

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.C (OAC) NO.304 OF 2018

(An application under Section 19 of the Administrative Tribunal's Act)

Santosh Kumar Padhi ... **Petitioner**

-versus-

State of Odisha & others ... Opposite Parties

Advocates appeared in the case through hybrid mode:

For Petitioner : Dr. J.K.Lenka, Advocate

-versus-

For Opposite Parties : Mr.R.N.Acharya,
Standing Counsel,
School & Mass Education
Department

Mr. H.K.Panigrahi,
Addl. Standing Counsel

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

05.04.2022.

Sashikanta Mishra,J. In the present Writ Petition, the Petitioner seeks to challenge the order dated 5th February, 2018 passed by the Collector-cum-CEO, Zilla Parishad, Nabarangpur (Opposite Party No.4) in disengaging him from the post of Junior Teacher, Kokodaguda PUPS, Dabugaon Block, District -Nabarangpur.

2. The brief facts of the case are that the Petitioner being a B.Sc., C.T. and Physically Handicapped candidate with 42% disability had applied for and engaged as Sikshya Sahayak in the aforementioned School on the basis of the proceeding of a Selection committee held on 10th March, 2011 and 31st March, 2011. The Petitioner's monthly honorarium was fixed at Rs.3,500/- consolidated and he joined on 29th April, 2011. At the time of submitting his testimonials, the Petitioner had submitted a disability certificate dated 21st May, 1999 issued by the District Medical Board, Nabarangpur consisting of the CDMO and Specialist in Orthopedics Department, District Headquarter Hospital, Nabarangpur to the effect that he was disabled to the extent of 42%. After three years continuous service as Sikshya Sahayak, the Petitioner was appointed as Junior Teacher w.e.f. 28th April, 2014 in the same School with monthly honorarium of Rs.7,000/-. While he was serving as such the District Project

Co-ordinator RTE,SSA, Nabarangpur (Opposite Party No.5) issued a letter dated 19th October, 2016 directing the Petitioner to appear before the CDMO/Disability Medical Board of the District again and to furnish a Disability Certificate after re-examination by the said Board within one month. The Petitioner sought to challenge the said communication before this Court in W.P.(C) No.20042/2016 with prayer for quashing the said letter, but while the said case was pending, the Petitioner appeared before the Additional Director-cum-CDMO, Nabarangpur (Opposite Party No.7) on 18th December, 2016 and was examined by the concerned Specialist. Basing on such examination a Physical Disability Certificate was issued in his favour showing 40% disability by the Opposite Party no.7. As such, the Petitioner withdrew the aforementioned Writ Petition pending before this Court. The Petitioner produced the disability certificate before Opposite Party No.5 and while he was expecting to be regularized in his service, suddenly, Opposite Party No.5 issued an order of disengagement dated 5th February, 2018 by order of the Opposite Party No.4 with immediate effect. The said order was stated to have been issued by holding that the Disability Certificate produced by the Petitioner at the time of his engagement as Sikshya Sahayak was found to be

unauthentic. It is stated that the order dated 5th February, 2018, which is enclosed as Annexure-9 to the Writ Petition, is bad in law as the same was issued without giving any show cause notice or personal hearing to the Petitioner. It is further stated that the Disability Certificate, originally issued on 21st May, 1999 by the CDMO, Nabarangpur was authentic as the Petitioner's disability was also subsequently proved by the certificate issued on 18th December, 2016. On such facts, the Petitioner has prayed to quash the impugned order under Annexure-9 and to direct the concerned authorities to allow him to continue as Jr. Teacher with immediate effect.

3. Opposite Party Nos.3 to 6 have filed a joint counter admitting the basic facts averred in the Writ Petition. However, it is stated that the Medical Certificate issued by the CDMO, Nabarangpur during 1999 was subsequently revealed to be a fake. Reference has also been made to the observation of the Opposite Party No.2 in its order passed in case No.SCPD-356/2016, wherein the Opposite Party No.4 was requested to initiate appropriate proceeding as to why the Petitioner shall not be disengaged from his service and to take further action accordingly as deemed proper for the cause of PWDs. Condition Nos.14 and 15 of the order of engagement as

Sikshya Sahayak have also been referred to in the counter affidavit by stating that the same shall stand automatically cancelled, if any testimonial produced by the candidate is found to be forged.

The Petitioner has filed a rejoinder to the counter affidavit filed by Opposite Party Nos.3 to 6 reiterating his averments that the Disability Certificate issued on 21st May, 1999 is genuine having been signed by the CDMO as well as the Orthopedic Specialist of DHH, Nabarangpur. It is specifically pleaded that the Petitioner was not impleaded as party in the case before the State Commissioner for Persons with Disabilities, Government of Odisha, Bhubaneswar (Opposite Party No.2) nor was given an opportunity of hearing to defend his case and to prove his Disability Certificate. Since there are materials on record to show that the certificate in question was in fact issued from the Office of the CDMO, Nabarangpur at the relevant time and disability of the Petitioner was also subsequently proved on re-examination, the contentions raised in the counter affidavit were sought to be repelled.

An additional counter affidavit has been filed by Opposite Party Nos.3 to 6 again taking the plea that the Disability Certificate submitted by the Petitioner was not genuine as informed by the

CDMO, Nabarangpur in his letter dated 28th November, 2016, enclosed as Annexure-D/6 to the additional affidavit, since complaint was received regarding the genuineness of the Disability Certificate, the Opposite Party No.5 asked the Petitioner to appear before the District Medical Board, Nabarangpur. The order of the Opposite Party No.2 as well as Condition Nos.14 and 15 of the order of engagement have again been referred to.

4. Opposite Party no.7 has filed a separate counter affidavit stating that the certificate dated 21st May, 1999 is not a Disability Certificate within the meaning of Rule 4(1) of Persons with Disability (Equal Opportunities, Protection of Rights, and Full Participation) Rules, 1996, but is a Medical Certificate for handicapped persons. Moreover, the said certificate does not contain any remark regarding recommendation of jobs which implies that the Petitioner is restricted from utilizing the said certificate for obtaining a job. That apart, the said certificate was not issued by the duly constituted Medical Board as per Rule 4(2) of 1996 Rules nor does it carry a passport size photograph of the Petitioner. Even the Identity Card issued by the Directorate of Social Welfare reveals that the same is valid for only three years

from the date of issue and, hence, the certificate had lost its force much before the year, 2011 when the recruitment process was taken up. Since during the time of recruitment, the Petitioner had not produced a valid and authentic Disability Certificate, he is not entitled to appointment. Opposite Party No.7 has also referred to Condition Nos.14 and 15 of the engagement order to justify its other pleadings.

5. Heard Dr. J.K.Lenka, learned counsel for the Petitioner, Mr. R.N.Acharya, learned Standing Counsel for the School and Mass Education Department appearing for Opposite Party Nos.3 to 6 and Mr. H.K.Panigrahi, learned Addl. Standing Counsel appearing for Opposite Party No.7.

6. It is argued by Dr. Lenka that having accepted the Medical Certificate submitted by the Petitioner at the time of his engagement in the year 2011 and having allowed the Petitioner to serve initially as Sikshya Sahayak and thereafter as Junior Teacher for a total period of five and half years, it is not open to the authorities to question his eligibility for such engagement on the basis of any error in the testimonials submitted by him. Even otherwise, there is absolutely no proof or any acceptable material to

show that the Disability Certificate dated 21st May, 1999 submitted by the Petitioner was in any manner forged or is a fake. Referring to the correspondence made with the CDMO of Nabarangpur, enclosed under Annexure-11, which was obtained under the RTI Act as also the communication dated 26th April, 2018 issued under Annexure-12 and dated 13th July, 2018, enclosed as Annexure-13 to the rejoinder filed by the Petitioner to counter affidavit filed by Opposite Party Nos.3 to 6, it is argued by Dr. Lenka that the same clearly proves that the certificate in question was in fact issued by the Office of the CDMO at the relevant time indicating his disability as 42%, but unfortunately, no records showing issuance of such certificate was maintained in the Office. Obviously, the Petitioner cannot be blamed for non-maintenance of records, but fact remains that the certificate was in fact issued. It is further argued by Dr. Lenka that the order of the Opposite Party No.2 is not binding on the Petitioner for the reason that he was not impleaded as party nor given an opportunity to defend himself or to prove his stand regarding the Disability Certificate. It is also contended that had the Petitioner continued in service, his services would have been regularized as a Primary School Teacher as evident from inclusion of his name in the Office Order dated 12th

June, 2018 issued by the District Education Officer, Nabarangpur vide Annexure-14 to the rejoinder. It has also been argued on behalf of the Petitioner that the Block Education Officer is the Appointing Authority and Disciplinary Authority of Elementary Teachers from Level-V to Level-III as clarified by the Government in School and Mass Education Circular No.14220 dated 29th June, 2019. Therefore, the power to disengage the Petitioner if at all is with the Block Education Officer and the Opposite Party No.4 could not have exercised such power. The final argument of Dr. Lenka is that the order of the Opposite Party No.2 is merely advisory in nature and not binding on the authority. In any case, the fact that the Petitioner is actually a disabled person has been proved subsequently on his re-examination by the Medical Board on 18th December, 2016. Since no notice whatsoever was issued to the Petitioner before issuance of the impugned order of disengagement, the principles of natural justice having been grossly violated, the same cannot be sustained in the eye of law.

7. Mr. R.N.Acharya, learned Standing Counsel for the School and Mass Education Department, has argued that the certificate produced by the Petitioner at the time of his engagement cannot be treated as authentic in view of the clear assertion of the CDMO

that no documents or records in support of issuance of such certificate was maintained in the Office. Referring to the conditions enumerated in the engagement order, enclosed as Annexure-1, it is submitted that as per Condition No.14 thereof, the engagement order shall stand automatically cancelled on detection of any forgery of testimonials produced by the candidate or mistake or falsification of facts. It is similarly argued that as per Condition No.15, the engagement being purely temporary can be disengaged at any time without assigning any reasons thereof. In the case at hand, the impugned order was issued clearly stating that the Disability Certificate was found to be unauthentic and, therefore, no illegality whatsoever was committed.

8. Mr. H.K.Panigrahi, learned Addl. Standing Counsel for Opposite Party No.7, has argued that the so called Disability Certificate submitted by the Petitioner is not actually Disability Certificate within a meaning of Rule 4(1) of the 1996 Rules as it is a mere medical certificate issued to handicapped persons. The same cannot be equated with disability certificate as per Rules. The Identity Card issued on the basis of such Disability Certificate was meant to be valid for three years and, therefore, the certificate could not have been utilized much after the said period, i.e. in the

year 2011. It is also argued that the Petitioner cannot raise the plea of lack of opportunity of hearing before issuance of the impugned order because the facts being clear and undisputed, the ultimate outcome would not have been any different had any opportunity being given.

9. I have considered the rival contentions noted above and have also perused the documents on record carefully. The basic facts of the case are not disputed inasmuch as the Petitioner was engaged as Sikshya Sahayak as a disabled candidate on the basis of the Medical Certificate issued on 21st May, 1999. It is also not disputed that the Petitioner served as Sikshya Sahayak for three years, thereafter as Junior Teacher for a period of about two and half years and after five and half years of such engagement, he was asked to initially appear before the District Medical Board and thereafter before the Appellate Medical Board at M.K.C.G. Medical College and Hospital, Berhampur for reexamination of his disability. It is borne out from the records that such a course was undertaken because of a complaint purportedly received to the effect that the disability certificate originally submitted by the Petitioner was not genuine. It is also borne out from the records that as directed, the Petitioner appeared before the District Medical

Board, Nabarangpur, which issued a Disability Certificate on 18th December, 2016 showing 40% permanent disability. Thus, the fact that emerges from the above discussion is, the Petitioner is in fact a disabled person with the extent of his disability being certified as 40% permanent in the year 2016. To put it differently, it is not a case where it has been proved that the Petitioner not being a disabled person had applied and got through the selection process as a disabled candidate. So, the first question that arises for consideration is whether the medical certificate issued in the year, 1999 could have been acted upon since the same is purportedly not in the form of a Disability Certificate as envisaged under 1996 Rules. A reference to the said certificate, which is enclosed as Annexurte-2 to the Writ Petition, reveals that the same is a “Medical Certificate for handicapped person” showing the type of disability as locomotor, nature of disability as *Post Traumatic Healed Acetabular Fracture and Healed Fracture Ischeo-Acetabular Junction of Lt Hip and Pelvis, (Lt) sided limp and (Lt) sided Lumbosliatic Scoliosis* and the percentage of disability as 42%. The said certificate has been signed by the Specialist in Orthopedics of DHH, Nabarangpur and the CDMO of Nabarangpur. Issuance of the said certificate has actually not been

denied, rather, as per the letters issued under Annexures-10 series, 11, 12 and 13 to the rejoinder filed by the Petitioner, it is evident that the same was in fact issued from the office of the DCMO, Nabarangpur though no record/register was maintained at that time. The Disability Certificate issued subsequently i.e. on 18th December, 2016, enclosed at Annexure-8 to the Writ Petition, reveals that the disability is locomotor disability, affected part of the body is left leg with diagnosis-*Post Traumatic Healed Acetabular Fracture and Healed Fracture-L and Permanent Physical Impairment as 40%*. Thus, there is no substantial difference between the two certificates referred above, rather the subsequent certificate only goes to prove the Petitioner's contention of being disabled. Such being the factual position, the question is, can the Petitioner be blamed for non-issuance of the disability certificate in the proper form or using proper nomenclature by the concerned authority? The answer would obviously be in the negative. Similar is the case with non-maintenance of registers/records showing issuance of the certificate in favour of the Petitioner at the relevant time. Obviously, the Petitioner cannot be blamed for the same. Thus, once it is admitted that the certificate was in fact issued and there is

subsequent proof that the recitals of the said certificate are not in any manner false, a hypertechnical view cannot be taken to deprive the Petitioner from the benefits accrued to him on the basis of such certificate.

10. Another point was raised by the Opposite Parties that the Identify Card issued to the Petitioner on the strength of the Disability Certificate issued on 25th April, 1999 is valid for a period of three years and, therefore, the Petitioner could not have utilized such certificate after the said period and in any case not for recruitment in the year 2011. This argument is on the face of it absurd for the simple decision that the Identity Card is never intended to be a major of the card holders disability but serves as an identification only. That apart, there is nothing in the certificate dated 25th April, 1999 that the disability found in the Petitioner shall exist for a period of three years only.

While it is admitted the disability issued on 18th December, 2016 (Annexure-8) proves that the Petitioner was disabled to the extent of 40%. The Opposite Parties have, however, taken the stand the same being based on medical examination of the petitioner in the year, 2016, can only have a perspective value.

This argument is also fallacious and absurd because the Disability Certificate issued on 18th December, 2016 only proves the correctness of the certificate issued on 25th April, 1999.

11. Even otherwise, it was for the authorities concerned to call upon the Petitioner at the relevant time to prove the authenticity of the certificate if they entertained any doubts at that time. However, having accepted the certificate and by acting upon it, the authorities concerned have issued engagement order in favour of the Petitioner and allowed him to continue as such for a long period i.e. for five and half years. It is, therefore, no longer open to them to turn around at such a belated stage and question the genuineness of the testimonials submitted by the Petitioner. In any event, as per the discussion made in the preceding paragraphs, the Petitioner's claim of being disabled has been subsequently proved to be correct.

12. It must be kept in mind that the State is supposed to be a model employer and as such, cannot be allowed to take actions that are arbitrary and not countenanced in law. In the instant case, the Opposite Party-authorities are guilty of approbation and reprobation, i.e. of blowing hot and cold at the same in the manner as described above thereby adversely affecting the right to

livelihood of the Petitioner included under Article 21 of the Constitution of India.

13. In the case of *Union of India and others v. Miss Pritilata Nanda*; reported in (2010) 11 SCC 674, the Apex Court held that once the candidature of a person is accepted by the concerned authorities and he/she is allowed to participate in the process of selection, it is not open to them to turn around and question his or her entitlement to be considered for engagement. The case at hand stands on an even better footing inasmuch as not only was the candidature of the Petitioner considered but also he was engaged and allowed to work for five and half years. The action of the authorities, therefore, cannot be countenanced in law.

14. Coming to the so called proceedings initiated by the Opposite Party No.2, it is not forthcoming from records that the Petitioner was ever impleaded as a party or otherwise given an opportunity to defend himself. It is also not forthcoming as to who was the complainant and what was the basis of such complaint, which was entertained and ultimately allowed. Be that as it may, a reference at this stage to Sections 80 and 81 of the Rights of Persons with Disabilities Act, 2016 would be in order:-

“80.Functions of State Commissioner.- The State Commissioner shall-

- (a) identify, suo motu or otherwise, provision of any law or policy, programme and procedures, which are in consistent with this Act, and recommend necessary corrective steps;*
- (b) inquire, suo motu or otherwise deprivation of rights of persons with disabilities and safeguards available to them in respect of matters for which the State Government is the appropriate Government and take up the matter with appropriate authorities for corrective action;*
- (c) review the safeguards provided by or under this Act or any other law for the time being in force for the protection of rights of persons with disabilities and recommend measures for their effective implementation;*
- (d) review the factors that inhibit the enjoyment of rights of persons with disabilities and recommend appropriate remedial measures;*
- (e) undertake and promote research in the field of the rights of persons with disabilities;*
- (f) promote awareness of the rights of persons with disabilities and the safeguards available for their protection;*
- (g) monitor implementation of the provisions of this Act and schemes, programmes meant for persons with disabilities;*
- (h) monitor utilization of funds disbursed by the State Government for the benefits of persons with disabilities; and*

(i) perform such other funds as the State Government may assign.

81. Action by appropriate authorities on recommendation of State Commissioner.-

Whenever the State Commissioner makes a recommendation to an authority in pursuance of clause (b) of Section 80, that authority shall take necessary action on it, and inform the State Commissioner of the action taken within three months from the date receipt of the recommendation:

Provided that where an authority does not accept a recommendation, it shall convey reasons for non-acceptance to the State Commissioner for Persons with Disabilities within the period of three months, and shall also inform the aggrieved person.”

15. From a conjoint reading of the aforequoted provisions and particularly the proviso to Section 81 of the Act, it is clear that the recommendation of the Opposite Party No.2 is not mandatory but only advisory in nature. Therefore, for the opposite party-authorities to contend that they had acted in pursuance of the order passed by the Opposite Party No.2 cannot be accepted. Rather, it shows a complete non-application of mind by the authority to the facts and circumstances of the case. In short, the recommendation was accepted mechanically.

16. Be it noted here that the Opposite Party No.2 vide its order dated 15th September, 2017, enclosed as Annexure-6, had only

requested the Opposite Party No.4 to initiate appropriate proceeding as to why the Petitioner shall not be disengaged from his service. Assuming that the Opposite Party No.4 deemed it proper to accept such recommendation fully, then a proceeding ought to have been drawn up in keeping with the principles of natural justice to enable the Petitioner to put forth his views in the matter. However, as it appears, acting on the recommendations of the Opposite Party No.2, the Opposite Party No.5 issued the impugned order purportedly by order of the Opposite Party No.4 to disengage the Petitioner from his post with immediate effect. Such order was not preceded by any show cause notice nor any opportunity of hearing to the Petitioner. Moreover, the said order was issued by referring to the observation of the Opposite party No.7 regarding “non-issue” of Disability Certificate by the concerned office and that basing on the said Disability Certificate the appointment order for the post of Sikshya Sahayak was issued is found to be un authentic. As has already been discussed in detail hereinbefore, the very basis of the impugned order is factually incorrect as not only was the certificate admitted to have been issued by the concerned authority, but also is proved to be authentic. The only objection that could be raised against the

certificate is that the same is not in the proper statutory form, but then when the content of the said certificate has been proved to be correct, mere technicality cannot stand on the way of conferring appropriate benefits on the person concerned. It must also be kept in mind that the Right of Persons with Disabilities Act, 2016 has been enacted with the pious objective of providing and protecting the rights of the disabled persons in line with the United Nations Convention on the Rights of Persons with Disabilities to which India is a signatory. Therefore, this Court is constrained to hold that the concerned authorities have dealt with the matter in a most haphazard and somewhat reckless manner, as a result of which, a disabled person has been thrown out of employment entirely on erroneous perception of the relevant facts. This Court is also constrained to hold that the Opposite Party No.2, who is statutorily duty bound to ensure protection of the rights of persons with disabilities has, in the case at hand, acted entirely contrary to the legislature in fact. By entertaining a complaint submitted by a person apparently having no locus standi and, who in all probability, was a busy-body and in allowing the same without granting an opportunity to the Petitioner against whom the complaint was made, the Opposite Party No.2 has given a

complete go-bye to the principles of natural justice. Moreover, by overlooking the fundamental fact that the disability of the Petitioner was otherwise proved from the materials on record, the Opposite Party No.2, who is supposed to work for the protection of rights of persons with disabilities, has made a recommendation which has ultimately gone on to deprive a disabled person of his right to livelihood, which is also ingrained in part of Article 21 of the Constitution of India.

17. For the foregoing reasons therefore, this Court finds that the impugned order of disengagement of the Petitioner from service is unsustainable in the eye of law. Resultantly, the Writ Petition is allowed. The impugned order under Annexure-9 is hereby quashed. The Opposite Parties are directed to re-instate the Petitioner in service with full back wages and all other service benefits with effect from the date of his disengagement by passing necessary orders to such effect within a period of four weeks from the date of communication of this order or on production of certified copy thereof by the Petitioner.

Ashok Kumar Behera

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Sashikanta Mishra,
Judge





