

ORISSA HIGH COURT: CUTTACK

W.P.(C) NO. 19888 OF 2015

In the matter of an application under Articles 226 and 227 of the Constitution of India.

AFR

State of Orissa and others Petitioners

-Versus-

Narayan Jena and another Opp. Parties

For Petitioners : Mr. S. Jena,
Standing Counsel S&ME

For Opp. Parties : M/s B. Pasayat,
P.K. Behera and
C.R. Mohanty, Advocates
[O.P. No.1]

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
HONOURABLE MISS JUSTICE SAVITRI RATHO**

Date of hearing and judgment: 18.04.2022

DR. B.R. SARANGI, J. The State-petitioners have filed this writ petition seeking to quash the order dated 09.02.2015 passed in O.A. No. 590 (C) of 2010, by

which the Odisha Administrative Tribunal, Cuttack Bench, Cuttack, by holding that the impugned order of disengagement dated 20.07.2002 was passed without complying the principles of natural justice, quashed the same so also the order dated 15.12.2009, rejecting the representation, and directed that the State-petitioners shall reinstate opposite party no.1 in service in the school, wherefrom he was disengaged, and that he will not be entitled to any pay during the period of disengagement. The tribunal, however, granted liberty to the petitioners to issue show cause notice to the opposite party no.1 giving him opportunity to submit his response before taking any further action in the matter.

2. The factual matrix of the case, in brief, is that opposite party no.1 was initially engaged as peon on daily wage basis for two years from November 1996 in the Board of Secondary Education, Orissa, Cuttack. Thereafter, vide letter dated 01.02.1999, the Secretary, Board of Secondary Education, Orissa requested the

Director, Teacher Education and SCERT to absorb opposite party no.1 as Peon in any vacant post. As a consequence thereof, on the very same day, without following due procedure, the Director, TE & SCERT appointed opposite party no.1 as Peon on temporary basis in the office of the Headmaster, Radhanath Secondary Training School, Cuttack with a condition that the appointment is purely temporary and can be terminated without any reason assigned thereof. The said fact came to the notice of the authority in the year 2002 and, therefore, vide letters dated 11.02.2002, 26.02.2002 and 13.05.2002, the Director, TE & SCERT was instructed to take necessary action for removal of opposite party no.1, who was illegally appointed as Peon in Radhanath Secondary Training School, Cuttack. Accordingly, the Headmaster, Radhanath Secondary Training School, Cuttack disengaged the opposite party no.1, vide order dated 20.07.2002. Aggrieved by such order, opposite party no.1 approached the tribunal by filing O.A. No. 2137(C) of 2002, which was disposed of

vide order dated 25.03.2009 remanding the matter back to the Director to treat the paper book and M.P. as representation and pass appropriate orders on merit within a period of two months from the date of receipt of the order. In compliance of the aforesaid order, the Director, TE & SCERT, vide order dated 15.12.2009, rejected the claim of the opposite party no.1 on the ground that the very appointment of opposite party no.1 was illegal and without following any recruitment procedure. As against the aforesaid order, opposite party no.1 approached the tribunal by filing O.A. No. 590(C) of 2010. The tribunal, vide order dated 09.02.2015, quashed the order of disengagement dated 20.07.2012 so also the order dated 15.12.2009 rejecting the representation of opposite party no.1, and directed that the State-petitioners shall reinstate opposite party no.1 in service in the school wherefrom he was disengaged, and that he will not be entitled to any pay during the period of disengagement. The tribunal, however, granted liberty to the petitioners to issue show

cause notice to opposite party no.1 giving him opportunity to submit his response before taking any further action in the matter. Hence this application.

3. Mr. S. Jena, learned Standing Counsel for School and Mass Education Department appearing for the State-petitioners contended that the tribunal has committed gross error apparent on the face of record in passing the order impugned. It is contended that if the initial appointment of opposite party no.1 was in gross violation of the recruitment procedure itself, the authorities are well justified in passing the order of disengagement so also the order rejecting the representation. In such event, the tribunal should not have held that principles of natural justice were to be followed, before the order of disengagement was communicated to opposite party no.1. More so, the appointment order clearly indicates that the service of opposite party no.1 can be terminated without assigning any reasons. It is further contended that as the petitioner was appointed, without following due

procedure of selection, the order of disengagement passed by the authority is well justified. To substantiate his contention, he has relied upon the judgment of the apex Court in the cases of **Basudeo Tiwary v. Sido Kanhu University**, (1998) 8 SCC 194; **Pramod Kumar v. U.P. Secondary Services Commission**, (2008) 7 SCC 153; **State of Odisha v. Mamata Mohanty**, (2011) 3 SCC 436; and of this Court in the case of **M.C. Bhagabati Bidyapitha v. Rajkumar Dash**, disposed of on 10.02.2016.

4. Mr. B. Pasayat, learned counsel for opposite party no.1 vehemently contended that opposite party no.1, having been appointed and rendered service for more than three years,—should not have been disengaged from service without following the principles of natural justice and, as such, the tribunal is well justified in passing the order impugned in quashing the order of disengagement. Thus, it is contended that the writ petition should be dismissed.

5. This Court heard Mr. S. Jena, learned Standing Counsel for School and Mass Education Department appearing for the State-petitioners and Mr. B. Pasayat, learned counsel for opposite party no.1 by hybrid mode. Pleadings having been exchanged between the parties, with the consent of learned counsel for the parties this writ petition is being disposed of finally at the stage of admission.

6. It is not in dispute that on the recommendation of the Secretary, Board of Secondary Education, Orissa, vide letter dated 01.02.1999, the Director, TE & SCERT appointed opposite party no.1 on the very same day, i.e., 01.02.1999 as Peon on temporary basis in Radhanath Secondary Training School, Cuttack with a condition that he can be terminated without assigning any reason thereof. When such illegal appointment was brought to the notice of the Government against, steps were taken for disengagement of opposite party no.1. Accordingly, the Director, TE & SCERT directed the Headmaster of the

school, vide letter dated 19.07.2002, to disengage opposite party no.1 from service. As a consequence thereof, on 20.07.2002, opposite party no.1 was disengaged from service, as the terms of his appointment do not require to assigning any reason for disengagement. The opposite party no.1 challenged the said order before the tribunal in O.A. No.2137(C) of 2002 and in turn the tribunal remanded the matter back to the authority to consider the grievance of the O.P.No.1 within a period of two months. In pursuance of the order of the tribunal, the Director TE & SCERT, vide order dated 15.12.2009, by holding that the initial appointment of the opposite party no.1 was void ab initio, rejected his claim, vide order dated 15.12.2009.

7. Aggrieved by the above order of the Director, the opposite party no.1 approached the tribunal by filing O.A. No. 590 (C) of 2010. But the tribunal, without taking into consideration the ground reality, passed the order impugned quashing the order of disengagement of opposite party no.1, on the ground

that the same suffer from non compliance of the principles of natural justice. But fact remains, if the appointment of O.P. No.1 was conditional one and, following the condition stipulated in the order of appointment, the order of disengaged was passed, it cannot be said that there should be compliance of principles of natural justice. More so, no right had been accrued in favour of O.P. No.1 in view of the fact that he was appointed without following due procedure of recruitment. Merely because O.P N.o-1 was given appointment, it cannot be said that such appointment is valid in the eye of law, as the same was done without following due process of selection. Once the recruitment of O.P No.1 was made without following any prescribed rule or procedure, the appointment so made cannot be held to be valid one and, as such, this Court is of the considered view that, in this particular situation, compliance of principles of natural justice may not be required.

8. In **Basudeo Tiwary** (supra), the apex Court held that if appointment is made contrary to the statute or rules governing the field, then issuance of notice before termination from service is not required.

9. In **Pramod Kumar** (supra), the apex Court held that if any appointment made in contravention to the statutory rules, would be void in law and such illegality cannot be regularized.

10. In **Mamata Mohanty** (supra), the apex Court held that if an order is bad in law from its very inception, then all further consequent action is non est in the eye of law and liable to be set aside.

Similar view has also been taken by this Court in the case of **M.C. Bhagabati Bidyapitha** (supra).

11. The cases of **Shrawan Kumar Jha v. State of Bihar**, AIR 1991 SC 309; **Pradipta Kumar Samanta v. State of Orissa**, (2002) ATT (OAT) 379 and **Shekar Ghosh v. Union of India**, (2007) 1 SCC

(L&S) 247, on which reliance was placed by the tribunal in the order impugned, have no application to the facts and circumstances of the present case. As such, each case is decided on its own facts and circumstances which have no application to the present context. Thereby, the conclusion arrived at by the tribunal in paragraphs-9 and 10 of the order impugned is without application of mind and, as such, the same has been passed without taking into consideration the fact that opposite party no.1 was appointed without following due procedure as envisaged under law. Once the appointment of O.P.No.1 was made without following due recruitment process, the same is void ab initio.

12. In view of the facts and law, as discussed above, this Court is of the considered view that the order dated 09.02.2015 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 590 (C) of 2010 cannot sustain in the eye of law. The same is liable to be quashed and hereby quashed.

13. In the result, the writ petition is allowed.

However, there shall be no order as to costs.

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DR. B.R. SARANGI,
JUDGE

SAVITRI RATHO, J. I agree.

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SAVITRI RATHO,
JUDGE

Orissa High Court, Cuttack
The 18th April, 2022, Ashok/GDS

