

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No. 1457 of 2012**

***Pankaj Kumar Sahoo***

....

***Petitioner***

Mr. Sameer Kumar Das, Advocate

*-versus-*

***State of Odisha and others***

....

***Opp. Parties***

Mr. Ramanath Acharya,

Standing Counsel,

School & Mass Education Department

(For Opposite Party Nos. 1 to 3)

Mr. Nilamadhab Sarakar, Advocate

(For Opposite Party No.4)

**CORAM:  
JUSTICE K.R. MOHAPATRA**

**ORDER  
11.02.2022**

**Order No.**

- 17.
1. This matter is taken up through Hybrid mode.
  2. Petitioner in this writ petition seeks to assail the order No.59608 dated 23<sup>rd</sup> December, 2011 (Annexure-10) passed by the Director, Secondary Education, Odisha, Bhubaneswar- Opposite Party No.2 in Appeal No.28 of 2004.
  3. Brief facts relevant for adjudication of the case are that the Raghunath Hembram High School, Taramora in the district of Mayurbhanj (for short 'the High School') was established by an educational agency in the year 1992 registered under the Societies Registration Act, 1860 vide order No.3236-174 of 1992-93. Upon establishment of the High School, teaching and non-teaching staff were appointed. The Petitioner was one amongst them who was appointed on 18<sup>th</sup> October, 1996 by the educational agency as a Classical Teacher. While he was continuing as such, the Petitioner was not allowed to discharge

his duties. Subsequently, a resignation letter was also submitted by him, which is alleged by the Petitioner to have been obtained under coercion. Thereafter, the Petitioner lodged an FIR alleging that the resignation letter was obtained from him under coercion. Accordingly, GR Case No.457 of 2000 was registered. The Petitioner had also moved this Court in OJC No.8066 of 2000 assailing the action of the Secretary of the High School in preventing him from discharging his duties as a Classical Teacher in the High School. This Court, vide order dated 16<sup>th</sup> March, 2004, disposed of the writ petition directing the parties to avail remedy before the Director, Secondary Education, Odisha, Bhubaneswar-Opposite Party No.2. Accordingly, the Petitioner filed Appeal Case No.28 of 2004 before the Opposite Party No.2, wherein the impugned order under Annexure-10 has been passed.

4. Mr. Das, learned counsel for the Petitioner submits that the impugned order under Annexure-10 is an outcome of total non-application of mind, apparent error on the face of the record and the same is also against law. It is his submission that the Director, Secondary Education, while adjudicating the matter framed the following issues.

- “ a) *As to whether the resignation of the appellant dtd. 28.7.00 has been taken forcibly (sic) against his own will?*
- b) *As to whether Managing Committee can be asked to get back the appellant into the services?”*

Due to pendency of the criminal proceeding in GR Case No.457 of 2000, the Director, Secondary Education refused to delve

into the controversy by answering issue (a); however, while answering issue (b), the Director erroneously held that the Managing Committee of the High School was registered under the Societies Registration Act, 1860, vide No.3236-174 of 1992-93 dated 29<sup>th</sup> August, 1992 issued by Mayurbhanj District Officer, Baripada, the term of which is ended on 28<sup>th</sup> August, 1995 after completion of three years. It is his submission that an ‘*educational agency*’ is defined under Rule 2 (e) of Odisha Education (Establishment, Recognition and Management of Private High School), Rules, 1991 (For short, ‘the Rules’), which reads as under:

**“Rule-2 Definitions – (1) In these Rules, unless the context otherwise requires-**

xx

xx

xx

(e) **“Educational Agency”** means any person or body of persons desirous for permission for establishment of private High School under provisions of the Act;”

**4.1** He further submits that ‘*Managing Committee*’ is constituted under Rule-25(1) of the said Rules. It provides that soon after a High School is established in accordance with these Rules, the Educational Agency shall constitute a Managing Committee for managing the affairs of the School as required under Section 7 of the Odisha Education Act, 1969. Section 7(4) provides that the term of office of the Managing Committee or Governing Body, as the case may be, shall continue for a term of three years from the date of its approval by the Prescribed Authority under sub-Section (2) of said Section and shall be reconstituted in accordance with the

Rules. He, therefore, submits that the term of the Managing Committee will only expire after three years from the date of its approval. There is no term for an educational agency. It expires only on constitution and approval of the Managing Committee/Governing Body of the educational institution, as the case may be. The Director in the impugned order has categorically observed that the Managing Committee of the High School was approved on 9<sup>th</sup> March, 1998. Thus, the educational agency was in management of the High School till the approved Managing Committee took over the management of the institution. As it appears, the Opposite Party No.2, while adjudicating the appeal, observed that the appointment of the Petitioner was by an incompetent authority as the appointment of the Petitioner was made in between 28<sup>th</sup> August, 1995 to 8<sup>th</sup> March, 1998. Such an observation of the Director-Opposite Party No.2 is both an error of law and the fact as well. The Managing Committee had never appointed the Petitioner, as it was constituted only on 9<sup>th</sup> March, 1998. The Opposite Party No.2 misconstrued the ‘*Educational Agency*’ to be the ‘*Managing Committee*’. The term of Educational Agency never expired on 28<sup>th</sup> August, 1995, as erroneously observed by Opposite Party No.2. Further, all the teaching and non-teaching staff of the School were appointed by the Educational Agency and services of some of them were approved subsequently. Thus, the finding of Opposite Party No.2 in the impugned order is not sustainable. He further submits that the main issue for consideration was whether the resignation was obtained from the Petitioner forcibly or not. Answer to issue (a) was *sine qua non* to answer of issue (b). When the Opposite Party No.2

refused to consider the issue (a), he could not have effectively answered issue (b). It is his submission that in the meantime, GR Case No.457 of 2000 has already been decided.

4.2 Therefore, he prays for setting aside the impugned order and remit matter back to the Director, Secondary Education- Opposite Party No.2 for consideration of the appeal afresh in view of the subsequent developments.

5. Mr. Sarkar, learned counsel for Opposite Party No.4- Managing Committee of the High School submits that the Petitioner was appointed when there was no valid Managing Committee of the High School. Thus, there is no error in the finding of Opposite Party No.2 in holding the appointment of the Petitioner by an incompetent authority. It is his submission that in the criminal proceeding, the Petitioner has categorically deposed that he has voluntarily tendered his resignation. Thus, no fruitful purpose will be served by remitting the matter to Opposite Party No.2 for fresh consideration. Accordingly, he prays for dismissal of the writ petition.

6. Mr. Acharya, learned Standing Counsel for School and Mass Education Department supporting the submission of Mr. Sarkar contends that there is no infirmity in the order of the Director, Secondary Education- Opposite Party No.2.

7. Taking into consideration the rival contentions of the parties and on scrutiny of the materials on record, this Court finds that while answering issue (b), the Director got confused and failed to distinguish between the '*Educational Agency*' and '*Managing Committee*'. Misconstruing Educational Agency to be the Managing Committee, the Opposite Party No.2

proceeded to adjudicate the appeal. No doubt, the Petitioner was appointed by the Educational Agency but the fact remains that services of the teaching and non-teaching staff of the said High School, who were appointed by the said Educational Agency have already been approved by the prescribed authority in the meantime. Further, GR Case No.457 of 2000 has already been decided in the meantime. Thus, there will be no difficulty on the part of Opposite Party No.2 to answer issue (a).

8. In view of the above, the impugned order is not sustainable and is accordingly set aside. The matter is remitted back to the Director, Secondary Education, Odisha, Bhubaneswar-Opposite Party No.2 for fresh adjudication giving opportunity of hearing to the parties concerned.

9. To avoid further delay in the matter, parties are directed to appear before the Director, Secondary Education on 7<sup>th</sup> March, 2022 along with certified copy of this order to receive further instruction. It is further observed that the Opposite Party No.2 shall make an endeavour for early disposal of the appeal, as expeditiously as possible, preferably within a period of six months from the date of appearance of the parties. Parties are at liberty to adduce further evidence in support of their case before the Director.

10. The writ petition is accordingly disposed of.

Issue urgent certified copy of the order on proper application.

*s.s.satapathy*

**(K.R. Mohapatra)**  
**Judge**