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IN THE HIGH COURT OF ORISSA CUTTACK

WPC(OAC) No.1579 of 2014

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

Parsuram Behera

....

Petitioner

Versus

State of Odisha & Ors.

....

Opposite Parties

For Petitioner

...

Mr.B.C.Panda, Advocate

Mr.B.K.Barik, Advocate

Mr.T.Sethi, Advocate

For Opposite Parties

...

Mr. S.P.Panda, Additional

Government Advocate

Mr.R.C.Patnaik, Advocate

J U D G M E N T

PRESENT:

THE HONOURABLE JUSTICE BISWANATH RATH

Date of Hearing and Judgment: 06.09.2022

Biswanath Rath, J. This Writ Petition involves the following relief:

“In view of the facts mentioned in para-6 above, the applicant prays for the following reliefs:-

- (i) to admit this case and to issue Rule Nisi against the Opp. Parties calling upon them all to show cause as to why the impugned order of disengagement under Annexure-6 shall not be quashed or set-aside and why the authorities

Opp. Parties shall not be directed to engage the petitioner again in his post and to allow him to work as such as before;

And

- (ii) to show cause or shown insufficient cause then the said rule be made absolute against them and a writ of mandamus be issued and subsequently the impugned order under Annexure-6 be quashed or set-aside and consequently a writ of certiorari be issued and the Opp. Parties be directed to engage the petitioner again as contract Teacher and to allow him to work as such as before with immediate effect;
- (iii) And/or to issue any other/further writ/writs and to pass any other/further order/orders, direction/directions in the interest of justice as would deem fit and proper.”

2. Taking this Court to the pleading and the documents appended therein, learned counsel for the Petitioner while challenging the order at Annexure-6, an order of disengagement of the Petitioner on the ground of misconduct involving criminal act and was put in jail custody for sometime considered to be a misconduct on the part of the Petitioner. It is in challenging to such condition taking this Court to the position involving the criminal case instituted through FIR No.384 dated 15.09.2013, learned counsel for the Petitioner submitted that criminal case involved herein is very much pending. It is even submitted unless the trial involving such criminal case concluded lawfully, there is no proving of misconduct of the Petitioner. It is pleaded mere pendency of a criminal proceeding cannot be construed proving of misconduct.

3. This Court finds, there is no denial to the fact that the criminal case involving FIR No.384 dated 15.09.2013 is still pending. Further it also reveals that such FIR is based on allegation of wife of the Petitioner under Section 498(A)/323/506/294/307/34 IPC/4DP Act. Undisputedly Petitioner is on bail. In the circumstance and as there is pendency of criminal trial,

the Petitioner challenges to the order at Annexure-6 and requests this Court for setting aside such order.

4. Mr. Pattnaik, learned counsel appearing for the contesting Opposite Parties apart from the objection raised in the counter affidavit, taking this Court to the reasoning in the order at Annexure-6, reading through the condition 9 attempted to establish the case of deponent through the same.

Reading through the condition-9 in the offer of appointment, an attempt is made to justify the impugned order at Annexure-6, Mr. Pattnaik, learned counsel for the contesting Opposite Parties submits that once there is initiation of the criminal proceeding itself amounts the employee misconducted and therefore there is no illegality in taking out service of such persons. Thus a request is being made to dismiss the Writ Petition for having no merit. There is however no denial that the criminal proceeding still pending.

5. Considering the rival contentions of the Parties, this Court finds the moot question required to be considered is if mere involvement of a person in a FIR involving under Section 498(A)/323/506/294/307/34 IPC/4DP Act construed to have misconducted in his employment. This Court here takes into account the reasoning in the impugned order at Annexure-6 which is reflected as herein follows:-

“Where as it has come to the notice that Sri Parshuram Behera, Contract Teacher (TGPCM), J.U.B.P, Mangalpur has been involved in criminal act and was put to jail custody as reported by the IIC, Soro Police station and an FIR has been lodged against him vide FIR No.384 dtd.15.09.13 under section 498(A)/323/506/294/307/34 IPC/4DP Act which is considered to be the misconduct and violation of the condition of the agreement executed by Sri Parshuram Behera at the time of engagement and subsequent renewal.

Now, therefore Sri Parshuram Behera is hereby disengaged from his service of contract teacher in J.U.B.P, Mangalpur with immediate effect.

6. Keeping in view the rival submission of the respective counsel, this Court now proceeds to find the condition applied by the learned counsel for Opposite Parties in his justification involving the order at Annexure-6 which reads as follows:-

“(9) That the Second Party has agreed to serve in the manner as required and perform the duties assigned by the First Party and he/she has agreed to be disengaged without any notice on ground of misconduct even during the operation of this agreement.”

Reading the aforesaid condition, this Court finds, there should not be any doubt that a person can be terminated and disengaged without notice on the ground of misconduct. For the disclosures in the Writ Petition and no denial of disclosures on the aspect of pendency of the trial involving the FIR No.384 dated 15.09.2013 and the allegation involves in the criminal proceeding has nothing to do with the employees official role and or transaction and allegation not involving moral turpitude. In the opinion of this Court once trial is not concluded and the proceeding does not go against the accused therein finding him guilty of such offences and the offences if proved has got to affect the official conducting of such person, there is no establishment of misconduct against an employee and in his official conduct. This Court in the entire backdrop of the case finds, no other ground available in taking out service of the Petitioner by the order at Annexure-6. In the circumstance and as there is no finality to the criminal proceeding, this Court finds the observations of the appointing authority that Petitioner already misconducted becomes illegal and remain unfounded.

7. For a clarity on the aspect meaning of misconduct, this Court here takes misconduct as defined in P.Ramanatha Aiyar's Law Lexicon, 3rd Edn. reads as follows:-

“The term ‘misconduct’ implies a wrongful intention, and not a mere error of judgment.

* * *

Misconduct is not necessarily the same thing as conduct involving moral turpitude.

The word ‘misconduct’ is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. ‘Misconduct’ literally means wrong conduct or improper conduct.”

In Stroud’s Judicial Dictionary definitions of misconduct is defined as follows:-

“Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct.”

This Court here also takes into account some of the decisions of Hon’ble Apex Court applying to the case at hand reads as follows:-

- (i) In *Zunjarrao Bhikaji Nagarkar Vs. Union of India* reported in (1999) 7 SCC 409 in para-42 held as follows:-

“42. Initiation of disciplinary proceedings against an officer cannot take place on information which is vague or indefinite. Suspicion has no role to play in such matter. There must exist reasonable basis for the disciplinary authority to proceed against the delinquent officer. Merely because penalty was not imposed and the Board in the exercise of its power directed filing of appeal against that order in the Appellate Tribunal could not be enough to proceed against the appellant. There is no other instance to show that in similar case the appellant invariably imposed penalty.”

- (ii) Similarly in *Union of India Vs. J. Ahmed* reported in (1979) 2 SCC 286, Hon’ble Apex Court in para-11 held as follows:-

“11. Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct

which is blameworthy for the government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (*see Pierce v. Foster*⁴). A disregard of an essential condition of the contract of service may constitute misconduct [*see Laws v. London Chronicle (Indicator Newspapers*⁵)]. This view was adopted in *Shardaprasad Onkarprasad Tiwari Vs. Divisional Supdt., Central Rly., Nagpur Division, Nagpur*⁶ and *Satubha K. Vaghela Vs. Moosa Raza*⁷.”

- (4. *Pierce v.. Foster*, 17 QB 536, 542.
5. *Laws v. London Chronicle (Indicator Newspapers)*, (1959) 1 WLR 698.
6. *Shardaprasad Onkarprasad Tiwari v. Divisional Supdt., Central Rly., Nagpur Division, Nagpur*, (1959) 61 Bom LR 1596.
7. *Satubha K. Vaghela Vs. Moosa Raza*, 10 Guj LR 23).

I am thus of the opinion that in the peculiar facts and circumstances of this case, the appellant cannot be said to have committed any misconduct.

8. In the circumstance, this Court finds, the order impugned at Annexure-6 is not sustainable in the eye of law. As a result interfering the impugned order at Annexure-6, this Court sets aside the same and directs the Petitioner to be deemed to continue in service. As a consequence of illegal depriving of the Petitioner from continuing in service for no fault of him. For there is no material forth coming as to the Petitioner if remained as non-earner in the above whole period, he is entitled to at least 50% of the back wages. Again for illegal disengagement resulting depriving the Petitioner from getting his livelihood for no fault of him and dues becomes admitted and illegally retained, Petitioner will also be entitled to interest all

through at least @ 6% per annum which may be calculated treating the Petitioner deemed to be continuing service. His salary undertaking the revision exercise, if any, in the meantime will be started forthwith. Arrear as per direction of this Court will be calculated within a period of one month and to be released within a period of fifteen days thereafter. This Court since finds the Petitioner will be entitled to huge amount considering disengagement taking place in the year 2014, he may forthwith be paid a sum of Rs.1,50,000/- -(rupees one lakh fifty thousand only) for his bare sustenance which amount will be adjusted in the final payment of the arrear.

09. In the result, the application succeeds. No cost.

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BISWANATH RATH, J.

*Orissa High Court, Cuttack.
Dated the 6th day of September, 2022/Swarna, Junior Stenographer*

