

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 2456 of 2018

An application under Articles 226 & 227 of Constitution of India.

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Mitra Mohapatra

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Petitioner

-Versus-

State of Odisha & others

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Opp. Parties

Advocate(s) appeared in this case:-

For Petitioner

: M/s. Saswati Mohapatra,
& P. Mangaraj, Advocates

For Opp. Parties

: Mr. B.P. Tripathy,
Addl. Govt. Advocate

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

20th September, 2022

SASHIKANTA MISHRA, J.

The short point that arises for consideration in the present writ application is, can an employee be denied promotion on the ground of pendency of a criminal proceeding?

2. Bereft of unnecessary details, the facts of the case are that the petitioner was appointed as a Lecturer in

History on 01.11.1988 by the Management of Balasore Mahila College (+3 wing) and was subsequently transferred and posted at Soro Women's College, Soro. On 14.11.2015 the Principal-cum-Secretary of Balasore Mahila College submitted the CCRs of 3 Lecturers, including that of the petitioner to the Director, Higher Education, Odisha for consideration of their cases for placement in Lecturer Grade A and State Scale under the Placement Rule, 2014. The Director, after scrutiny, published a report of the colleges of whom CCRs of employees, other documents etc. were not furnished. The name of Balasore Mahila College was mentioned in the said list but the petitioner's name was not indicated. On enquiry, the petitioner came to know that the higher scale had not been granted to her because of pendency of a Vigilance case against her. Further, the opposite party No.3, who is junior to the petitioner, was granted higher scale and State Scale w.e.f. 04.06.2001 and 04.06.2011. It is the case of the petitioner that mere pendency of a criminal case cannot be a bar to grant higher scale of pay to an employee. On such facts the

petitioner has filed the instant writ petition seeking the following relief:

“Under the aforesaid facts and circumstances, it is therefore, prayed that this Hon’ble Court may graciously be pleased to:

(i) direct/order State Opp.Parties, more particularly the Opp.Party No.2 to place the petitioner under Lecturer (Gr. A) and Reader (State Scale) from 04.05.2001 and 04.06.2011 i.e., with effect from the date admitted juniors received the consequential and monetary benefits;

(ii) pass such other order (s) or issue direction (s) as may be deemed fit and proper in the bona fide interest of justice.

And for this act of kindness, the petitioner shall as in duty bound every pray.”

The petitioner also filed an additional affidavit intimating that in the Vigilance Case bearing VGR No. 28/2015 Final Form has not yet been submitted.

3. A Preliminary counter affidavit has been filed by the Opposite Party No. 1. It is basically stated in the affidavit that the petitioner could not submit necessary vigilance clearance as required under the Rules. Further, upon information submitted by the Principal of Balasore Mahila College it is ascertained that Balasore Vigilance P.S. Case Nos.57 dated 28.12.2015 and 7 dated 16.02.2018 are pending against the petitioner. That apart, the S.P., Vigilance, Balasore by his letter dated 25.02.2016 has

informed that the charges against the petitioner are serious in nature. Therefore, having regard to the provision under Rule-6 of the Odisha Non-Govt. Aided College Lecturers Placement Rules, 2014 (in short “Placement Rules, 2014”), it is not permissible to grant the relief claimed by the petitioner.

4. Heard Ms. Saswati Mohapatra, learned counsel for the petitioner and Mr. B.P. Tripathy, learned Addl. Govt. Advocate for the State.

5. Ms. Mohapatra would contend that notwithstanding the provision under Rule 6 of the Placement Rules, 2014, law is well settled that mere pendency of a criminal proceeding cannot be a bar to deprive an employee from the higher scale, particularly when charge-sheet has not been submitted in the said proceeding. It is further submitted that when her juniors have received the benefit, non-grant of the same amounts to gross discrimination as also contrary to Article 14 of the Constitution.

6. Per Contra, Mr. Tripathy submits that Rule- 6 of the Placement Rules, 2014 mandates that the Screening Committee is required to examine the status of all departmental and criminal or vigilance proceedings pending against the employee including vigilance clearance certificate. In the instant case, such necessary information in respect of the petitioner was not available and therefore, her claim for placement in the higher scale was rightly not considered.

7. The facts of the case being more or less undisputed, it would be proper to examine the relevant rule at the outset. Rules 5 and 6 of the Placement Rules, 2014 provide as under:

5. Constitution of Screening Committee: *There shall be a screening committee consisting of the following members for selection for placement of a Lecturer/Junior Lecturer to Lecturer (Group-A) and Reader (State Scale) Scale of Pay under rule 9, namely:—*

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|--|---------------|
| (i) Principal Secretary/Secretary to Government, Higher Education Department. | - Chairperson |
| (ii) Director Higher Education, Odisha | - Member |
| (iii) A Senior Principal/Professor of a Government College | - Member |
| (iv) Additional/Joint/Deputy Secretary to Government, Higher Education Department. | - Convenor. |

6. Verification of documents: *The Screening Committee shall examine the following documents at the time of screening for selection for placement to Lecturer (Group-A) and Reader (State Scale) of pay under rule 9, namely,-*

(i) Attested list of eligible Junior Lecturers/Lecturers

- (ii) *Annual Confidential Reports (ACRs) for any five including preceding three years prior to the date of eligibility.*
- (iii) *Indication about the pending representation against adverse remarks in the Annual Confidential reports, if any.*
- (iv) *Indication of detail status on Departmental or Criminal proceedings or Vigilance case, if any, pending or contemplated as the case may be.*
- (v) *Vigilance clearance certificate.*
- (vi) *Sealed cover procedure shall be followed in case of Junior Lecturer/Lecturer who is placed under suspension and against whom Disciplinary or Criminal proceedings or Vigilance case is pending.”*

8. Obviously, an employee cannot obtain and produce the vigilance clearance certificate as it is for the concerned authorities to inform whether any vigilance case is pending against the employee concerned or not. In any case, there is material to show that two vigilance cases, being Balasore Vigilance P.S. Case No 57 of 2015 and 7 of 2016 were pending against the petitioner. Mr. Tripathy has informed the Court that the case of the petitioner was not considered by the DPC at the relevant time. Such being the case, it is now to be seen if mere pendency of vigilance cases can act a bar for grant of placement in the higher scale.

9. Law is no more *res integra* that a vigilance (criminal) case can be said to be pending only upon submission of charge-sheet by the investigating agency.

Mere filing of an FIR or continuance of investigation cannot be treated as a criminal proceeding in so far as the question of considering the employee's case for promotion is concerned. Reference may be had to the decision of the Apex Court in the case of ***Union of India and others vs. K. V. Jankiraman and others***, reported in **(1991) 4 SCC 109**. It would be profitable to quote the observations of the Apex Court under Paragraph 16 and 17 of the said judgment:

"16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons,

they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy. It was then contended on behalf of the authorities that conclusions Nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows: (ATC p. 196, para 39)

“(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;

(2) xx xx xx

(3) xx xx xx

(4) the sealed cover procedure can be resorted to only after a charge memo is served on the concerned official or the charge-sheet filed before the criminal court and not before;”

17. There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion No. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions.”

10. The decision in **Jankiraman** (*supra*) has since been followed in number of decisions by the Apex Court and other High Courts of the country. It would be

unnecessary to refer to all those decisions. But the common point decided in all these decisions, which has now become law of the land is, the pendency of preliminary investigation without submission of charge-sheet cannot be a ground to deny promotion to an employee who is found otherwise suitable for the same.

11. As has already been seen, in the instant case, charge-sheet has not yet been filed in VGR Case No. 28 of 2015 (arising out of Balasore Vigilance Case No. 57 dated 28.12.2015). There is of course no information regarding the other case, namely, Balasore Vigilance P.S. Case No. 7 dated 16.02.2018. But as submitted by learned counsel for the petitioner, the pendency of the said case is of no consequence because by the time of initiation of the said latter case, the decision regarding placement in the higher scale had already been taken. Thus, the position of law being what has been discussed hereinbefore, it can be safely held that the action of the concerned authorities in not considering the case of the petitioner at the relevant time for placement in the higher scale only on the ground of pendency of the vigilance case, in which charge-sheet

has not yet been submitted, cannot be sustained in the eye of law. Moreover, Rule 6 is a matter of procedure and cannot be cited as a reason to deprive the petitioner of her legitimate right.

12. For the foregoing reasons, the writ application is disposed of with a direction to opposite party No. 1 to consider the case of the petitioner for placement under Lecturer (Grade A) and Reader (State Scale) w.e.f. 04.06.2001 and 04.06.2011 respectively having regard to the settled position of law discussed herein before. Decision in this regard shall be taken as early as possible, preferably within a period of three months from the date of communication of copy of this order or on production of certified copy thereof.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 20th September, 2022/ A.K. Rana, P.A.