

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.355 of 2019

Saraswati Devi

Appellant

....
Mr. J. Biswal, Advocate

-versus-

State of Odisha and others

Respondents

M/s. K. K. Swain and associates, Advocates for Respondent No.6

**CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN**

**ORDER
23.11.2022**

Order No.

13. 1. Learned counsel for the Appellant places a memo in Court today enclosing the order dated 7th November, 2009 passed by the Director, Secondary Education, Orissa in Appeal No.10 of 2008, which is taken on record.
2. The present appeal is directed against the judgment dated 17th July, 2019 passed by the learned Single Judge allowing W.P.(C) No.17590 of 2009 filed by Respondent No.6 herein and setting aside an order dated 7th November, 2009 passed by the Director, Secondary Education, Odisha in Appeal No.10 of 2008 filed by the present Appellant.
3. By the said order dated 7th November 2009, the Director set aside the termination of the Appellant by an order dated 23rd

August, 2003 passed by the Managing Committee (MC) of Bhismagiri Girl's High School, Berhampur District Ganjan (Respondent No.4 herein).

4. This Court has heard the submissions of learned counsel for the Parties.

5. The brief facts are that the Appellant, who was initially appointed as a Classical Teacher (CT) in the aforementioned school, which at that stage was an un-aided school, on 30th June, 1992, became a permanent teacher with effect from that date by an order dated 30th June, 1994. It is stated that the Appellant worked without any interruption till 12th September, 2002. From 13th September 2002, the Appellant remained absent and by a letter dated 19th September, 2002 of the Headmistress of the school, she was asked to furnish an explanation for her absence. When this letter was not replied to, another explanation was sought from her by a letter dated 1st November, 2002. The Appellant purportedly submitted reply to the said letter on 8th November, 2002 claiming that she had not received the earlier letter dated 19th September, 2002. She supposed to have submitted an application for leave at that stage which apparently was "acknowledged by the Head mistress on 16th November, 2002 on the body of the said application dated 8th November, 2002."

6. Learned counsel for the Appellant repeatedly stressed that this acknowledgement of the receipt of the application from the Appellant by the Headmistress would tantamount to sanctioning of the leave by the Headmistress and, therefore, it could not be said

that the Appellant's absence was unauthorized. The Court is unable to agree with the said submissions. Mere acknowledgement of a leave application would not amount to approval or sanction of the leave. These are two different things altogether. There is nothing on record placed either before the Director, Secondary Education in the aforementioned Appeal No.10 of 2008 or before the learned Single Judge or even before this Court to show that there was any leave application of the present Appellant which was in fact sanctioned by the MC of the school or the Headmistress.

7. As it transpires by another letter dated 26th February 2003, the Headmistress again informed the Appellant to resume duty by 10th March, 2003. It is stated that in this letter the Appellant was informed that her leave application "had been accepted." However, the fact remains that the Appellant did not resume duty by 10th March, 2003.

8. The Secretary, MC then by a letter dated 25th May, 2003 again asked the Appellant to resume duty on the reopening day of the school. The Appellant did not.

9. When asked about the repeated absence from school by the Appellant despite the above letters, learned counsel for the Appellant volunteered that she had not received those intimations. The fact remains therefore that from 13th September, 2002 till the date of termination of her services by the MC's Resolution dated 18th July 2003, the Appellant never reported for duty.

10. The situation was such that the school had to go in for a newspaper publication informing that the Appellant stood

suspended on 22nd July, 2003 and that her services were terminated on 23rd August, 2003.

11. It appears that the school became an aided school on 20th February, 2004 by a Notification under the Odisha Education Act, 1969. The OJC No.5022 of 2004 filed by the Appellant challenging the termination order was disposed of by this Court permitting her to file an appeal before the Director, Secondary Education by an order dated 22nd April, 2008. Pursuant thereto, the Appellant preferred Appeal No.10 of 2008 before the Director, Secondary Education, which came to be allowed by the order dated 7th November, 2009.

12. It was this order that was challenged by Respondent No.6, who in the meanwhile had been appointed in place of the Appellant in the school.

13. The learned Single Judge has set aside the impugned order dated 7th November, 2009 on two grounds. One was that since the school had become an aided school, the challenge to the termination order ought to have been preferred by the Appellant before the State Education Tribunal (SET). Nevertheless, on merits, the learned Single Judge found that the Director had erred in allowing the appeal when it was plain that despite repeated opportunities, the Appellant had not turned up for duty and remained unauthorizedly absent.

14. Learned counsel for the Appellant urged that the MC had never appeared in the appeal or even before the learned Single Judge to make clear its stand. According to him, once the leave application

of the Appellant stood 'accepted', her absence could not be termed 'unauthorized'. The termination order, according to him, was passed behind her back and was in violation of the principles of natural justice. It was therefore rightly set aside by the Director, Secondary Education.

15. As noticed by the learned Single Judge, the Appellant did not report for duty despite repeatedly asked by the Headmistress to do so. Even assuming that the Appellant had belatedly submitted an application on 8th November, 2002 for approval of her leave, the fact remains that it was only acknowledged and not approved. Later, on 26th February, 2003 when the Headmistress asked her to report for duty by 10th March 2003, the Appellant failed to do so. The Appellant could not have presumed, having remained absent from 13th September, 2002, that she could remain indefinitely absent. At some stage, she should have asked to report for duty and she should have approached the school. Clearly, the Appellant did not do that at least till her services were terminated on 23rd August, 2003. For a teacher in a school to remain continuously absent from 13th September, 2002 for almost a year without bothering to report for duty, the conduct is telltale and, therefore, the order dated 23rd August, 2003 by the school MC terminating her services in such circumstances appeared perfectly justified.

16. These circumstances were, as rightly pointed out by the learned Single Judge, not taken note of by the Director, Secondary Education and, therefore, the learned Single Judge was justified in

setting aside the order dated 7th November, 2009 of the Director, Secondary Education.

17. No grounds have been made out for interfering with the impugned judgment of the learned Single Judge. The writ appeal is dismissed.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

M. Panda

