

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P. (C) No.10031 of 2011

***1.Managing Committee of Sriman
High School
2.Niranjan Behera***

Petitioners

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Mr.P.C.Acharya, Advocate

Versus

***1. State of Odisha
2.Joint Director, Regional
Directorate of Education,
Bhubaneswar
3.Inspector of Schools
4.Sanjib Kumar Giri***

Opposite Parties

*Mr. S.N.Mohapatra, Standing Counsel,
School & Mass Education Deptt.
(for O.Ps. 1 to 3)
None for O.P.4*

CORAM:

JUSTICE SAVITRI RATHO

ORDER

29.09.2022

(Through hybrid mode)

Order No.

08.

1. In this writ petition, the petitioners - the Managing Committee (in short “*the MC*”) of Sriman High School, Kamalasole (in short “*School*”) and one Niranjan Behera have prayed to quash the order dated 30.03.2011 (Annexure-18) passed by the Opposite party No 2 – the Joint Director, Regional Directorate of Education, in Appeal Case No.128 of 2009, holding the decision of the MC to terminate the services of the opposite party No.4-Sanjib Kumar Giri (Appellant therein) to be illegal and unacceptable and directing the petitioner No. 1 to take back opposite party No 4 in the post of Hindi teacher of the school and extend him all consequential benefits.

2. On 23.09.2002, as there was no appearance on behalf of the opposite party No. 4, the case had been adjourned to 26.09.2022. The matter could not be taken up on 26.09.2022 and has therefore been listed today. None appears for the opposite party No.4, when the matter is called.

Counter affidavit has been filed on behalf of the Opposite party No.2 and opposite party No 4. Separate rejoinder affidavits have been filed on behalf of the petitioner to the said counter affidavits and the petitioner has also filed an additional affidavit. As the pleadings are complete, the case is taken up for final disposal.

3. Appeal No.128 of 2009 on 3.1.2009 had been filed by the opposite party No.4 before the Joint Director, Regional Directorate of Education, Bhubaneswar praying for a direction to allow him as work as Hindi Teacher in the School and to give him other service benefits.

The case of the opposite party No. 4 is that he had been selected and appointed as Hindi Teacher of the school, pursuant to Resolution No.6 dated 23.10.1995 and he joined the school on 01.11.1995. The school was established in the year 1994 and received recognition of the Government on 14.01.2002. In the staff position, his name was shown as Hindi Teacher for the purpose of receiving recognition and in the application for renewal of recognition which was prepared by the MC. He has worked as Hindi Teacher and signed in the attendance register uninterruptedly till December, 2008, when he was illegally disallowed to sign in the attendance register. He alleges that this was done to deprive from receiving the grant in aid which the School had become eligible to receive and the name of petitioner No.2 was shown in the letter sent for renewal. He had submitted representations to the Inspector of Schools, Mayurbhanj in

this regard. After he submitted such representation, the MC created some fabricated documents regarding his misbehaviour with a girl student and terminated his service in 2008 and appointed petitioner No.2. They also said that the services of opposite party No.4 had earlier been terminated on similar allegation in 1994 and he was later re-employed and his name was included in the staff list from 2003-2004 to 2007-2008. They also stated that his name was deleted in the year 2008-2009 and the name of petitioner No.2-Niranjan Behera was substituted. Opposite Party No 4 stated that the allegations had been created subsequently with an oblique motive to disengage him and to make room for the petitioner No.2. No enquiry whatsoever was held nor any notice issued to him complying with Rule 21 of the 1974 Rules or approval of the opposite party No.3 – Inspector of Schools, Mayurbhanj taken before he was prevented from working. He had submitted representations before opposite party No.3 on 6.11.2008 and 13.11.2008. As they were not considered, he filed the appeal.

4. Counter affidavit had been filed on behalf of the petitioners in the Appeal stating therein that vide resolution No.6 dated 23.10.1995, the opposite party No.4 was selected as Hindi Teacher of the school and joined in the school on 1.11.1995. He continued in the school till one schedule tribe girl student of Class-VIII complained about his misbehaviour on 10.1.2003 before the Headmaster. Pursuant to such complaint, the MC vide its meeting No.24 dated 25.2.2003 decided not to allow him in the school any further and this decision was intimated to opposite party No.4 by the Headmaster of school. The opposite party No.4 did not challenge the said decision of the MC but quit his job. In order to fill up the post of Hindi Teacher,

selection was done by the MC and one Gagan Bihari Patra was selected for appointment as Hindi Teacher of the school vide resolution dated 26.06.2003 and he joined on 1.7.2003. But he resigned from service on 17.6.2004 which was accepted by the MC vide Resolution No.28 dated 30.6.2004. The opposite party No.4 appeared before the MC on 30.6.2004 and begged apology and requested the MC to allow him to work in the school with the assurance that he will not repeat his earlier behavior in future. So, the MC verbally permitted him to work in the school from 1.7.2004. The opposite party No.4 applied to the MC to regularize his service in the school and vide Resolution No.32 dated 25.4.2006, the MC permitted him to work till 29.9.2007 temporarily and his case for regular appointment was to be decided on 30.09.2007. But the Headmaster of the school received a complaint dated 25.3.2007 that opposite party No.4 had gone to the house of the complainant, namely, and proposed to marry his daughter who was a student of the school. On 10.7.2007, the allegation was discussed and it was decided to terminate the service of opposite party No.4 and he was informed vide letter No.42 dated 27.7.2007 and he was directed to appear before the Secretary of the School on 6.8.2007 for giving the explanation. Although decision was taken to terminate the service of opposite party No.4 by resolution dated 10.7.2007 but it had not been executed till 29.9.2007 for which the opposite party No.4 continued to work in the school and on 27.7.2007, his name was included in the application form for recognition. On 30.09.2007, the MC decided not to extend the service of opposite party No.4 any further. So he has served in the school till 29.9.2007 and signed the attendance register till 29.9.2007. They did not dispute that opposite party No.4 was allowed to temporarily teach

the student in the school from 1.7.2004 till 29.9.2007 and allowed to sign the attendance register till 29.09.2007, after which his services were not extended further.

5. Challenging the order dated 30.03.2011, the MC of the School has filed the writ petition alongwith Niranjana Behera whose appointment had been challenged by the opposite party No. 4 in the Appeal on the self same grounds as those taken in its counter affidavit filed in the Appeal.

6. The opposite party No. 4 has filed counter affidavit taking the self-same grounds as taken by him in the appeal and further stating that copy of the writ petition served on him is incomplete and dates and lines are missing in paragraph 12 and 13 of the writ petition. It has also been stated that petitioner No.1 is a defunct MC whose term has expired since long and no new MC has been constituted and therefore petitioner No.1 has no *locus standi* to file the writ petition for which the writ petition should be dismissed and that there is no illegality in the order dated 30.3.2011 passed in Appeal No.128/2009 for which the writ petition deserves to be dismissed. It has been further stated that although the fact of appointment and continuance of opposite party No.4 as Hindi Teacher was intimated to all the authorities as well as the Inspector of schools, the Director of Schools and to the Board of Secondary Education but no information is available with them regarding termination of service of opposite party No.4 and appointment of petitioner No.2 in his place. The petitioners could not produce any documents in support of their stand, for which the Director came to the conclusion that the unilateral action of the MC disallowing the

opposite party No.4 to sign the attendance register and to discharge his duties is illegal and directed the MC to allow the opposite party No.4 to resume his duties.

7. A rejoinder affidavit has been filed by the petitioners wherein it has been stated that the MC was approved vide memo No.29201 dated 8.6.2010 and its duration was valid for three years, i.e., till 8.6.2013. The allegation that the petitioner No.2 was never appointed as Hindi Teacher in the School is incorrect in view of the MC Resolution No.41 dated 28.11.2001 and renewal recognition application of the year 2008-2009. It is clarified that after completion of term of appointment of the opposite party No.4, the MC appointed the petitioner No.2 and submitted the renewal recognition application of the year 2008-09 before the Inspector of Schools, Mayurbhanj Circle recommending to grant renewal recognition for the year 2008-09. The MC through Headmaster of the School had submitted the entire records, i.e., Resolution Book, pay acquaintance Book, teachers attendance register and other records to show that the services of opposite party No.4 was not terminated but his service was not extended beyond 29.9.2007 as per the decision of the MC. It further clarified to opposite party No.3 that after expiry of the term of appointment of opposite party No.4, the petitioner No.2 was appointed by the MC Resolution No.41 dated 28.11.2007 which was intimated to his office vide Memo No.72 dated 28.11.2007. Being satisfied after the scrutiny of appointment of petitioner No.2 and replacement of opposite party No.4, the opposite party No.3 recommended the renewal recognition appointment to the Board of Secondary Education, Cuttack. As the petitioners had filed a joint counter affidavit in the appeal, the allegation that petitioner No.2 had

not contested in the appeal is not correct. It has been further reiterated that the MC vide Resolution No.28 dated 30.6.2004 had permitted the opposite party No.4 to assist the school as Hindi Teacher but he had not given any appointment. It is also stated that service of the petitioner has not been extended beyond 29.9.2007 so he has no right to claim service in the school and there was no necessity to issue any show cause or conduct any enquiry as his term of appointment was over.

8. Thereafter, an additional affidavit has been filed by the petitioner No. 1 stating that during pendency of this writ petition, the opposite party No.4 has been convicted vide judgment dated 30.9.2021 in S.T. No.33/07 – 2013/11 by the learned Additional Sessions Judge, Baripada, District, Mayurbhanj for which he is no longer entitled to benefit in service.

9. I have heard Mr.P.C. Acharya learned counsel for the petitioners and Mr.S.N. Mohapatra learned Standing Counsel, School and Mass Education for opposite parties No. 1 to 3 and perused the writ petition, the counter affidavits, rejoinder affidavits and the additional affidavit.

10. Appeal No.128 of 2009 has been allowed with the following findings :

i.) The name of the appellant was there in the list as Hindi Teacher of the school at the time of Recognition of Class-X of the school.

ii.)The office of the Inspector of Schools had no record as to termination or elimination of the name of the Appellant in the Renewal form 2008-09.

iii.) The date of appointment of Sri Niranjan Behera as 28.11.2007 appears to be anomalous in face of having no records.

iv.) The appointment of Sri Niranjan Behera is not free from illegality and irregularity and elimination of the name of the appellant is violation of law-rules and principles of natural justice.

v.) As such, appointment of the appellant as regular Hindi teacher of the school is available on records and the same cannot be disputed and his name has been sent in the Renewal Recognition forms from 2004-05, 2005-06, 2006-07 and 2007-08 showing his date of appointment as 01.07.2004.

vi.) The name of the petitioner has been shown in the renewal application form for 2007-08 which has been signed on 27.07.2007. The plea that on 10.07.2007, the Managing Committee decided to terminate the services of the appellant on the ground of misbehavior shown to the girl students creates confusion and the entire charges are vitiated.

vii.) Serious allegation of misbehavior with girl student was there, however, charges were not framed against him and the matter was not properly enquired into. The matter was not reported to proper quarters to start criminal proceeding and disciplinary action against the appellant. Hence, the allegations and charges have not been properly established.

11. It has not been disputed by the counsel for the petitioners that notice to show cause had not been issued to the opposite party No. 4. It is therefore obvious that principles of natural justice have been violated, as admittedly no show cause was issued to the opposite party No.4 nor any enquiry was held before he was not allowed to work (which amounts to termination). The submission of the learned

counsel for the petitioners that this was not necessary as the term of appointment of opposite party No.4 had expired and had not been renewed is not acceptable.

12. As the learned counsel for the petitioners has not been able to point out any infirmity or illegality in the impugned order, I find no reason to interfere with the impugned order.

13. As regards the submission regarding conviction of opposite party No .4 in S.T. case No 33/07 of 2013-11 on 30.03.2021 for commission of offences punishable under Section – 302 I.P.C, this conviction will not nullify the impugned order. The submission that Opposite party No.4 cannot be reinstated in service or allowed to work because of his conviction in a criminal case, is a matter to be considered by the authorities as per law after giving opportunity to the opposite party No.4 to put forward his case.

14. In view of the above discussion, I do not find any merit in the writ petition, which is dismissed.

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(Savitri Ratho)
Judge

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