

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 28134 of 2013

Urmila Routray

.....

Petitioner

Mr. N. Biswal, Adv.

Vs.

State of Orissa and others

.....

Opposite Party

State Counsel

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

16.03.2022

Order No.

5.

This matter is taken up through hybrid mode.

2. By means of this writ petition, the petitioner has challenged the order dated 31.10.2007 (Annexure-4) passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 1189 (C) of 1994 whereby learned Tribunal has dismissed the Original Application.

3. It appears that the petitioner was initially appointed as Primary School Teacher in the scale of pay of Rs.780-16-896-EB-18-950-201850-EB-22-1160/- per month pursuant to the order dated 08.02.1990 issued by the District Inspector of Schools, Cuttack under Annexure-1, which reads as under:

*“Office of the District Inspector of Schools, Cuttack
Office Memo No.213/Dated-8.2.90*

In pursuance of the G.O. No.17188 dated 9.9.78 of the Labour Housing Department and No.20306 dated 20.5.85 of the Education and Youth Services Department, Government of Orissa, Sri Ashis Kumar Mohapatra, Matric, son of late Udayanath Mohapatra, At-Talamundai, P.O. Kanakajodi, Dist. Cuttack in provisionally appointed as Primary School teacher on purely temporary basis under the Rehabilitation Assistance the families of the Primary School teachers under Education & Youth Services Department

who dies or while in services in the scale of pay Rs.780-16-896-EB-18- 950-EB-22-1160/- per month with usual D.A. & A.D.A. and posted as such to Sapanpur U.P. School under Tangi Circle of Tangi-Choudwar Block in an existing vacancy. He should join within 7 days of receipt of this appointment or this appointment will be cancelled.

The appointment of Sri Mohapatra is purely temporary and subject to the condition that he should be trained within three years from the date of joining to the post. He should produce the following certificates before the Sub-Inspector of Schools Tangi Circle for verification while joining the post.

- 1. H.S.C. pass certificate*
- 2. Medical fitness certificate from an officer nor the rank of Asst. Surgeon.*
- 3. Character Certificate from the Gazetted Officer.*

Sd/- K.C. Sahu

*District Inspector of Schools,
Cuttack"*

4. Learned counsel for the petitioner has made a grievance to the termination order under Annexure-2, which was issued without giving any notice to the petitioner. However, the termination order is very clear which reads as under;

*"Office of the Panchayat Samiti: Rajnagar
Office Memo No.135/Dt.14.1.94*

In pursuance of office Memo No.129 dated 13.1.94 of the District Inspector of Schools, Pattamundai the services of the following Primary School Teachers of this Block, who are continuing as such on production forged & spurious documents are no longer required to continue further & their services are hereby terminated w.e.f. 13.1.94 FN.

<i>Sl.No.</i>	<i>Name of the teacher</i>	<i>Name of the School</i>
<i>1.</i>	<i>Urmila Routray</i>	<i>.. Mahulia, U.P. School</i>
<i>2.</i>	<i>Sanjukta Sahoo</i>	<i>.. B.K. Jharpara U.P. School</i>
<i>3.</i>	<i>Narendra Kr. Sahoo</i>	<i>.. Pataparia L.P. School</i>
<i>4.</i>	<i>Laxmidhar Panda</i>	<i>.. Pentha L.P. School</i>
<i>5.</i>	<i>Bijan Kr. Jena</i>	<i>.. Laxminarayan U.P. School</i>

6. *Diptiranjana Behera* .. *Ahirajpur L.P. School*
 7. *Bijay Kr. Sahoo* .. *Banipal U.P. School*
 8. *Tusarkanta Samal* .. *Vekta U.P. School*
 9. *Avin Mallick* .. *Daruora U.P. School*
 10. *Pramod Kr. Pati* .. *Dauora U.P. School*
 11. *Laxmidhar Sahoo* .. *B.K. Jhadapara U.P.*
 12. *Pramoda Kr. Senapati* .. *Digiri U.P. School*
 13. *Amulya Kr. Sahoo* .. *Bunupangara U.P. School*
 14. *Asish Kr. Mohapatra* .. *Kurunti U.P. School*
 15. *Antaryami Sathua* .. *Dangamal U.P. School*
 16. *Kishore Ch. Sahoo* .. *Balabhadrapur U.P. school*
- Sd/-

*Block Development Officer,
R a j n a g a r*

5. On the allegation of production of forged and spurious documents, on the basis of which the petitioner was continuing, a criminal case was initiated. However, the criminal court acquitted the petitioner on the ground that allegations made under Section 471 I.P.C. were not proved and he was acquitted granting him benefit of doubt. Learned criminal court at paragraphs-10 and 11 has observed as under:

“10. At this juncture, I would like to venture how this sensational case is damaged due to improper investigation and reluctance of witnesses to depose with all fairness which should have been conducted with all fair means and diligence. In the case at hand when the F.I.R. itself is a carbon copy, the author of the F.I.R. failed to recall the contents though placed in such responsible post, the I.O. did not choose to examine the previous authorities of the accused persons under whom they were alleged to be served and no attempt has been made to prove that the documents viz service appointment, transfer orders, are forged one. I am of the view that prosecution case is bound to be failed due to lapses of the witnesses who supposed to have made all endeavour to prove their case beyond all reasonable doubts, especially when society is having any eye over the result of the case.

11. In view of the discussion (supra), I have come to

this conclusion that the prosecution has utterly failed to prove its case U/s.420/471/35 I.P.C. against the accused persons and accordingly the accused persons are found not guilty U/s.420/471/35 I.P.C. and are acquitted there from U/s.428(1) Cr.P.C. They be set at liberty and their bail bonds are cancelled.

The seized documents as per seizure list be handed over to the concerned authorities from whom seized after three months of period of appeal, if no appeal is preferred and in case of any appeal in accordance with the direction of the appellate Court.”

6. In the case at hand, when the F.I.R. itself is a carbon copy, the author of F.I.R failed to recall the contents though he was in such a responsible post. Only on that ground, the criminal court has acquitted him.

7. Learned Tribunal while considering the matter has given him a chance to produce all the original certificates, but in paragraph-20 of the impugned order, learned Tribunal has observed as under:

“20. Learned counsel for the applicant submitted that had the applicant/petitioners been given opportunity of show-cause, it would have been possible for the respondents to arrive at a different conclusion. In the case at hand, we have already held that the appointment of the applicants were all no nest in law and so they are not at all appointed in the eye of law. It is not possible to arrive at a different findings particularly when the appointments on the face of them do not exist, on obtaining reply of the petitioners/applicants, by issuing show-cause notice before termination. There are, that part, sufficient circumstances to justify an inference that before their termination they were directed to produce the documents such as original appointment letters, service books etc. for verification. Even during pendency of the O.A. they have not produced those documents in original in support of their claim. The learned counsel for the appointments have advanced the plea that when the petitioners have been acquitted in a Criminal Proceeding, they cannot be terminated from service. But it is well settled that both the departmental actions and Criminal actions can be initiated and continued against the delinquent concurrently. In the facts and circumstances of the cases, the termination of the petitioners/applicants in the impugned order made by the authority appointed by virtue of nonexistent appointment letter does not require compliance with “Audi alteram partem” facet of natural justice. Since the appointments are

no nest in law and no appointment in the eye of law, the order of termination which appears to be termination simpliciter cannot be said to be illegal,, bad in law and in breach of natural justice by not issuing show-cause notice. Accordingly, the 2nd issue is answered.”

8. In our considered opinion, this is a simple discharge. Neither any stigma is attached to the termination nor it is by way of a punitive measure. Thus, no case is made out to interfere with the impugned order. Hence, this writ petition being devoid of merit deserves to be dismissed and the same is dismissed.

(DR. B.R. SARANGI)
JUDGE

Ashok/Sukanta

(SAVITRI RATHO)
JUDGE

