

IN THE HIGH COURT OF ORISSA AT CUTTACK

WA Nos. 114 and 121 of 2015

Managing Committee of Padmalochan Appellant
Mundahan High School
(In WA No.114 of 2015)

Mr.Sameer Kumar Das, Advocate
-versus-

State of Odisha & Others Respondents
Mr. Manoj Kumar Khuntia, Addl. Govt. Advocate
Mr. Manoj Kumar Mohanty, Advocate for Respondent No. 4
Mr. S.C. Dash, Advocate for Respondent No. 5

AND
Deepak Kumar Ghosh Appellant
(In WA No. 121 of 2015)

Mr. Manoj Kumar Mohanty, Advocate
-versus-
State of Odisha & Others Respondents

Mr. Manoj Kumar Khuntia, Addl. Govt. Advocate
Mr. Sameer Kumar Das, Advocate for Respondent No. 4
Mr. S.C. Dash, Advocate for Respondent No.5

CORAM:
THE CHIEF JUSTICE
JUSTICE MURAHARI SRI RAMAN

JUDGMENT
08.12.2022

Murahari Sri Raman, J.

1. Intra-Court Appeals have been preferred by the Managing Committee of Padmalochan Mundahan High School at Jadibali Village in the district of Balasore (herein after referred to as “MC”) and Deepak Kumar Ghosh, a terminated Assistant Teacher of said

High School (for convenience referred to as “Appellant”), under Clause 10 of the Letters Patent read with Rule 2 of Chapter VIII of the Odisha High Court Rules, 1948 and Article 4 of the Orissa High Court Order, 1948, assailing the Judgment dated 16th February, 2015 delivered by the learned Single Judge of this Court in W.P.(C) No.14678 of 2012, whereby the order dated 27th July, 2012 passed by the Director, Secondary Education, Odisha has been *set aside* with a limited remand.

W.A. No.114 of 2015

2. Being aggrieved by direction contained in the Judgment delivered in the writ petition, being W.P.(C) No.14678 of 2012, for rehearing on the issue whether the Appellant’s Contractor Licence continued and/or to ascertain the position of said licence at the time of termination of service as Assistant Teacher of Padmalochan Mundahan High School (for brevity referred to as “PMHS”), the MC has filed this Writ Appeal.

W.A. No.121 of 2015

3. The Appellant, Deepak Kumar Ghosh, preferred this Appeal against the aforesaid Judgment in said writ petition, on the ground that when the termination order was issued on the basis of non-acquisition of B.Ed. qualification, and the learned Single Judge came to conclude that such ground is not tenable in view of fact that the Appellant had acquired requisite B.Ed. qualification subsequent to his appointment being duly permitted by competent authorities, the direction for further enquiry as to whether “Contractor Licence” was subsisting at the time of issue of termination order was irrelevant.

The Writ Petition bearing W.P.(C) No.14678 of 2012:

4. Established as non-Government private school in the year 1984-85, Padmalochan Mundahan High School got recognition and subsequently, on 6th May, 1995 it was notified as an Aided Educational Institution with effect from 1st June, 1994. The Managing Committee of PMHS having not found Trained Graduate Teacher for appointment against Trained Graduate (Arts) post, selected the Appellant having B.A. qualification and issued appointment letter; consequent upon which he joined on 1st October, 1985. On 17th November, 1988, on the basis of letter circulated by the Board of Secondary Education, Odisha, The Secretary of the M.C. insisted the Appellant to obtain the B.Ed. qualification. Accordingly, as the Directorate of the Correspondence Courses of Utkal University issued prospectus for B.Ed. to facilitate *in-service* teachers to acquire such qualification on 11th July, 1989, having applied to undergo training programme on 7th August, 1989, said Secretary certified that the Appellant, having B.A. qualification was working as Assistant Teacher since 01.10.1985, and relieved the Appellant to take admission in B.Ed. course. He further certified that he would be allowed to join after completion of Personal Contact Programme Training. This was also countersigned by Inspector of Schools, Balasore Circle, Balasore on 19th August, 1989. On 08.11.1989, the Appellant being selected to take admission in B.Ed. course, took admission as *in-service* teaching staff and on 20th November, 1989 opted for undergoing the course at Government Training College, Balasore. On 27th December, 1989, the Appellant made an application to Special Officer, *i.e.*, Inspector of Schools, Balasore Circle, Balasore (as MC was not functional) for permitting the Appellant to undergo first phase of training from 28th December,

1989 to 8th January, 1990. As directed by the said Special Officer, the Appellant was relieved by the Headmaster of the PMHS. The Inspector of Schools, Balasore Circle, Balasore in the capacity of “Special Officer”, in absence of MC, instructed the Headmaster of PMHS to allow the Appellant to undergo B.Ed. training (2nd phase) under correspondence course in Government Training College, Balasore on 24th January, 1990. The Appellant being duly permitted by the Inspector of Schools, Balasore Circle, Balasore was relieved from the PMHS and had undergone the 2nd phase of training from 5th March, 1990 to 25th March, 1990. The Appellant appeared in the B.Ed. examination under Utkal University on 7th May, 1990 and result of which was published only on 28th May, 1991 where the Appellant was declared successful.

4.1. Though MC was defunct, the (former) Secretary of MC communicated charges under six heads against the Appellant, to which the Appellant has stated to have furnished reply on 24.01.1990 as an abundant caution. However, the new MC passed Resolution dated 18.05.1990 in its 44th Meeting taking decision to remove the Appellant from service on the ground that the Appellant had not acquired required trained graduate qualification. Though the Letter No.94, dated 24.05.1990 addressed to the Appellant indicating fact of his termination from service with one month's notice was stated to be issued by the Secretary, PMHS, the same was served on him on 06.03.1991. Letter No.104, dated 18.07.1990 signed by the Secretary, PMHS is stated to be issued without reference to the earlier resolution *vide* Letter No.94, dated 24.05.1990, wherein it has been mentioned that a decision has been taken on 18.07.1990 by way of Resolution in 46th Meeting of MC that the Appellant is terminated with effect from 18.07.1990.

4.2. On reopening of the School after Summer Vacation, as the Appellant was not allowed to discharge his duty by the newly constituted MC, a representation was submitted to the Inspector of Schools, Balasore. On 01.08.1990, the Inspector of Schools, Balasore Circle, Balasore directed the Secretary of PMHS to allow the Appellant to discharge his duty in the PMHS as he has appeared in the B.Ed. examination. As the Appellant was not allowed to work in the PMHS, the Inspector of Schools, Balasore Circle, Balasore conducted enquiry by paying visit to the PMHS personally with Administrative-cum-Accounts Officer on 22nd August, 1990 and informed the Secretary of the PMHS on 7th November, 1990 to allow the Appellant to work in the school. Since the above request was not carried out, the Inspector of Schools, directed the Secretary *vide* Letter dated 22.02.1991 to remain present in his office with all the records on 07.03.1991.

4.3. On receiving the Letter dated 24.05.1990 issued by the Secretary of PMHS intimating termination of service with one month's notice on 06.03.1991, the Appellant filed Appeal before the Director of Secondary Education, Odisha as per G.O. No.13585, dated 27.03.1983. With a prayer to issue direction to dispose of said Appeal, writ petition being O.J.C. No.7960 of 1994 was filed before this Court, which came to be disposed of on 22.12.1994 with a direction to the Director of Secondary Education, Odisha to dispose of the representation/appeal within a period of three months from the date of receipt of said order. Pursuant to said direction, the Director allowed the appeal on 27th February, 1997 and directed for reinstatement without any back wages.

4.4. Challenging said order, while the MC filed O.J.C. No.5490 of 1997 for acceptance of certain documents by the Director-

Appellate Authority, the Appellant filed O.J.C. No.8166 of 1997 for a direction to accept joining report and to allow him to discharge duty in the school as Trained Graduate Teacher (Arts). Both the writ petitions came to be disposed of by this Court on 12th November, 2007 by a common order. After due opportunity being granted to both the sides, on 27th July, 2012, the Director, Secondary Education, Odisha has passed order in Appeal No.5 of 2008 filed by the Appellant, which was impugned in the writ petition being W.P.(C) No.14678 of 2012. Judgment has been delivered by learned Single Judge on 16th February, 2015 in the said writ petition, against which both the MC as well as the Appellant filed writ appeals.

5. The grievance of the Appellant, Deepak Kumar Ghosh, was that though he acquired B.Ed. qualification after being duly allowed by competent authorities as *in-service* staff of Padmalochan Mundahan High School, the ground on which the Director, Secondary Education, Odisha *vide* Order dated 27.07.2012 (Annexure-19 to the writ petition) confirmed the termination order pursuant to Resolution(s) of the MC, could not have been sustained. The only ground of termination of the Appellant *vide* Resolution(s) dated 18.05.1990/18.07.1990 of the MC shows that the termination was on account of non-acquisition of B.Ed. qualification and the Appellant remained untrained Graduate. The Appellate Authority, *i.e.*, Director, Secondary Education has proceeded on the basis that the Appellant was a registered 'C' Class Contractor and, therefore, the termination order was valid. The Appellant submitted that with due knowledge of the proper authorities and being allowed to pursue B.Ed. course and having obtained requisite B.Ed. qualification as *in-service* person, there was no occasion for the MC to debar him from discharging his duty as Assistant Teacher

particularly when the Secretary of MC has appended a certificate on 11.08.1989 in the application dated 07.08.189 for admission into B.Ed. Course (Annexure-3 to the writ petition). Said Certificate runs as follows:

“Certified that Sri Deepak Kumar Ghosh, qualification B.A. has been working as Asst. Teacher in P.M. High School, Jadibali (Name of the High/ME School) which is unaided school in the District Education Circle Balasore on regular/~~adhoe~~ basis since 01.10.1985 (date) against sanctioned post of the school. Further certified that there is no objection to relieve him. Selection for admission into B.Ed. course and he will be allowed to join after completion of personal contact programme training.”

5.1. It is not denying fact that the Government of Odisha has been allowing the untrained teachers both in recognized private school as well as aided secondary schools from time to time to undergo training as *in-service* person and, therefore, it is submitted that the appointment of the Appellant was neither illegal nor irregular.

5.2. Per contra, the MC took a stance before the Writ Court that the Appellant was afforded opportunity to show-cause by communicating details of charges under six different heads framed against him on 13th January, 1990, which the Appellant responded on 24th January, 1990. Such reply being found not satisfactory, it is claimed by the MC that the Appellant was again served with a letter on 24th May, 1990, which remained un-responded. The MC proceeded to terminate the Appellant on the threat of the School being derecognized. The MC further took a plea that the Appellant was continuing as a registered contractor and as such the MC has rightly taken a decision to remove him from service. Therefore, the

Director in Appeal correctly decided the matter which warrants no intervention by this Court.

5.3. The learned Single Judge *vide* judgment dated 16th February, 2015 after analyzing rival contentions and taking note of decisions cited by both sides, came to hold that:

“(16) In view of my finding already given at paragraph 10 I am of the view that the termination of the petitioner on account of no proper qualification has not been given proper consideration, hence I reverse the finding of the Appellate Authority so far it relates to termination of the petitioner on the ground of having no required qualification at the time of termination.”

5.4. However, the learned Single Judge remanded the matter to the Director, Secondary Education, Odisha-Appellate Authority for re-hearing on the question of continuance of “contractor license” at the time of termination. Ultimately, at paragraph 25 of the Judgment it has been held that Appellant’s *“reinstatement in service would be dependent on the ultimate outcome in the matter of decision on the question of position of the contractor license at the time of termination or not”*.

Writ Appeal No.114 of 2015 filed by the Managing Committee of Padmalochan Mundahan High School, Jadibali and Writ Appeal No.121 of 2015 filed at the behest of Deepak Kumar Ghosh:

6. Dissatisfied with the remand order of the learned Single Judge for rehearing on the plea of the MC with regard to continuance of “contractor license” at the time of termination of the service, the Appellant-Deepak Kumar Ghosh has filed the writ appeal. The counsel for the Appellant submitted that only ground of termination of service of the Appellant has been stated in the Letter No.94, dated 24.05.1990 [claimed to be issued by the Secretary of

PMHS indicating fact of termination of service on one month's notice (served on the Appellant on 06.03.1991)] and the Letter No.104, dated 18.07.1990 [signed by the Secretary, PMHS stated to be issued without reference to the earlier resolution *vide* Letter No.94, dated 24.05.1990], indicating decision taken on 18.07.1990 by way of Resolution in 46th Meeting of MC to terminate the Appellant with effect from 18.07.1990, was on account of non-acquisition of trained graduate qualification. Therefore, in the Appeal before the Director preferred by the Appellant, the Appellate Authority should have confined his finding and observation to the said limited extent. Thus, the learned Single Judge while recording his conclusion that the termination of the service of the Appellant on the ground that he did not acquire B.Ed. qualification on the date of termination cannot be held to be valid, ought not to have directed the Director-Appellate Authority for rehearing on the issue of continuance of "contractor licence", which is a irrelevant factor. The counsel for the Appellant, thus, submitted that the Judgment of learned Single Judge to this extent is liable to be set aside.

6.1. On the contrary, the MC in Writ Appeal No.114 of 2015 attacked the Judgment of the learned Single Judge on the ground that the facts and circumstances of the case does not justify reinstatement of the Appellant and the learned Single Judge fell in error by remitting the matter to the Appellate Authority for *de novo* hearing with regard to "contractor license".

Analysis and consideration of the rival contentions:

7. It is the contention of Sri Manoj Kumar Mohanty, the learned counsel for the Appellant that Sri Deepak Kumar Ghosh was allowed to pursue B.Ed. course as *in-service* person on consideration

of his application dated 7th August, 1989 and such fact was also within the knowledge of MC as also the Inspector of Schools, Balasore Circle, Balasore. He had undergone first phase of training from 28th December, 1989 for twelve days. He was relieved after completion of B.Ed. Personal Contact Programme on 8th January, 1990. It is further submitted by the learned counsel for the Appellant that in view of proviso to Rule 6(2) of the 1980 Rules and as is apparent from the Letter *vide* Memo No.1434 dated 24th January, 1990 of the Inspector of Schools that the M.C. was defunct. Therefore, the Inspector of Schools, Balasore being vested with power of Special Officer instructed the Headmaster of PMHS in the said Letter dated 24th January, 1990 to permit the Appellant to undergo second phase of Training Programme. The Inspector of Schools, Balasore Circle, Balasore further permitted the Appellant to undergo training from 5th March, 1990 to 25th March, 1990. Mr. Manoj Kumar Mohanty, Advocate for the Appellant urged that the MC could not have passed Resolution on 24th May, 1990 and taken a decision to terminate the service of the Appellant on the ground that the Appellant remained untrained. It is further contended that as the MC was conscious about the fact that the Appellant had already undergone B.Ed. course having appeared in the B.Ed. examination on 07.05.1990, which fact was never disputed neither in the counter nor in the writ appeal by the MC, the Resolution dated 24th May, 1990 or 18th July, 1990 taking decision to terminate the Appellant cannot be sustained. Furthermore, the intention of the MC is tell-tale as it could not have taken decision on 18th July, 1990 without reference to Resolution dated 24th May, 1990. This Court finds the above contentions are borne on record and supported by documents enclosed to the writ petition/writ appeal.

7.1. Mr. Sameer Kumar Das, learned Advocate for the MC made valiant attempt to justify the action of MC on both the counts, viz., as the Appellant was not qualified trained graduate, the termination was in accordance with law and the Appellant had subsisting “contractor licence”.

7.2. Amplifying his stance, Mr. Das pressed into service Letter No.28465-XVIIIE-S-80/82-EYS, dated 08.07.1981 issued by the Government of Odisha in Education & Youth Services Department addressed to the Director of Public Instructions, Odisha, wherein the staffing pattern of non-Government Secondary Schools was prescribed. Relevant portion of said Letter is extracted herein below:

“Sub.: Fixation of standard staff for the non-Government Secondary Schools.

Sir,

I am directed to say that the question of fixation of standard staff for the non-Government Secondary Schools has been felt necessary by the Government due to introduction of the revised syllabus under 10 years School pattern. After careful consideration of various aspects, Government have now been pleased to decide that the standard staff both teaching and non-teaching for different categories of non-Government Secondary Schools shall be as follows:

(A) For the Schools having no additional sections:

<i>Category of staff</i>	<i>3 class</i>	<i>5 class</i>	<i>7 class</i>
<i>1. Headmaster/Headmistress</i>	<i>1</i>	<i>1</i>	<i>1</i>
<i>2. Trained graduate</i>	<i>4</i>	<i>4</i>	<i>4</i>
<i>3. ***</i>	<i>*</i>	<i>*</i>	<i>***</i>
<i>Note: (a) out of the four Trained Graduate Teachers 2 must be Arts Graduates and 2 must be Science Graduates. ***”</i>			

7.3. It is, therefore, contended by Mr. Sameer Kumar Das, Advocate for MC that the Appellant being untrained graduate teacher, he could not continue in the post of Assistant Teacher.

7.4. To this Mr. Manoj Kumar Mohanty, Advocate for the Appellant has responded by arguing that at the relevant point of time the MC having not found candidate having trained graduate qualification, appointed the Appellant in the post of Assistant Teacher and as such the Appellant joined in the said post on 01.10.1985. Subsequently, with due permission from and approval by the competent authority he completed B.Ed. course. On the date of Resolution(s) was passed by the MC, i.e., on 18.05.1990 and 18.07.1990, the Appellant had already appeared in the B.Ed. examination, i.e., on 7th May, 1990, though the results were published on 28th May, 1991. Mr. Mohanty relied on the decision rendered in the case of *Bibekananda Das Vrs. State of Odisha & Ors., 1997 (II) OLR 122*, wherein this Court observed as follows:

“9. At this juncture we may deal with the instruction issued by the Government in letter No.1074/EYS dated 5.1.1991 (Annexure-C/3). On perusal of the aforesaid letter it would appear that the Government took note of the position that untrained teachers were being appointed in non-government (aided) High Schools and after taking note of such position, the Government clarified as follows:-

*‘*** that henceforward untrained teachers should not be entertained in any Govt. High Schools ***’*

The direction of the Government in the said letter being prospective, it - cannot be made applicable against the petitioner as he was appointed prior to the issuance of the letter.

10. Let us now turn to some of the judgments and orders of this Court referred to by the counsel for the parties.

In *Sarat Chandra Sahoo v. State of Orissa*, (O.J.C.No.3233 of 1989 disposed of on 10.7.1990) one of the questions which fell for consideration was whether under 1972 Rules, an untrained graduate could be appointed in the Junior Grade (Assistant Teacher). In paragraph-5 of the judgment, the Court opined that there is no requirement in the 1972 Rules that appointment to the junior grade shall necessarily be of only trained graduates. By referring to Rule 7 and Rule 14 (2) of the 1972 Rules the Court held that requirement to the posts may be either of trained graduate or of untrained graduate.

In *Gouri Devi v. State of Orissa* (O.J.C. No. 1024 of 1990 disposed of on 17.6.1993) the ratio of *Sarat Chandra Sahoo* (Supra) was followed and by referring to another case in *Muralidhar Pati v. State of Orissa* (O.J.C. No.6165 of 1991 decided on 11.9.1992) this Court observed that there is no bar on the part of the Inspector in giving approval to the appointment of an untrained teacher though while approving he may insert a condition that the appointee unless acquires B.Ed. qualification within a specified period may be replaced by a trained hand. The Court observed that appointment of a teacher having graduate qualification may be lawfully approved and reasonable time may be granted to him for acquiring B.Ed. qualification, as B.Ed. qualification is necessary for a candidate to fill a permanent post of assistant teacher in a High School.

In *Anusuya Prusty v. State of Orissa*, (OJC No.4972 of 1994 disposed of on 10.11.1994) the petitioner's grievance was with regard to non-payment of her monthly salary for a specified period. The claim was opposed by the State and its officials on the following two grounds:

- (i) As she had not acquired the qualification of a trained graduate, she was not entitled to receive trained graduate scale of pay, and
- (ii) She was ineligible to be appointed in view of the Government letter No. 1074/EYS dated 5.1.1991 (Annexure-C/3) in the present case.

The Court held that although the petitioner had not acquired the prescribed qualification of a trained graduate, she cannot be denied the untrained (graduate) scale of pay for the period in question. Regarding letter dated 5.1.1991 (Annexure-C/3), the Court held that it cannot operate as a bar against the petitioner as she was appointed prior to the issuance of the said letter.

11. From the foregoing discussions, the following conclusions unhesitatingly emerge:

(i) During the relevant time, an untrained (graduate) teacher was eligible to be appointed as an assistant teacher in a non-government (aided) High School. He was not eligible to receive trained (graduate) scale of pay. Untrained (graduate) scale of pay, however, was admissible to him. The petitioner being a pre-1993 appointee, his appointment cannot be dis-approved merely because he does not possess the training qualification (B.Ed)

(ii) the Government instructions contained in letter No.1074/EYS. dated 5.1.1991 at Annexure-C/3 cannot be a bar against the petitioner in view of the fact that he was appointed on 6.11.1989 prior to the issuance of the said letter, and the State Government has already approved the post (with petitioner's name) against additional section in Pipli High School, Pipli"

7.5. The learned counsel for the MC, Mr. Sameer Kumar Das would urge that aforesaid Judgment rendered by this Court in the case of *Bibekananda Das Vrs. State of Odisha & Ors., 1997 (II) OLR 122* has been distinguished in the matter of *Manamohan Tripathy Vrs. State of Odisha & Ors., 1999 (II) OLR 185*. In *Manamohan (supra)* it has been stated thus:

*"10. *** Assuming that power to appoint untrained persons continued even after introduction of new pattern, the Management of School must justify appointment of an untrained person in a trained post. If appointment of*

untrained Graduate in trained Graduate posts are automatically allowed after July 1, 1981 without any justifying circumstances, it would make the new pattern totally redundant, produce undesirable results and affect the interest of the education inasmuch as it is an accepted position that teaching of student should be entrusted to appropriately trained teachers. The decision in Bibekananda Das's cannot be said to have laid down any proposition that the Management of the School was free to appoint untrained persons at their will without making any effort to get trained persons. According to us, after new pattern was introduced with effect from July 1, 1981, untrained persons could be appointed against trained post only under unavoidable circumstances justifying such appointment."

7.6. It is narrated by the learned Single Judge as follows:

"Since the Managing Committee of the aforesaid High School could not find a trained graduate teacher for appointment against TG (Arts) post, in a duly constituted selection process the Managing Committee selected the petitioner having B.A. qualification at that point of time."

7.7. Furthermore, the Appellant was given scope to get himself complete B.Ed. training. In fact the Appellant having been allowed by competent authority pursued and qualified B.Ed.

7.8. Since it is demonstrated by Sri Manoj Kumar Mohanty, counsel for the Appellant that there was circumstances which justified the School to appoint the Appellant, untrained graduate, the case law cited by Sri Sameer Kumar Das is of no help. It may be pertinent to quote paragraph 13 of *Manamohan Tripathy Vrs. State of Odisha & Ors., 1999 (II) OLR 185* as cited by Sri Das:

"13. It appears that the writ petitioner herein was in fact given an opportunity to undergo B.Ed. training when his application was forwarded on June 27, 1995. Although more than two and half years had passed in the meantime, the petitioner failed to avail of the said opportunity and could not obtain B.Ed. qualification."

Accordingly, we do not find any illegality or infirmity in the action of the Superintendent of Sanskrit Studies in not approving the appointment of the petitioner.”

7.9. The case at hand is distinguishable from *Manamohan Tripathy Vrs. State of Odisha & Ors., 1999 (II) OLR 185* inasmuch as the opportunity granted to the Appellant was availed and he got qualified by obtaining B.Ed.

7.10. This Court, thus, finds force in the contention of Sri Manoj Kumar Mohanty, the learned counsel for the Appellant that during the relevant point of time untrained graduate teachers were being appointed by the MC in the private schools and such teachers were being given opportunity to acquire B.Ed. qualification on later date.

7.11. It is also fact on record that the Secretary, PMHS appended certificate on 11.08.1989 to the effect that the Appellant would be allowed to join in the post after completion of the B.Ed. course (Annexure-3 to the writ petition). As the Appellant was not allowed to join in the PMHS, the Inspector of Schools, Balasore Circle, Balasore conducted enquiry by paying visit to the PMHS personally with Administrative-cum-Accounts Officer on 22nd August, 1990 and accordingly, directed for allowing the Appellant to resume his duty. In spite of directions of the Inspector of Schools who conducted enquiry into the matter personally to allow the Appellant to join, the same remained unheeded to by the MC. Therefore, there was no occasion for the MC to debar the Appellant from discharging his duty as Assistant Teacher.

7.12. This Court, after referring to catena of earlier Judgments, held in *Niranjan Beura Vrs. State of Odisha, 65 (1988) CLT 659*, as follows:

“6. *** Inasmuch as some Managements were habitual in refusing to take back the teachers after completion of their training, the Additional Director of Public Instructions (Schools), Odisha, issued Circular No.358-112-75-20981 dated 17.06.1977 to all the District Inspectors of Schools drawing their attention to the conduct of certain Managing Committee who were not allowing the teachers to rejoin their posts after undergoing the training observing that such conduct of the Managing Committee was illegal. The teachers, who wished to rejoin their former posts after completion of their training, should be allowed to do so.

9. In view of the settled position of law in this Court, refusal to allow the petitioner to rejoin his service not having been terminated which is the stand in paragraph 13 of the return submitted by the Management, the petitioner continues to be in service and is entitled to be reinstated.”

7.13. This Court having considered the rival contentions of both the sides, on perusal of documents available on record, comes to the conclusion that by the time, Resolutions dated 24th May, 1990 and 18th July, 1990 came to be passed, the Appellant had already been allowed to undergo the second phase of B.Ed. training and written the B.Ed. examination.

7.14. In the case of *Managing Committee, Mohammadpur-Biswanathpur Girls' High School, Cuttack Vrs. State of Odisha & Ors.*, OJC No.687 of 1990, vide Judgment dated 07.05.1991, it has been laid down as follows:

“A validly constituted Managing Committee in a valid meeting can pass a resolution to be effective. There is no material before us to come to conclusion that the Managing Committee which passed the resolution on 24.04.1988 was validly constituted. Inspector was required to examine it. If the resolution is invalid on account of absence of a validly constituted Managing Committee, the body of persons who resist decision of Inspector would not

be available. To raise voice against it in the capacity they challenge. For a validly constituted Managing Committee Rules 3, 4 and 6 of the Odisha Education (Management of Private High Schools) Rules, 1980 are to be kept in mind and state after stage from 1982 June, they are to be applied. Where any requirement fails, constitution becomes invalid. Merely by accepting a body of persons to be Managing Committee they do not constitute the same unless the constitution satisfies the requirement of law. There is no estoppel against statute. Inspector is to examine the same.”

7.15. At this juncture, it is fruitful to refer to Rule 6 of the 1980 Rules which reads as follows:-

“6. Term of Office of the Members of the Managing Committee.—

(1) The term of office of the Members of the Managing Committee shall be five years:

Provided that an ex officio member shall cease to continue as such as soon as he ceases to hold the office by virtue of which he held the office.

(2) If for any reason, the Managing Committee, constituted under these rules, has not been reconstituted before the expiry of its term as prescribed in Sub-rule (1), it shall be deemed to continue in office until the new Managing Committee assumes office:

Provided that the Managing Committee shall not continue after the expiry of its term for more than six months and that the function of the Managing Committee shall thereafter vest with the Inspector or the District Inspector, as the case may be:

Provided further that the provisions of this sub-rule shall not apply to the case where a Managing Committee has been reconstituted under the proviso to Sub-section (1) of Section 11 of the Act.

(3) Any member of the Managing Committee other than the ex officio members may, at any time resign from the office by sending a letter of resignation to the President, but such resignation shall take effect from the date on which it is accepted by the Managing Committee.

(4) If a member of the Managing Committee other than the ex officio member absents himself from four consecutive meetings of the Managing Committee without prior permission of the President, he shall cease to be a member.

(5) Any member appointed against any casual vacancy caused during the term of the Managing Committee shall continue as a member only for the remaining period of the term if the member in whose vacancy he is appointed.”

7.16. So far as is necessary for the present purpose, relevant portion of Section 7 of the Odisha Education Act, 1969 as amended by virtue of the Odisha Education (Amendment) Act, 1988, is reproduced hereunder:

“7. Managing Committee or Governing Body of the Educational Institution.—

(1) Every private educational institution shall have a Managing Committee or Governing Body, as the case may be, constituted in accordance with the rules.

(2) The Managing Committee or the Governing Body, as the case may be, constituted for any private educational institution, shall obtain the approval of its constitution by the prescribed authority, in the prescribed manner failing which the institution shall not be eligible for recognition.

*(3) ****

(4) A Managing Committee or the Governing Body, as the case may be, shall continue in Office for a term of five years from the date of its approval by the prescribed authority under sub-section (2) and shall be reconstituted in accordance with the rules.

****”*

7.17. Aforesaid provision has come to the statute book by way of amendment and Section 1(2) of the Odisha Education (Amendment)

Act, 1988 specifically stipulated that “it shall deemed to have come into force on the 14th day of August, 1989”. Five years term is, therefore, applicable for the Managing Committee which got approval after 14.08.1989, but not the one which is constituted prior to this effective date. From reading of Section 1(2) of the Odisha Education (Amendment) Act, 1988 it is apparent that the said Amendment Act has prospective in application. In the present case, the term of the Managing Committee which was approved on 10.03.1986 came to be expired on 09.03.1989 and due to non-constitution of the Managing Committee, the term was extended for six months as per proviso to sub-rule (2) of Rule 6. In such view of the matter it has rightly been contended by the Appellant that after 08.09.1989, as the Managing Committee remained defunct, the Inspector of Schools was vested with powers to function as Special Officer. This fact is apparent from the Letter dated 24.01.1990 of the Inspector of Schools, *vide* Annexure-11 to the Writ Appeal filed by the Appellant.

7.18. As per above rule, the Managing Committee was not functional on 13.01.1990, *i.e.*, the date of issue of show cause notice dated 13.01.1990 citing charges against the Appellant. From the Letter *vide* Memo No.1434 dated 24th January, 1990 of the Inspector of Schools, Balasore in the capacity of Special Officer (Annexure-10 enclosed to the writ petition) instructing the Headmaster, PMHS to allow the Appellant to undergo second phase B.Ed. training, it is *ex facie* clear that Managing Committee was defunct by that date. Annexure-11 to the Writ Appeal shows that the newly constituted Management Committee was approved by the Inspector of Schools on 04.04.1990. Therefore, it is not understood as to how the Secretary, Managing Committee claimed to have gone ahead to issue

notice levelling charges under six heads *vide* Letter No.94, dated 24.05.1990. It is interesting to note that said Letter dated 24.05.1990 could be served on the Appellant only on 06.03.1991. Thus, the action of the MC is reprehensible.

7.19. It remained uncontroverted that the Appellant having appeared in the B.Ed. examination on 7th May, 1990, the results thereof were declared on 28th May, 1991. It is beyond control of the Appellant for the delay in publication of the results.

7.20. This Court on perusal of the letter No.94 dated 24th May, 1990 issued by the Secretary, PMHS finds that the Resolution was passed on 18th May, 1990 by the M.C. having taken a decision to terminate the service of the Appellant with one month's notice. It is revealed from letter No.104 dated 18th July, 1990 issued by self-same Secretary, PMHS that further decision was taken in Resolution dated 18th July, 1990 with regard to termination of the Appellant. In this letter, there is no reference to the earlier letter dated 24th May, 1990 nor Resolution dated 18th May, 1990. This Court is satisfied that the Appellant was not afforded due opportunity before taking a decision to terminate his service.

7.21. This Court is, therefore, one with the elaborate reason assigned by the learned Single Judge who came to the conclusion as follows:

“(16) In view of my finding already given at paragraph 10 I am of the view that the termination of the petitioner on account of no proper qualification has not been given proper consideration, hence I reverse the finding of the Appellate Authority so far it relates to termination of the petitioner on the ground of having no required qualification at the time of termination.”

Issue of subsistence of contractor licence:

8. It is the case of the Appellant that the Letter dated 24.05.1990 of the Secretary, PMHS intimating decision to terminate the Appellant with one month's notice as taken in the Resolution dated 18.05.1990 was served on him on 06.03.1991 and the subsequent Letter dated 18.07.1990 intimating decision taken to terminate the Appellant with effect from this date had never been communicated/served. It is asserted by Sri Manoj Kumar Mohanty, learned counsel for the Appellant that no show cause notice was ever served on the Appellant by the Secretary of the MC, thereby entire process undertaken by the MC to terminate the Appellant is vulnerable and without adherence to the principles of natural justice.

8.1. It is submitted by the learned counsel for the Appellant that neither Letter bearing No.94, dated 24.05.1990 nor Letter bearing 104, dated 18.07.1990 indicates decision to terminate the Appellant has been on account of subsistence of "contractor licence". Both the letters unequivocally speak that since Trained Graduate is required to be appointed, the service of the Appellant was decided to be terminated. However, none of these document whisper about allegations/charges and opportunity, if any, being granted.

8.2. In this context the observation contained in the Order dated 27.07.2012 passed by the Director, Secondary Education, Odisha-Appellate Authority, is reproduced hereunder:

*“*** As it is further seen that since 1986 till 1998 Sri Ghose continued to be the contractor and performed the job as contractor received the money from the State exchequer. At the time of hearing, it is further admitted by the parties that Sri Ghose is still continuing as the contractor with the valid registration number. He has suppressed the fact to the school authorities. This itself is an act of misconduct. Teaching is an noble profession and its paramount assignment is to teach the students, it is not*

*understood how a registered C class contractor can continue as a contractor and also devotes his time for teaching. It is the case of the management that they were not aware of the fact and allowed his continuance of upto 10.08.1989. ***”*

8.3. The Director of Secondary Education, Odisha appears to have proceeded to decide the issue of “contractor licence” on the basis of writ of *mandamus* issued by this Court *vide* common Order dated 12.11.1997 passed in OJC No.5490 of 1997 [filed by MC] and OJC No.8166 of 1997 [filed by Appellant-Deepak Kumar Ghosh].

8.4. This Court notes that while disposing of OJC No. 5490 of 1997 and OJC No.8166 of 1997, *vide* Order dated 12.11.2007, it has been observed as follows:

*“*** When the MC and the Headmaster of did not allow Sri DK Ghosh discharge his duties on 22.03.1991, he filed a representation before the Director Higher Secondary Education, Orissa, Bhubaneswar, Annexure-10 in OJC No 8166 of 1997. In the meantime Sri D.K. Ghosh also filed O.J.C. No.7960 of 1994 seeking interference of this Court on the illegalities committed by the Managing Committee and the Headmaster. That OJC was disposed of on 22.12.1994 in the following manner:*

‘The petitioner not being allowed to discharge his duties after service of the termination order dated 24.5.1990 (Annexure-9) has filed a representation to the Director of Secondary Education, Orissa on 22.3.1991 annexed as Annexure-10. As that representation has not been disposed of as yet, the petitioner has approached this Court. Though this writ application is today listed for admission but in view of the nature of direction, we propose to issue, it is not necessary to issue notice on the opposite parties. Having heard the learned counsel for the petitioner and the learned Addl. Govt. Advocate for the opposite parties, we direct the Director of Secondary Education, Opposite Party No. 2 to dispose of the petitioner’s representation (Annexure-10) within a

period of three months from the date of receipt of our order. The writ application is disposed of accordingly. Requisites shall be filed by tomorrow.'

*After hearing the parties at length and going through the citations, we find that the Director has not taken note of all the relevant facts and circumstances to complete an effective adjudication of the dispute on factual side. **In that respect the grievance of the Managing Committee appears to be genuine inasmuch as no finding has been recorded by the Director as to whether Sri Ghosh was registered as a Contractor and what consequence flows from that.** Similarly, the Director has not taken into note that the period for which the Managing Committee was functioning in view of the provision of law amended from time to time regarding the duration of M.C. As we find after noting the career of the petitioner and the action taken against him by the Managing Committee the Director disposed of the case with the remark of violation of principle of natural justice. In view of the contention of the parties and overlapping which was factual situation it is not appropriate for us to resolve that factual controversy. Director should be addressed to decide all the factual controversies raised before us (as noted in the writ petitions) and such controversies be set at rest by a positive finding recorded by the Director on perusal of the relevant documentary evidence if produced by the parties and thereafter he is to take a decision on contention of the parties. Accordingly, while setting aside the order Annexure-8 in O.J.C. No.5490 of 1997 we direct the Director, Secondary Education, Orissa to conduct fresh or further enquiry to resolve the factual controversy, record is finding and pass appropriate consequential order. He should bear in mind that we have not expressed any opinion either in favour or against either of the parties. Therefore, the Director should feel free to record his finding without any impediment but his findings should be supported by fact and evidence available existing on record. The dispute being an old one, we direct him to hear and dispose of the same within a period of ten weeks from the date of receipt of a copy of this order and therefore, we direct the parties to appear before the Director on 26.11.2007 together with certified copy of this order. Each*

parties shall file their list of documents together with the authenticated documents before the Director by 30.11.2007. On perusal of the same, if clarification is necessary, the Director may seek such clarification by 3.12.2007 and thereafter hear the parties and dispose of the case within the above targeted period. We make it clear that both the parties are to cooperate with the Director for timely disposal of the case and it is open to draw adverse inference if any of the parties try to avoid to answer or try to delay the disposal of the case.

Both the writ petitions are disposed of accordingly.”

8.5. The submission of counsel for the Appellant proceeded on the premise that no evidence is available on record to suggest that due to subsistence of contractor licence, the teaching of students was ever affected. Furthermore, at the relevant point of time Padmalochan Mundahan High School of Jadibali in Balasore District was private unaided school and there was no statutory prohibition to possess “contractor licence”. It is, therefore, objected to by the Appellant that the foundation for termination being based on untrained qualification, there was no point in considering the merit of the matter in the light of “contractor licence”. But the argument of the learned counsel for the Appellant is fallacious as the Appellant has neither challenged the Order dated 12.11.2007 passed by Division Bench of this Court in OJC No.5490 of 1997 and OJC No.8166 of 1997 in appeal nor by way of review. Therefore, the learned Single Judge is correct in discussing the matter on this issue while delivering Judgment dated 16.02.2015.

8.6. It is pertinent to refer to the following observation made by the learned Single Judge:

“(21) From the above, it clearly reveals that the petitioner had a simple denial to such allegation and on the other hand if he had at all any document in his

possession to prove the contrary, it was very much open to him to give a suitable reply at least.

(22) Further from the document at Annexure-E/4, it is amply clear that the petitioner was continuing as a 'C' class contractor, even after such an allegation was made in the year 1990, the document at Annexure-E/4 has also a clear indication that the petitioner is not only continuing with the contractor license but he is also getting some money through such contracts and earning in the year 1994 runs to over Rs.40,000/- (Rupees Forty thousand only) in the whole year. Similarly his earning through such contractorship in the year 1994-1995 runs nearing Rs.50,000/- (Rupees Fifty thousand only), this is also the position in the subsequent years but with improvement in the financial side.

(23) However, these are all receipts after the termination of the petitioner, what was relevant for the Appellate Authority is to take into account the position of the petitioner as a Contractor while the notice of termination or termination order was issued.

(24) Under the circumstances, I am of the view that the Director has also not applied his mind in the above regard and his findings are based on receipt of the petitioner after the termination order takes place. I therefore also set-aside this part of the Appeal order and remit the matter back to the Appellate Authority to rehear the parties on the question of continuance and or the position of the contractor licence at the time of termination and pass a fresh order confining it to the question of contractor licence which exercise be concluded within a period of four months from today.

(25) As I have already held the petitioner's termination on account of having no qualification at the time of show-cause as well as termination as bad, under the circumstances, I further direct the petitioner's reinstatement into service will be dependent on the ultimate outcome in the matter of decision on the question of position of the contractor licence at the time of termination or not."

8.7. In such view of the matter the learned Single Judge having remanded the matter for fresh adjudication on factual aspect has not erred in directing the Appellate Authority to rehear the issue of “contractor license at the time of termination”. The Appellant is afforded a scope to avail opportunity to establish his case on this aspect. As his reply was found to be inappropriate, he is, therefore, given a chance to place proper material before the Director, Secondary Education, Odisha in Appeal No.5 of 2008. Thus, further direction in the Judgment dated 16.02.2015 of the learned Single Judge suffers no infirmity as he directed the Director to “*pass a fresh order confining it to the question of contract license which exercise be concluded within a period of four months from today*”.

8.8. Records reveal that “contractor license” was issued to the Appellant on 17th September, 1986. It is a fact that at that point of time, the PMHS was a private school (unaided) and the learned counsel for the Appellant pointed out that the appointment letter did not contain any clause prohibiting or restricting possession of “contract license”. It is also noteworthy that on the date of alleged issue of show cause notice, *i.e.*, 13.01.1990 by the Secretary of MC (Annexure-B/4 to the counter affidavit filed by the MC in the writ petition) calling upon the Appellant to furnish reply in connection with contemplated disciplinary proceeding, the MC was defunct. Be that as it may, the contention that there was no necessity for the learned Single Judge to direct for further inquiry into the aspect of “contractor licence” cannot be acceded to in view of the fact that the Appellant as well as the MC accepted the common Order dated 12.11.2007 passed by Division Bench of this Court in OJC No.5490 of 1997 and OJC No.8166 of 1997, wherein the Director of Secondary Education, Odisha was directed to specifically record

finding “as to whether Sri Ghosh was registered as a contractor and what consequence flows from that”. This Court, therefore, does not find any justified ground to show indulgence in the decision rendered by the learned Single Judge.

Conclusion & Order:

9. In the above factual backdrop and reasons assigned with legal position, this Court does not find infirmity in the conclusion arrived at by the learned Single Judge.

9.1. For the foregoing reasons, W.A. No.114 of 2015 filed by the Managing Committee of Padmalochan Mundahan High School in the Village: Jadibali, P.S.: Raj Nilagiri, District: Balasore, and W.A. No.121 of 2015 filed by Deepak Kumar Ghosh are dismissed.

9.2. It is directed that the opposite parties shall take appropriate effective steps forthwith to give effect to the Judgment dated 16.02.2015 of the learned Single Judge passed in W.P.(C) No.14678 of 2012.

9.3. However, in the circumstances, there is no order as to costs.

(Dr. S. Muralidhar)
Chief Justice

(M. S. Raman)
Judge