

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 20396 of 2018

An application under Articles 226 & 227 of Constitution of India.

AFR **Surendra Mahanta** ----- **Petitioner**

-Versus-

State of Odisha & others **Opp. Parties**

Advocate(s) appeared in this case:-

For Petitioner : M/s. A.K. Mohanty-A,
R.K. Behera, R.C. Pradhan,
S. Das, Advocates

For Opp. Parties : Mr. R.N. Acharya,
Standing Counsel for School and
Mass Education Department.
[O.P. No. 1 & 2]

 M/s. Shakti Prasad Das & Tej
Kumar, Advocates.
[O.P. Nos. 3 & 4]

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

8th August, 2022

SASHIKANTA MISHRA, J

The petitioner was appointed as a Lecturer in Odia on 15.07.1991 in Government Higher Secondary

School, Ukhunda (hereinafter referred to as College). His appointment was approved by the director of Secondary Education by order dated 11.07.2011. After such approval, the Deputy Director (NCG-II) allowed the petitioner to work as Principal in charge of the College as approved by order of the Director of Higher Education dated 22.08.2011. As per the said order, the Sub-Collector, Champua is the President of the Governing Body of the institution. The term of the then Governing Body having expired, the petitioner as Secretary, sent recommendation for approval of the Governing Body on 23.7.2018. No action was taken on such recommendation. While the matter stood thus, all on a sudden, the opposite party No. 3 posing as the self-styled President of the Governing Body, passed a resolution on 29.08.2018 placing the petitioner under suspension on several vague, concocted and frivolous allegations. It is stated that the petitioner's office was put under lock and key with the assistance of some of the staff of the College while the petitioner was busy in college work. On 30.08.2018, some of the staff members of the college put lock and key in the

chamber of the Principal, while he had gone to attend a conference at Balasore. When the petitioner came to know of the same, he lodged an FIR on 31.08.2018. The police also lodged FIR against the local people for blocking the road under various sections of the Indian Penal Code. Again on 31.08.2018, the opposite party No. 3 illegally and forcibly convened a meeting of the Governing Body and placed the petitioner under suspension by making several false and frivolous allegations. It is stated that the opposite party No.3 has no jurisdiction to act as President of the Governing Body and in suspending the petitioner as also by directing him to handover charges of his office to one Bhaskar Chandra Majhi, Lecturer in History to remain in charge of the principal of the College even though he is not the next senior to the petitioner. The Director (Opposite Party No.2), being influenced by opposite party No. 3 approved the proposal to keep Bhaskar Chandra Majhi as principal in charge of the college by order dated 10.9.2018. The Joint Director, Directorate of HSE, Odisha by letter dated 12.9.2018 approved the order of suspension pursuant to the order of

opposite party No.3 dated 10.9.2018 without application of mind. It is further stated that the resolution by the so-called president of the Governing Body and the order of suspension are illegal, arbitrary and contrary to the provision under section 21 of the Odisha Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institution) Rules, 1974 (for short, 1974 Rules). It is stated that the illegal order of suspension passed on 10.09.2018 was approved on 12.09.2018 because of influence of the opposite party No. 3 who is an MLA of the ruling party. It is further stated that no prima facie case has been established against the petitioner nor any investigation conducted with regard to the allegations levelled against him before placing him under suspension. It is therefore stated that the entire action is actuated with malafides and arbitrariness. As such the petitioner has been out of office since 29.8.2018.

2. Despite repeated opportunities no counter was filed by the opposite parties. However learned State counsel preferred to make oral arguments based on records.

3. Heard Mr. A.K. Mohanty, learned counsel for the petitioner and Mr. R.N. Acharya, learned Standing Counsel for the School and Mass Education Department.

4. It is argued by Mr. Mohanty that the order of suspension under Annexure-6 and its approval under Annexure - 8 is entirely illegal since the opposite party No. 3 is not competent to place him under suspension. Moreover, the order is contrary to the provision under Rule-21 of the 1974 Rules. The resolution of the Governing Body dated 29.08.2018 and 31.08.2018 are also bad as the procedure to hold meeting of the Governing Body and to take decision for suspension of the petitioner was not followed. It is further argued that the allegations levelled in the resolution are false and frivolous. The petitioner was never called upon by the Governing Body to show cause before placing him under suspension. It is further contended that since no proceeding whatsoever has been initiated even till date, the order of suspension needs to be revoked.

5. Mr. R.N. Acharya has argued that the petitioner was placed under suspension not on the individual decision of

opposite party No.3 but by a resolution passed by the Governing Body of the institution. Since serious allegations had been levelled against him, he was rightly placed under suspension pending drawl of disciplinary proceedings, which is permissible in law. In the instant case suspension has not been imposed as a measure of punishment but purely as an administrative decision taken in contemplation of disciplinary proceedings. According to Mr. Acharya therefore, there is no infirmity in the order warranting interference by this court.

6. From the documents enclosed to the writ petition it is seen that the petitioner was placed under suspension vide order dtd.10.09.2018 as per Resolutions dated 29.08.2018 and 31.08.2018 of the Governing Body. The said order was approved by the Director of HSE by order dated 12.09.2018 with instructions to the Governing Body to frame charges as per 1974 rules and to finalise the proceedings as per detailed procedure defined under Rule 20, 22, 23 and 26. Rule 21 of the 1974 rules reads as under:

“21.Disciplinary authorities- (1) The Director may impose any of the penalties specified in rule 20 on any employee:

Provided that the Director shall not initiate any disciplinary proceeding unless the Managing Committee or the Governing Body, as the case may be, refuses or neglects to take disciplinary action against any employee.

(2) Without prejudice to sub-rule (1) but subject to the provisions of sub-rules (3) and (4) any of the penalties specified in rule 20 may be imposed—

(a) in respect of a lower grade employee, by the Headmaster or the principal as the case may be, and

(b) in respect of any other employee, by the Managing Committee or the Governing Body as the case may be.

Provided that in case of suspension of employees falling under Clauses (a) and (b) the prior approval of the Inspector in respect of any employee serving in a School and of the Director in relation to any other employee is obtained:

Provided further that the Managing Committee or the Governing Body, as the case may be, may place an employee under suspension at the initiation of disciplinary proceedings for a period of thirty days, pending approval of Inspector of the Director, as the case may be.

(3) No penalty shall be imposed on any employee by an authority other than the authority mentioned in sub rules (1) and (2) hereinafter referred to as the disciplinary authority.

(4) No penalty shall be imposed on a person appointed to any post in an aided institution on deputation from the Government except in accordance with the provisions of rule 25.”

From a bare reading of the second proviso to sub-rule (2) of Rule 21, it is evident that the recommendation of the Governing Body to place the principal under suspension must be approved by the Director within a period of 30 days. As stated above, the Governing Body

resolved to place the petitioner under suspension on 10.9.2018 which was approved on 12.9.2018 that is, within two days. Therefore, there has been no violation of the rules.

7. It is further observed that by order dated 12.09.2018 the Governing Body was also instructed to initiate disciplinary proceedings against the petitioner and to conclude the same as per rules. It is contended that no further action has been taken in the matter even till date, a fact not specifically controverted by the opposite parties. Thus, as things stand at present, the petitioner has continued to be under suspension for nearly 4 years without initiation of the contemplated disciplinary proceeding. No explanation is forthcoming from the side of the opposite party authorities as to the reason for such inordinate delay. While it is a fact that the statute confers power on the authorities to place an employee under suspension pending drawl of disciplinary proceedings yet it does not sanction any arbitrary or whimsical action on the part of the authorities. If the director had instructed the Governing Body to initiate and conclude the

disciplinary proceedings as per law and there is nothing on record to show that the petitioner is responsible for the delay caused therein, there is no reason as to why the same should be kept pending indefinitely. The procedure for imposing penalties has been delineated under Rule 22 of the 1974 rules. True, there is no time limit specified therein for conclusion of the disciplinary proceeding but then, it is trite law that no proceeding can be kept indefinitely open to the detriment of the concerned employee. To the above extent therefore, the inaction of the opposite party authorities in initiating and concluding the disciplinary proceeding against the petitioner cannot be approved. On the same analogy, the action of the opposite party authorities in keeping the petitioner suspended on the ruse of disciplinary proceeding for an inordinately long period of time also cannot be sustained in the eye of law.

8. For the foregoing reasons therefore, this Court is of the view that the impugned order dated 12.09.2018 insofar as it relates to grant of approval to the resolution of the Governing Body dated 10.09.2018 to place the

petitioner under suspension cannot be sustained in the eye of law and is therefore, quashed only to such extent. As a natural corollary it is directed that the petitioner be reinstated in service forthwith and all consequential financial and service benefits shall be paid to him as admissible in law within a period of two months from the date of communication of this order or on production of certified copy thereof by the petitioner.

9. The writ petition is disposed of accordingly.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 8th August, 2022/ A.K. Rana