

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.9746 OF 2017

(An application under Articles 226 and 227 of the Constitution of India)

Kaminilata Sahu ... **Petitioner**

-versus-

State of Odisha & others ... Opposite Parties

Advocates appeared in the case through hybrid mode:

For Petitioner : Mr.Sidheswar Mallik,
Advocate

**For Opposite Parties 1 and 2: Mr.N.K.Praharaj,
Government Advocate.**

For Opposite Parties 3 and 4: Mr. M.K.Dash, Advocate.

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT
11.08.2022.

Sashikanta Mishra,J. The Petitioner was appointed as a Lecturer in Sanskrit on 12th September, 2009 on contractual basis in Biren Mitra Memorial Women's College, Cuttack. The said College is an aided educational institution. While continuing as such, an advertisement was published on 24th August, 2013 inviting candidates for selection and appointment to the post of Lecturer in Sanskrit. The Petitioner, though continuing in the post applied pursuant to the said advertisement. An interview was conducted in which the Petitioner stood first. She was issued a fresh appointment order on 24th December, 2013 as Lecturer in Sanskrit on consolidated pay of Rs.2000/- per month, which was subsequently enhanced to Rs.5,300/-. On 4th May, 2017, the Principal of the College (Opposite Party No.4) issued an office order disengaging the Petitioner and some other Lecturers from their services w.e.f. 1st May, 2017. Neither any prior notice was issued nor any explanation was called for from the Petitioner. No reason was also ascribed for taking such action. Being aggrieved thus, the Petitioner has approached this Court claiming the following relief:-

“Quash the impugned order dated 4.5.2017 disengaging the Petitioner as at Annexure-5. Direct/order that the Petitioner's services as a lecturer in Sanskrit shall be regularized and pass such other

orders as may be deemed fit and proper in the interest of justice.”

2. No counter affidavit is filed by Opposite Party Nos.1 and 2.

3. The Governing Body of the Institution (Opposite Party No.3) and the Principal of the College (Opposite Party No.4) have filed a joint counter. In the said counter, it is stated that in view of the restrictions issued by the State Government vide order dated 20th April, 1998, the appointment of the Petitioner being without prior permission of the State Government is not valid. Moreover, such appointment was made without resolution of the Governing Body nor approval of the appropriate authority. The Petitioner was appointed on consolidated remuneration which was conditional in nature. The Regional Director of Education, Bhubaneswar vide order dated 24th September, 2014 specifically directed that no appointment should be made without his prior permission and in case of any violation, the Opposite Party No.4 will be held responsible. Therefore, when the Opposite Party No.4 came to know that the appointment of the Petitioner is without prior permission of the authorities concerned, he passed the impugned order disengaging the Petitioner and others from their services. It is further stated that since the Petitioner's appointment was invalid to

begin with, she does not have the locus standi to challenge the impugned order. Further, the instructions issued by the Regional Director of Education in his letter dated 10th August, 2015 with regard to disengagement of contractual/guest faculties have been referred to and it is stated that the Petitioner was disengaged as there is no requirement for engagement of Lecturer in Sanskrit as per the prescribed work load. The instructions issued on 19th September, 2016 of the Regional Director with regard to engagement of guest faculty was also referred to.

4. The Petitioner filed a rejoinder disputing the averments made in the counter affidavit. It is stated that the instructions issued by the Regional Director do not have retrospective effect. The Petitioner is neither a contractual employee nor a guest faculty but was appointed against regular vacant post on consolidated pay, which was enhanced from time to time by the Governing Body. Therefore even otherwise, the instructions of the Regional Director are not applicable. It is further stated that there is requirement of three Lecturers in Sanskrit and therefore, it is in correct to say that there is no work load for teaching faculty in the said discipline.

5. Heard Mr. Sidheswar Mallik, learned counsel for the Petitioner, Mr. N.K.Praharaj, learned Government Advocate for Opposite Party Nos.1 and 2, and Mr. Manmaya Kumar Dash, learned counsel for Opposite Party Nos.3 and 4.

6. It is submitted by Mr. Mallik that the impugned order was passed without adhering to the principles of natural justice inasmuch as neither any notice was issued to the Petitioner nor any opportunity was afforded to her to have her say in the matter. It is further contended by Mr. Mallik that the circulars/instructions of the Regional Director of Education referred to in the impugned order are prospective in nature and cannot be made applicable to the case of the Petitioner, who has been continuing in her post since 2009. Mr. Mallik further draws attention of this Court to the case of *Soumyashree Das v. Governing Body of Biren Mitra Memorial Women's College and other* (W.P.(C) No.8396 of 2017), which was disposed of by judgment dated 12th May, 2020 passed by a Co-ordinate Bench. The Petitioner therein stands exactly on the same footing as the Petitioner in the present case. By the said judgment, this Court after going through the facts, provisions of law and earlier decision of this Court in the case of *Managing Committee Majhipada M.E. School v. State of Odisha and others*; reported in

1992 (1) OLR 447, quashed the impugned order of disengagement passed in respect of the Petitioner therein. According to Mr. Mallik, the present Petitioner stands on the same footing as a common order of disengagement was passed in respect of five teachers including the present Petitioner and the said Soumyashree Das.

7. Per contra, learned Government Advocate has contended that the Petitioner was appointed without any resolution of the Governing Body and without approval of the concerned authority and therefore, she has no right to the post so as to challenge the impugned order.

8. Mr. M.K.Dash has put forth similar contentions as learned Government Advocate stated above and adds that the work load of the institution does not justify the post of Lecturer in Sanskrit and whenever the need would arise in future, the Governing Body may decide to engage guest faculty. In so far as the present Petitioner is concerned, according to Mr. Dash the impugned order was passed taking into consideration all the above facts as also on the specific instructions issued by the Regional Director of Education.

9. A bare reading of the impugned order dated 4th May, 2017 reveals that the same was passed purportedly in obedience to letter Nos.10529 dated 10th August, 2015 and 13441 dated 19th September, 2016 of the RDE, Bhubaneswar and as per the decision of the Staff Council Meeting as well as approval of the ADM-cum-President, Government Body. As already stated, a co-ordinate Bench in the case of Soumyashree Das (who stands at Sl. No.3 in the impugned order), has already dealt with the contentions raised by the parties before this Court and has held that the impugned order is not in consonance with law and dehors the principle of natural justice and amounts to infraction of Rules 21 and 8 of Odisha Education (Recruitment and Conditions of Services and Teachers and Members of the Staff) and Aided Educational Institution Rules, 1974 Rules. The co-ordinate Bench has also referred to the earlier decision reported in 1992(1)OLR 447 to hold that the Governing Body/Managing committee is estopped to challenge the validity of the appointment on the ground of non-approval of the appointment by the concerned authority and thus, quashed the impugned order. After perusing the judgment passed in the case of Soumyashree Das referred to above, this Court is in respectful agreement with the same as the Petitioner stands exactly

on the same footing as the said Soumyashree Das and is hence, entitled to similar order in her favour.

10. In the result, the Writ Petition is allowed. The impugned order under Annexure-8 in so far as it relates to the Petitioner (Kaminilata Sahu) is hereby quashed. The petitioner shall be forthwith reinstated in her post, if not already reinstated, and shall be given all consequential benefits within a period of two months.

Ashok Kumar Behera



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Sashikanta Mishra,
Judge



