

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.3296 of 2016

In the matter of an application under Section 19 of the
Administrative Tribunal Act, 1985.

.....

Arjun Charan Jena

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s.M.K.Khuntia, G.R.Sethi,
A.K.Patra, J.K.Digal &
B.K.Pattnaik.

For Opp. Parties : Standing Counsel
Mr. B.A.Prusty.

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 16.09.2022 and Date of Order:24.09.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. G.R. Sethi, learned counsel for the Petitioner and Mr. B.A. Prusty, learned Standing counsel for the State-Opposite Parties.
3. The present Writ Petition has been filed by the Petitioner with the following prayer:-

“(i) admit the original application;

(ii) call for the records;

(iii) *issue appropriate orders directing the respondents to regularize the service of the applicant for the period he was illegally suspended, i.e., from 01.08.2010 till 24.08.2015 while he was working in Orilikota Upper Primary School and to release all financial and service benefits for the said period within a reasonable time to be stipulated by this Hon'ble Tribunal; and*

(iv) *pass such other order / orders and direction / directions as this Hon'ble Tribunal may deem fit and proper in the eye of law".*

4. Mr. Sethi, learned counsel for the Petitioner submitted that the Petitioner while working as an Asst. Teacher in Orilikota Primary School under B.D.O., Narayanpatna in terms of the order issued on 30.09.2003 under Annexure-1, the Petitioner was illegally placed under suspension vide Office Order dated 30.07.2010 of the then District Inspector of School, Koraput by treating the Petitioner as an Asst. Teacher of Mankidi Primary School under the self-same Narayanpatna Block.

5. Mr. Sethi at the outset vehemently submitted that the Petitioner at no point of time was posted to Mankidi Primary School under Narayanpatna Block nor he has ever worked as a Teacher with due joining in the said school.

6. It is further submitted that subsequent to the illegal order of suspension passed under Annexure-2, the self-same District Inspector of Schools, Koraput initiated a proceeding against the Petitioner under Rule-15 of the OCS (CC&A) Rules, 1962 with the following charges:-

"STATEMENT OF CHARGES

That the D.O., Sri Arjuna Ch. Jena, Asst. Teacher, Mankidi Primary School under Narayanpatna Block during his incumbency as such has committed the following irregularities for which the article of charges note below are framed against him.

That the D.O. is quite irregular in his duties.

Thus the following articles of charge are framed against him for violation of Rule 03 and 04 of the Orissa Govt. Servants Conduct Rules, 1959.

1. That Sri Arjuna Ch. Jena did not turn up to perform Electoral Roll Revision Work commencing from 10.06.2010 to 24.06.2010”.

5. Mr. Sethi, learned counsel for the Petitioner submitted that the Petitioner at no point of time was a Teacher in Mankidi Primary School nor at any point of time, he was directed to perform Electoral Roll Revision Work commencing from 10.06.2010 to 24.06.2010. The Opposite Party No.3 purely on misconception not only placed the Petitioner under suspension vide order under Annexure-2, but also initiated the proceeding under Annexure-3.

6. It is also submitted that the Petitioner at no point of time was also issued with any order of ERO and Sub-Collector, Koraput bearing No.3237 dated 31.05.2010 directing him to discharge the Electoral Roll Revision Work from 10.06.2010 to 24.06.2010.

7. It is submitted that on receipt of the charges issued under Annexure-2 on 12.10.2010, the Petitioner submitted his reply on 16.11.2010 under Annexure-3 indicating therein that the Petitioner was never served with any order issued by the ERO and Sub-Collector, Koraput directing him to perform Electoral Rule Revision Work commencing from 10.06.2010 to 24.06.2010. In the said explanation, the Petitioner also prayed for his reinstatement as he has been illegally placed under suspension vide order dated 30.07.2010 under Annexure-2.

8. Mr. Sethi, learned counsel for the Petitioner

submitted that in the Departmental Proceeding initiated under Annexure-3 on 12.10.2010 the Enquiry Officer after conducting the enquiry submitted his report vide letter dated 27.01.2012 under Annexure-4 before the District Inspect of School, Koraput-Opposite Party No.3.

9. It is submitted that in the said enquiry report, no fault was found with the Petitioner and the enquiry officer suggested that the petitioner be excused and the period of suspension may be treated as duty or leave with pay.

10. It is submitted that in spite of the submission of the enquiry, no further action was taken by the Opposite Party No.3 and the Petitioner was neither reinstated his service nor he was paid his subsistence allowance w.e.f. 01.08.2010. The Petitioner after failing to get any response from the Opposite Party Nos.3 & 4 moved the Opposite Party No.2 on 10.01.2015 under Annexure-6 with a prayer to take appropriate steps with regard to his reinstatement and payment of the subsistence allowance w.e.f. 01.08.2010.

11. It is submitted that the representation submitted before the Opposite Party No.2 was duly forwarded to the Office of the Opposite Party No.4 vide letter dated 12.03.2015 under Annexure-7.

12. It is submitted that in the meantime pursuant to the office order dated 18.08.2015 under Annexure-7-Series, the Petitioner was transferred from Orlikota Primary School coming under Narayanpatna Block to Kutrabada Project U.P. School coming under Bandhugaon Block of Narayanpatna Grama Panchayat. Pursuant to the said

order dated 18.08.2015 of the Opposite Party No.3, the Petitioner was posted to the said School by the B.E.O., Narayanpatna, the Opposite Party No.4 vide his order dated 20.08.2015 under Annexure-9. At this point of time, Mr. Sethi, learned counsel for the Petitioner submitted that the order dated 18.08.2015 issued by the Opposite Party No.3 clearly reveals that the Petitioner was continuing as an Asst. Teacher in Orlikota Primary School coming under Narayanpatna Block and accordingly he was transferred to Kutrabad Project U.P. School coming under Bandhugaon Block and this clearly shows that the Petitioner at no point of time was ever posted as an Asst. Teacher in Mankidi Primary School.

13. Mr. Sethi, learned counsel further submitted that pursuant to the order dated 16.08.2015 under Annexure-7-Series and consequential order dated 20.08.2015 under Annexure-8, the Petitioner joined in his new assignment in Kutrabad Project U.P. School on 25.08.2015 and the said joining was also accepted by the B.E.O., Bandhugaon, Opposite Party No.5 vide his letter dated 25.08.2015 under Annexure-9.

14. It is also submitted that on his joining in Kutrabad Project U.P. School, B.E.O, Narayanpatna, Opposite Party No.4 vide his letter dated 05.01.2016 under Annexure-10 submitted the LPC to B.E.O, Bandhugaon-Opposite Party No.5.

15. Mr. Sethi, learned counsel for the Petitioner submitted that in spite of his joining in terms of the order dated 20.08.2015 under Annexure-8 in Kutrabad Project

U.P. School, when the Petitioner was not released with his salary, the Petitioner moved the Opposite Party No.5 on 15.07.2016 under Annexure-11 with a prayer to release his salary from August, 2015 to July, 2016.

16. It is further submitted that not only the Petitioner was harassed due to non-payment of his salary from 25.08.2015 onwards but also he was harassed due to non-regularization of his service for the period from 1.8.2010 to 24.8.2015 and non-payment of the subsistence allowance for the said period also. The Petitioner seeking extension of such benefit, ultimately approached this Court in the present Writ Petition.

17. Mr. Sethi, learned counsel for the Petitioner submitted that since the Petitioner at no point of time was posted as an Asst. Teacher in Mankidi Primary School not only the order of suspension passed on 30.07.2010 under Annexure-2 is illegal but also the proceeding initiated against him vide Memorandum dated 12.10.2010 under Annexure-3-Series. Mr. Sethi accordingly prayed for interference of this Court on the prayer made by the Petitioner.

18. Mr. Prusty, learned Standing Counsel on the other hand made his submission basing on the stand taken by the Opposite Party No.4 in his counter.

19. It is submitted by Mr. Prusty, learned counsel for the State that subsequent to the order of suspension passed on 30.07.2010 under Annexure-2 and the initiation of the proceeding on 12.10.2010 under Annexure-3-Series, the Petitioner though was reinstated by the Opposite Party No.3

vide Office Order No.7619 dated 22.12.2010 with his posting at Mankidi Primary School, but he never joined in the said school and remained on unauthorized absent till he ultimately joined in Kutrabeda Project U.P. School on 25.08.2015.

20. It is also submitted by Mr. Prusty, learned counsel for the State that the order of reinstatement passed by the Opposite Party No.3 vide Office Order No.7619 dated 22.12.2010 was sent in the native address of the Petitioner and the said letter was issued by one Smt. Pramila Jena on 04.09.2012.

21. It is also submitted that in spite of such service of the order, the Petitioner since never joined as an Asst. Teacher in Mankidi Primary School, he is not entitled to receive subsistence allowance and the break period of service will be regularized as per law.

22. It is also submitted that since the Petitioner in terms of the order dated 22.12.2010 under Annexure-B/4 never joined, Opposite Party No.3 also instructed the Opposite Party No.4 not to release the salary of the Petitioner from 23.12.2010 vide his letter dated 28.12.2011 vide Annexure-A/4-Series.

23. It is submitted that in the meantime the Opposite Party No.3 basing on the rationalization policy posted the Petitioner to Kutrabeda Project U.P. School, where he joined on 25.08.2015.

24. Accordingly, Mr. Prusty, learned counsel for the Opposite Party submitted that since the Petitioner pursuant

to the order of reinstatement dtd. 22.12.2010 under Annexure-B/4 never joined in the school till he joined on 25.08.2015, the Petitioner is not entitled to get the benefit from 23.12.2010 onwards till his rejoining on 25.08.2015.

25. A rejoinder affidavit is filed by the Petitioner indicating therein that the Petitioner was never a teacher in Mankidi Primary School nor at any point of time the Petitioner was directed to perform the Electoral Roll Revision Work for the period from 10.06.2010 to 24.06.2010, pursuant to the order of the ERO and Sub-Collector, Koraput bearing No.3237 dated 31.05.2010.

26. It is also submitted in the rejoinder that the order dated 31.05.2010 was never served on the Petitioner though CRCC as stated by the Opposite Party in the counter.

27. It is also submitted that the order of reinstatement dated 22.05.2010 under Annexure-B/4 nor the letter dated 28.12.2011 under Annexure-A/4 was ever served on the petitioner at any point of time.

28. It is also submitted that as admitted by the Opposite Parties the order of reinstatement dated 22.12.2010 was received by one Smt. Pramila Jena only on 04.09.2012.

29. It is also stated in the rejoinder affidavit that had the Petitioner at any point of time been posted to Mankidi Primary School, the Petitioner should not have been shown as an Asst. Teacher in Orlikota Primary School when the order of transfer and posting was issued on 20.08.2015 under Annexure-8 basing on the order passed by the self-

same Opposite Party No.3 in his order dated 16.08.2015 under Annexure-7-Series.

30. Mr. Sethi, learned counsel for the Petitioner submitted that the order under Annexure-7-Series and 8 clearly vindicates the stand of the Petitioner that the Petitioner at no point of time was ever posted to Mankidi Primary School and accordingly not only the order of suspension but also initiation of the proceeding by showing him as an Asst. Teacher of Mankidi Primary School is baid in the eye of law.

31. Mr. Sethi accordingly submitted that the Petitioner is eligible and entitled to get the salary for the period from 01.08.2010 to 24.08.2015 as the Petitioner was kept out of employment due to illegal order passed by the Opposite Party No.3 under Annexure-2 and the initiation of the proceeding under Annexure-3.

32. A further affidavit was also filed by the Petitioner pursuant to the order passed by this Court on 22.08.2022 indicating therein that the Petitioner has not received the subsistence allowance for the period from 01.08.2010 to 24.08.2015. This Court after going through the pleadings made and the materials available on record passed an order on 24.08.2022 directing the State Counsel to file any order showing the transfer and / or posting of the Petitioner as an Asst. Teacher in Mankidi Primary School. Pursuant to the said order though an affidavit was filed by the Opposite Party No.3 by enclosing various documents under Annexure-C/4 to Annexure-E/4, but no such order pursuant to the direction of this Court was filed by the

Opposite Party No.4 showing the Petitioner being posted as an Asst. Teacher in Mankidi Primary School at any point of time. No order is also filed by the Opposite Party No.4 or by the other opposite parties enclosing so called order of the ERO and Sub-Collector, Koraput bearing No.3237 dated 31.05.2010 and the initiation of the proceeding on the ground that the Petitioner in terms of the said letter did not perform his Electoral Roll Revision Work.

33. Heard learned counsel for the Parties.

34. Perused the materials available on record. This Court after going through the same finds that the Petitioner at no point of time was ever posted to as an Asst. Teacher in Mankidi Primary School. Therefore, the action of the Opposite Party No.3 in issuing the order of suspension under Annexure-2 on 30.07.2010 and the initiation of the proceeding on 12.10.2010 vide Annexures-3 by showing the Petitioner as an Asst. Teacher of Mankidi Primary School is illegal. This Court further finds that since the Petitioner as per the order dated 16.08.2015 and consequential order dated 20.08.2015 under Annexure-7 & 8 was transferred and posted to Kutrabeda Project U.P. School, while continuing as an Asst. Teacher in Orlikota Primary School under Narayanpatna Block, it is to be held that the Petitioner was continuing as an Asst. Teacher in Orlikota Primary School while he was illegally placed under suspension vide order dated 30.07.2010 under Annexure-2 by showing him as an Asst. Teacher in Mankidi Primary School. This Court also finds that the order of reinstatement passed on 22.12.2010 was never served on the Petitioner and the letter dated 28.12.2011 under

Annexure-A/4 was also never served on the Petitioner. The Petitioner on receipt of the letter dated 09.12.2014 though submitted his joining before the Opposite Party No.3 on 22.12.2014 under Annexure-12-Series, but the same was not accepted.

35. Therefore, taking into account the materials available on record, this Court finds and came to conclusion that the Petitioner was illegally kept under suspension for the period from 01.08.2010 to 24.08.2015. Therefore, the Petitioner is eligible and entitled to get all the service and financial benefit for the said period. This Court accordingly while holding so directs the Opposite Parties to sanction and release all the service and financial benefits as due and admissible in favour of the Petitioner for the period from 01.08.2010 to 24.08.2015. The entire exercise shall be completed within a period of three months from the date of receipt of this order.

36. With the aforesaid observations and directions, the WPC(OAC) stands disposed of. There shall be no order as to costs.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 24th of September, 2022/Subrat