Samiti and the Block Development Officer. These charges broadly related to misappropriation of the funds, non-observance of the leave rules, not handing over articles as per the old stock register and gross misbehaviour towards the Sub-Inspector of schools. The petitioner submitted an explanation specifically denying the charges. The petitioner averred that no enquiry was held Into the charges without giving any reasonable opportunities to the petitioner to defend himself he was discharged from service by an order of the chairman, zilla parishad, on 27 February 1965. The order communicated by the Block Development Officer was in the following terms:

Yon are discharged from services as per the order of the Chairman, Zilla Parishad, Purl, communicated-vide memorandum No. 271, dated 18 January 1965. Your pay la forfeited with effect from August 1964. A copy of the order along with the comments of Chairmen, Panchayat Samiti, Bolgarh, thereon is enclosed herewith for your Information. Please make over charge to Sri Hitakar Mohapatra, teacher, Immediately.

A copy of this order was forwarded to the Sub-Inspector of schools, Bolgarh. He was requested to prepare pay bill up to the end of July 1964.

2. No counter-affidavit has been filed on behalf of opposite parties 2 to 4 who are the Chairman, Bolgarh Panchayat Samiti, Block Development Officer, Bolgarh and the State of Orissa. The Chairman, Zilla Parishad, Furl (opposite party 1), filed a counter-affidavit. The gist of the counter-affidavit is that after receipt of the explanation the chairman of the panchayat samiti made an enquiry into the charges and submitted a report to the chairman, zilla parishad, on 2 July 1964 finding the petitioner guilty on almost all the charges and recommending necessary steps to be taken against him. While this report was pending consideration by the opposite party 1 he received a further report from opposite party 2 on 14 December 1964 intimating him that the petitioner approached opposite party 2 with a resignation letter for being forwarded to opposite party 1. With necessary endorsement opposite party 2 sent the resignation letter to opposite party 1 through the petitioner, who did not attend the school thereafter as reported by the chairman of the school managing committee on 11 December 1964. Opposite party 1 passed the Impugned order of discharge after taking into consideration the reports of the chairman, panchayat samiti, the papers relating to the proceeding and all materials including the explanation to the charges. Opposite party 1 gave a direction to forfeit the petitioner's pay from 1 August 1964 as he was not attending school since that day. A personal hearing was not considered necessary in the circumstances of the case.

3. Sri Mohanti, appearing for the chairman of the zilla parishad, frankly stated that on the basis of the counter-affidavit and the annex-urea filed by the chairman, zilla parishad, he cannot contend that there was an enquiry in the presence of the petitioner after an explanation was submitted by him. We have carefully gone through all the documents and affidavits on behalf of the parties. It appears that the chairman of the panchayat samiti held an enquiry into the charges without giving any notice to the petitioner. Though certain witnesses were examined in support of the charges, the petitioner was given no opportunity to cross-examine them. He was not called upon to cite defence witnesses, in support of his case. He was not also given opportunities to present his arguments on the evidence taken.

4. On the aforesaid conclusion two questions arise for consideration:

(1) Is the Impugned order of discharge valid, even though principle of natural Justice was violated as no reasonable opportunity was given to the petitioner to defend himself ?

(2) Is the Impugned order liable to be quashed in exercise of the Jurisdiction of this Court under Articles 226 and 227 of the Constitution ?

5. In *Jaswant Singh Vs. The State of Punjab*, their lordships analysed the meaning of principle of natural justice. They said:

stating it broadly, and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the

opponent should be taken In his presence, and that be should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them.

This dictum has been consistently followed. See *State of Madhya Pradesh v. Chintaman* AIR 1961 S.C. 1623. Applying the aforesaid test the Impugned order was passed by holding an enquiry without observing the principles of natural justice and as such, It Is liable to be quashed.

6. The next question for consideration is whether In exercise of Its powers under Articles 226 and 227 of the Constitution this Court would quash such an order. This necessitates an examination as to the status of the petitioner and the powers of chairman, zilla parishad In passing the Impugned order. Section 20 (It (b) of the Orissa Panchayat Samiti and Zilla Parishad Act,, 1959 (Orissa Act 7 of 1960), hereinafter to be referred to be as the Act, lays down that a samiti shall, subject to such terms and conditions as Government may, from time to time by order specify, exercise the powers and perform the functions hereinafter provided for management, control and spread of primary education In the block. Section 68 (1) of the Aot lays down that the Government may, from time to time with a view to ensure the proper functioning of the Parishad and samitis and the proper Implementation of the provisions of the Act Issue Job administrative orders, directions and instructions as they deem fit; not inconsistent with the aforesaid provisions and the rules made thereunder for the guidance of the parishads and samitis. Government of Orissa in the Education Department Issued Instructions under this section for the guidance of zilla parlshads, paaohayat samitis, gram panchayats and officers of the Education Department concerned with the primary education In the State. These instructions classified all types of primary schools in the State Into five categories of schools to be placed under the panchyat samiti in order to ensure management and control. Those are:

- (1) Government primary schools (in Ganjam Agency);
- (2) Government-managad primary schools (in ex-State areas);
- (3) schools taken over from ex-district boards;
- (4) directly aided primary schools, and
- (5) junior basic schools.

With regard to service conditions until details relating to zilla parishad cadre are formulated the existing teachers of the categories mentioned above will continue on the same terms and conditions as at present. Advocates for the parties stated that Manibandha upper primary school comes In the third category. That means It was a school taken over from ex-district board. The school Is therefore not a purely private institution. It is quasi-public In character.

7. Instruction IV is regarding control over primary education. Item 6 of the

fourth ins emotion is to the following effect:

Punishment, if any, may be imposed by the chairman of the zilla parishad on any primary school teacher for negligence of duty or such other offences on the recommendation of the chairman of the panchayat samiti. The views of the Sub-Inspector of schools In this behalf should be given due weight age in the interest of departmental discipline.

This rule clarifies the position that the chairman of the Zilla Parishad is the punishing authority of the primary school teacher.

8. Instruction V prescribes the procedure to be followed for recruitment of primary school teacher. There shall be a district selection committee for selection of the teachers to be appointed in primary schools with the chairman and vice-chairman of the zilla parishad and the district Inspector of schools as secretary and convenor. The selection committee shall conduct such selection tests both written and oral in vogue at present and draw up a list in order of merit of such candidates as are found qualified to hold posts of primary school teachers. The chairman of the zilla parishad shall have powers to make appointment of teachers to the zilla parishad cadre out of the list prepared by the district selection committee (Rule 3). Thus, under Instruction V, the Chairman is the appointing authority of the primary School teachers. Under the General Clauses Act, an authority having the power to appoint has also the power to suspend or dismiss a person unless a different Intention appears. By the various Instructions as already discussed the chairman of the zilla parishad has been conferred with full powers of appointment and dismissal of a primary school teacher.

9. On the aforesaid discussions it is clear that primary school teachers are appointed and can be removed by the chairman of the zilla parishad. As opposite party 1 as a public functionary has failed to observe the principles of natural justice in discharge of Its public duties In passing the Impugned order, this Court can quash the order In exercise of its power under Articles 226 and 227 of the Constitution. The petitioner shall be deemed to be continuing In service on the date the impugned order was passed.

10. In the result, the order of discharge Is set aside and the application is allowed with costs against opposite party 1 alone. Hearing fee Rs. 100. A writ of certiorari be Issued quashing the Impugned order and a writ of mandamus be issued against the opposite parties directing them to treat the petitioner to be in service on the date the Impugned order was passed.

Barman, Acting C.J.

11. I agree.