IN THE HIGH COURT OF ORISSA AT CUTTACK
WP(C) No.6267 of 2021

Ranjita Nayak .... ***Petitioner***
Mr. A.K. Bose and Mr. D.N. Rath, Adv.

-versus-

State of Odisha and others .... ***Opposite Parties***
Mr. S. Mishra, SC
Mr. A.K. Bose, Advocate (for opposite party No.3)
Mr. S.S. Pratap, Advocate (for opposite party No.4)

CORAM: JUSTICE S.K. PANIGRAHI

ORDER
29.03.2022

Order No.

8. **1**. This matter is taken up through hybrid mode.

2. Heard learned counsel for the parties.

3. The petitioner was appointed against the post of Demonstrator in Physics in Nilakantha Junior Mohavidyalaya, Bangara, Khannagar. By way of this writ petition she challenges the order of termination passed by the opposite Party vide order dated 29.12.2020 in Appeal Case No. 07/2015 and the consequential order dated 22.01.2021, passed by opposite party No.3, terminating the services of the petitioner and reinstating opposite party No.4 against the post.

4. Learned counsel for the petitioner contended that the judgment and order dated 29.12.2020 passed by the State Education Tribunal, Bhubaneswar in Appeal Case No.07 of 2015 cannot sustain in the eye of law in view of fact that the petitioner has not been impleaded

as party in the said appeal though the Tribunal has taken note of fact that after opposite party no.4 was terminated from service, the petitioner is continuing in the post of Demonstrator in Physics after duly selected by following due procedure of selection on 05.05.2013 and is performing her duty. This fact has been placed in paragraph-4 of the judgment passed by the Tribunal in Appeal Case No.07 of 2015. Knowing fully well that the petitioner is continuing in service, opposite party no.4 did not implead the petitioner as party in the aforesaid appeal nor the petitioner was given opportunity to participate in the hearing and the Tribunal quashed the order of termination of opposite party no.4 vide order dated 29.12.2020 and directed for her reinstatement. It is further contended that the opposite party no.4 has not been terminated from services, which is tell tale as evident from paragraph-2 of the judgment passed by the Tribunal in Appeal Case No.07 of 2015, wherein it is specifically stated that on 29.06.2015 when opposite party no.4 went to College after summer vacation, the Principal cum-Secretary of the College demanded rupees one lakh from her telling her that unless she paid the amount, she would not be allowed to perform her duties. That amounts to prevention of opposite party no.4 to discharge her duty. Against termination of service, appeal under Section 10-A of the Orissa Education Act, 1969 lies before the Director to quash the order of termination, but here, as recorded in the judgment, it amounts to prevention of discharging the duty, which may ultimately amounts to termination of service. In paragraph-11 of the judgment, the Tribunal has already held taking note of such fact stating that the

allegations made against the Principal of the College by opposite party no.4 being serious one, she had to lodge either a complaint at least to the Governing Body or to opposite parties no.1 and 2, though might not to the police In absence of any concrete material being placed by opposite party no.4, her allegation that the Principal demanded rupees one lakh to allow her to join in duty cannot be believed. It is further contended that reasons for termination of opposite party no.4 to prevent her to discharge the duty, in that case the Tribunal cannot quash the order of termination of opposite party no.4. Immediately after the order was passed on 9.12.2020, the order impugned has been issued without granting opportunity of hearing to the petitioner. It is further contended that in order to accommodate opposite party no.4, the order Impugned has been passed.

5. The counsel for the opposite party No.04 contended that while the opposite party No.4 was continuing as Demonstrator in Physics, on dated 29.06.2015 she was prohibited by the Principal-cum-Secretary of the college to perform her normal duty. Law is well settled by this Hon'ble Court in the case of ***Dhaneswar Nayak Vrs. State of Odisha***,[1], prohibition amounts termination. Being aggrieved by such prohibition termination, the present opposite party No.4 filed an appeal within 30 days before the State Education Tribunal U/s-10-A of the Act with a prayer to quash or declare the prevention/termination, passed in violation of mandatory provisions of Section-10-A of the Odisha Education Act, 1969.That, in the said

[1]OLR-1986-11-113

appeal the Governing Body (present Opp. Party No-3) appeared and filed counter reply. In the said counter reply the Governing Body annexed a document that the opposite party No.4 has not been prohibited rather she has been terminated from her service w.e.f. 16.04.2013 (Annexure-F/4 to the counter filed by the opposite party No.4). But it is a fact that, the said termination order dated 16.04.2013 has been passed without complying Section-10-A of the Act, which is mandatory in nature. From the counter reply, for the first time, the opposite party No.4 came to know that she was terminated by the Governing Body on dated 16.04.2013. It is also a fact that, the said termination order was not served on the opposite party. That, the Governing Body also in his counter reply before the Tribunal annexed three show cause notices without any postal receipt. It is a fact that all those notices were not served upon the opposite party No.4. All those notices are manufactured documents. The Governing Body only to save his skin, annexed all those documents. Nowhere in the counter reply they have stated that all the notices were served upon the opposite party No.4 on registered post. Therefore all the notices annexed in the counter reply were forged and manufactured documents. It was submitted that, the plea of the present petitioner before this Hon'ble Court that the judgment dated 29.12.2020 passed in the Appeal Case No.07 of 2015 which adversely affect the service of the petitioner is not at all tenable in the eye of law as because the petitioner was not a necessary party before the learned Tribunal. It is fact that at the time of filing the appeal case before the Tribunal the opposite party No.4 has no

information that the present petitioner was appointed against her terminated vacancy for which the petitioner was not made a party. At the time of filing counter, the present opposite party No.4 for the first time could able to know that the present petitioner was appointed against her terminated vacancy.

6. It is seen from the record that the impugned judgment has been passed by the State Education Tribunal, Bhubaneswar vide order dated 29.12.2020 in Appeal Case No.07 of 2015 without giving opportunity of hearing to the parties and without complying the provisions of Section 10(a) of the Orissa Education Act, 1969.

7. In such view of the matter, the writ petition is allowed. The order dated 29.12.2020 passed in Appeal Case No.07/2015 is hereby set aside. The matter is remitted back to the learned State Education Tribunal, Bhubaneswar to re-hear the same and pass a reasoned order, after providing opportunity of hearing to the parties concerned, within a period of two months from the date of presentation of this order. The petitioner is at liberty to file a petition for his impletion as a party in the proceeding. The interim order dated 24.02.2021 stands vacated.

8. Accordingly, the writ petition is disposed of.

9. Urgent certified copy of this order be granted as per rules.

(S.K. Panigrahi)
Judge