

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 10906 of 2016

Debendra Kumar Samal

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Petitioner

Mr. S.K. Baral, Advocate

Vs.

***Chairman, OAT, BBSR and
Others***

.....

Opposite Parties

*Mr. S. Jena, Standing Counsel for
S&ME Department.*

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE SANJAY KUMAR MISHRA

ORDER

06.07.2022

Order No.
08.

This matter is taken up through hybrid mode.

2. Heard Mr. S.K. Baral, learned Counsel appearing for the Petitioner and Mr. S. Jena, learned Standing Counsel appearing for School & Mass Education Department.

3. The Petitioner has filed this Writ Petition challenging the order dated 03.07.2015 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 163 of 2014 under Annexure-1, by which though the Tribunal, while directing for reinstatement in service, observed that the Petitioner will not be entitled to his back wages and his pay shall be notionally fixed from the date of his disengagement till the date of his joining in service and his position shall be revised taking into account his original marks, i.e., 367, secured in the HSC Examination.

4. Mr. S.K. Baral, learned Counsel appearing for the Petitioner

contended that since there was illegality and irregularity committed by the Authorities while dismissing the service of the Petitioner, who was continuing as Assistant Teacher, he approached the Tribunal by filing the above Original Application. After due adjudication, the Tribunal came to a definite finding that no proceeding had been initiated against the Petitioner as per the procedure prescribed under OCS (CCA) Rules, 1962, before the disengagement of the Petitioner from service and merely issuing show cause notice his dismissal from service cannot be construed to be compliance of the provisions of law. As a consequence thereof, though the Tribunal set aside the order of dismissal and directed for his reinstatement in service, but committed an error by not awarding back wages to the Petitioner from the date of disengagement, till he was reinstated in service. It is contended that the Petitioner was prevented from discharging his duty by the Authority, by illegally disengaging him from service. Therefore, he is entitled to get the back wages from the date of disengagement till he was reinstated in service.

5. Mr. S. Jena, learned Standing Counsel appearing for School & Mass Education Department contended that the Petitioner had entered into service by producing a fake certificate where his mark was indicated as 397, but the actual mark secured by him was 367. Once he got an appointment by producing fake mark sheet, he cannot claim that he is entitled to get back wages, even though the order of dismissal has been set aside by the Tribunal. It is also contended that since the Petitioner has not discharged his duty from the date of his disengagement till the date of reinstatement, the Tribunal is well justified by passing the order

that the Petitioner is not entitled to get back wages. Thereby, the order of the Tribunal is well justified, which does not call for interference by this Court.

6. Having heard learned Counsel for the parties and after going through the record, it appears that the Petitioner joined as Sikshya Sahayak in Jantuali Nuagaon Primary School on 07.01.2005. Vide order No. 177 dated 02.06.2011, the Petitioner was appointed as a regular Primary School Teacher with effect from 07.01.2011 under the Zilla Parishad against the existing vacancy, as he completed six years of continuous service as Sikshya Sahayak and Junior Teacher taken together. While he was so continuing, vide letter dated 22.10.2013, Opposite Party No.5 directed the Petitioner to produce all his original documents before him. Pursuant to there to, he produced all his original certificates. But the Petitioner received a show cause notice on 13.11.2013 on the allegation that he had submitted forged and manufactured H.S.C. mark sheet showing to have secured 397 marks, instead of 367 marks, during his selection in the year 2004-05. But fact remains, the Petitioner had never submitted any forged or manipulated mark sheet, rather he had produced his mark sheet obtained from the Board of Secondary Education of the H.S.C. Examination 1982 with Roll No. 37M166. The Petitioner secured 406 marks in H.S.C. and excluding the extra optional mark, his mark was 367. After receipt of notice of show cause, the Petitioner requested the Opposite Party No.5 to supply the so called mark sheet containing 397 marks, as alleged, in his representation dated 07.12.2013. Instead of supplying the said alleged forged mark sheet, the Opposite Party No.5, vide letter dated 13.12.2013,

without considering the application submitted on 07.12.2013 directed the Petitioner to appear in person for hearing in the matter on 28.12.2013. Even though the Petitioner denied the allegation, he was disengaged from service, vide order dated 04.01.2014. Such disengagement order was challenged by the Petitioner before the Tribunal. After due adjudication the Tribunal came to a definite finding that since the Petitioner was continuing as Regular Primary School Teacher, OCS (CCA) Rules, 1962 is applicable to him. But, having so found, the Tribunal came to hold that before dismissing the Petitioner from service no proceeding was initiated against him following the procedure contained in OCS (CCA) Rules, 1962. Only the Opposite Parties had issued a show cause notice and disengaged the Petitioner from service after receipt of show cause reply from him. As a consequence thereof, the Tribunal set aside the order of dismissal from service and directed for reinstatement of the Petitioner in service, pursuant to which the Petitioner has been reinstated in service. But the Tribunal while directing for reinstatement observed that the Petitioner shall not be entitled to back wages. The Petitioner, being aggrieved by that part of the order of the Tribunal, has filed the present Writ Petition.

7. If the Petitioner was deprived of discharging his duty by the action of the Opposite Parties without any rhyme and reason and, as such, if the order of dismissal was passed without following the procedure laid down in OCS (CCA) Rules and ultimately the Tribunal came to a finding that such procedure was not followed and accordingly directed for reinstatement, there is no valid justifiable reason not to grant back wages to him. As a

consequence thereof, the Tribunal has committed gross error apparent on the face of the record by denying the benefit of the back wages from the date he was disengaged till he joined the service in compliance of the order of the Tribunal.

8. This Court in the case of ***Biswanath Sethi v. State of Odisha and others, 2021 (I) OLR-555*** held that since the procedure envisaged under OCS (CCA) Rules was not followed, the order of dismissal cannot sustain in the eye of law. The principle laid down by this Court has already been taken into consideration by the Tribunal while setting aside the order of dismissal as the procedure laid down in OCS (CCA) Rules has not been followed. So far as the grant of back wages is concerned, as the Petitioner was deprived of discharging his duty for no fault attributed to him, he is entitled to get back wages.

9. Similar question had come up for consideration before the apex Court in ***Sardul Singh v. Delhi Administration, (1991) 3 SCC 346***, paragraph-3 whereof reads as follows:

“By the date this order was passed the appellant had reached his normal age of superannuation. The grievance of the appellant is that once the order of compulsory retirement was quashed as legally unsustainable, the Tribunal was not justified in issuing the extracted directive since the proper order would have been to direct his reinstatement in service, that is, to direct the respondents to proceed on the premise that there was no valid order of compulsory retirement against him. We think this contention is well-founded. Once the Tribunal quashed the order of compulsory retirement as unsustainable, the only alternative for it was to direct the respondents to ignore that order and to proceed on the basis that the Petitioner had continued in service till the date of his normal retirement, i.e. November 30, 1989. We, therefore, quash the extracted portion and direct the respondents to treat the appellant as having retired in normal course w.e.f. November 30, 1989 on the post which he was occupying at the date of compulsory retirement and pay him the back wages and other monetary benefits and refix his pension accordingly. The appeal is allowed accordingly but there will be no order as to costs.”

10. In ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors, (2013) 10 SCC 324***, the apex

Court while considering for payment of back wages, observed that in case of wrongful termination of service, reinstatement with continuity of service and back wages is normal rule.

11. Therefore, applying the above proposition of law to the present context, since the Tribunal has directed for reinstatement of the Petitioner in service, the normal course would have been to pay the back wages. Denial of such benefit to the Petitioner cannot sustain in the eye of law. To that extent, the order passed by the Tribunal cannot sustain and is hereby quashed. The Opposite Parties are directed to pay the back wages admissible to the Petitioner from the date of his disengagement till the date of reinstatement in service as expeditiously as possible, preferably within a period of four months from the date of communication of this order. Needless to say, in the event the Opposite Parties do not release the back wages to the Petitioner within the time stipulated, it will carry interest @ 7% per annum till actual payment is made.

12. With the above observation and direction, the Writ Petition stands disposed of.

(DR. B.R. SARANGI)
JUDGE

Arun/Banita

(S.K. MISHRA)
JUDGE