

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.3810 of 2014

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

.....

Hemanta Ku. Rout

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

For Petitioner : M/s. L.K. Mohanty and
B.K. Jena
For Opp. Parties : Standing Counsel
Mr. N. Prusty

PRESENT:

THE HON'BLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 08.04.2022 and Date of Judgment: 20.04.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. L.K. Mohanty, learned counsel for the Petitioner and Mr. N. Prusty, learned counsel for the Opposite Parties.
2. The Petitioner has filed the present Writ Petition for the following relief:-

- “(i) The Original Application be allowed;*
- (ii) The retrenchment order dtd.17.9.2009 under Annexure-4 be quashed/set-aside;*
- (iii) The Respondents be directed to regularize the period of service from 17.9.2009 to 30.6.2011 treating as duty with all service benefits;*
- (iv) The Respondents be directed to regularize the service as a regular teacher on completion of 6 years of service treating date of appointment as 15.12.2008 under Annexure-1;*
- (v) Such other order/orders be passed granting complete relief in favour of the Applicant.”*

4. It is submitted by Mr. Mohanty, learned counsel for the Petitioner that after facing due recruitment process and on being duly selected the Petitioner vide order under Annexure-1 dtd.15.12.2008 was engaged as a Contract Teacher by the Opp. Party No.3.

5. Pursuant to the said order, the Petitioner joined in his post on 26.12.2008. It is submitted that while so continuing, when the Petitioner was arrested by the Local police of Rajnagar Police Station on 22.04.2009 and the Petitioner remained in custody till 28.04.2009, the Opp. Party No.3 without issuing any show cause straight away disengaged the Petitioner vide order dt.17.09.2009.

6. It is submitted that the Petitioner subsequently was acquitted in the aforesaid G.R. Case No.173/2009 vide Judgment dtd.03.04.2010 of the learned J.M.F.C., Pattamundei. It is further submitted that on his acquittal by the learned Trial Court on 03.04.2010, the Petitioner moved the Opp. Party No.3 on 10.05.2010 under annexure-6 with a prayer to re-engage him as he has been honorably acquitted in the said criminal case. It is further submitted that on consideration of such application, Opp. Party No.3 re-engaged the Petitioner vide Order dtd.01.07.2011 under Annexure-7 and the Petitioner accordingly rejoined in his post. It is submitted by Mr. Mohanty, learned counsel for the Petitioner that persons similarly placed and appointed along with the Petitioner on 15.12.2008

were regularised as Trained Graduate Teacher, on completion of 6 years of service vide order dtd.08.09.2015 of the Opp. Party No.3.

7. It is submitted that in view of such illegal disengagement of the Petitioner, the Petitioner was deprived from the purview of such regularization. It is further submitted that the Petitioner was regularized only w.e.f. 01.07.2017 i.e. after completion of 6 years of service from 01.07.2011. Mr. Mohanty, learned counsel for the Petitioner accordingly prayed that since the Petitioner was illegally disengaged from his service only because of his arrest in a Criminal case and that too without issuing any show cause, the said disengagement is illegal and the break in service for the period of 17.09.2009 to 30.06.2011 is to be treated as duty period for all purposes. It is also prayed that the Petitioner is also entitled for his regularization with effect from the completion of 6 years of service, to be counted from 15.12.2008.

8. Mr. Mohanty in support of his aforesaid submission relied on a decision of this Court reported in the case of **Jyotirmayee Naik Vrs. Superintendent, S.C.B. Medical College, Cuttack** reported in **1996 (I) OLR 561**.

9. It is submitted that in the aforesaid decision of this Court, it has been held that a person against whom an order to his prejudice is made should be informed of the allegation and charges against him and he should be given opportunity to submit explanation. This Court in the aforesaid decision in Para 7 held as follows:-

“ The precise and exact question that arises for consideration is whether the rule of audi alteram partem that is, hear the other side was complied with before the adverse decision was taken against the petitioner. It is now well settled that an administrative order which involves civil consequence must be made consistently with the rule of audi alteram partem. It means that a person against whom an order to his prejudice may be made should be informed of the allegations and charges against him be given opportunity of

submitting his explanation thereto, have the right to know the evidence on which the matter is proposed to be decided against him. The rule of audi alteram partem being not embodied rule, its scope and extent depend upon particular fact situation and circumstances peculiar to each case.”

10. Mr. Mohanty, learned counsel for the Petitioner also relied on a decision of the Hon’ble Apex Court reported in the case of **Basudeo Tiwari Vrs. Sido Kanhu University & Ors.** reported in **AIR (1998) SC 3261**. In the aforesaid reported decision, Hon’ble Apex Court in Para 9 held as follows:-

“The law is settled that non-arbitrariness is an essential facet of Article 14 pervading the entire realm of State action governed by Article 14. It has come to be established, as a further corollary, that the audi alteram partem facet of natural justice is also a requirement of Article 14, for, natural justice is the antithesis of arbitrariness. In the sphere of public employment, it is well settled that any action taken by the employer against an employee must be fair, just and reasonable which are components of fair treatment. The conferment of absolute power to terminate the services of an employee is antithesis to fair, just and reasonable treatment. This aspect was exhaustively considered by a Constitution Bench of this Court in Delhi Transport Corporation v. D.T.C. Mazdoor Congress, reported in AIR 1991 SC 101.”

11. Mr. Mohanty placing reliance on the aforesaid decision of the Hon’ble Apex Court as well as of this Court argued that since the Petitioner was illegally disengaged without following the principle of natural justice, he is eligible and entitled to get all the benefits for the period, he remained out of employment i.e. 22.04.2009 to 30.06.2011. Mr. Mohanty accordingly prayed that this Court may pass appropriate order on such prayer of the Petitioner.

12. Mr. Prusty, learned counsel for the Opp. Parties placed his argument relying on the stand taken in the counter affidavit. It is submitted by Mr. Prusty, learned counsel for the Opp. Parties that since the Petitioner was arrested, in connection with a criminal case on 22.04.2009 and he remained in custody for around 6 days, the Petitioner was rightly disengaged vide order dtd.17.09.2009 of the Opp. Party No.3. It is also submitted that after his acquittal, the Petitioner was re-engaged in his service vide order dtd.01.07.2011. Accordingly, it is argued by Mr. Prusty, learned counsel for the Opp. Party that no illegality has been committed by the OPP. Party No.3 in disengaging the Petitioner w.e.f.17.09.2009. Mr. Prusty accordingly said that no interference is called for with regard to the prayer made by the Petitioner.

13. Having heard learned counsel for both the Parties and taking into account the decision relied on by Mr. Mohanty, this Court is of the considered opinion that the Petitioner was disengaged w.e.f.17.09.2009 because of his implication in G.R. Case No.173/2009 dtd.22.04.2009. By the time the Petitioner was disengaged on 17.09.2009, he had already been released on bail on dtd.28.04.2009. Therefore, prior to disengaging the Petitioner, the Opp. Party No.3 should have at least issued a show cause to the Petitioner and thereby enabling him to give his reply. Opp. Party No.3 without following the settled principle straight away disengaged the Petitioner w.e.f. 17.09.2009.

14. In view of the decision relied on by the Petitioner in the aforesaid reported cases, this Court is prima facie of the view that the Petitioner was disengaged w.e.f. 17.09.2009 without affording him any reasonable opportunity of hearing and in complete violation of the principle of natural justice. Therefore, this Court is of the view that the period of service from 17.09.2009 to 30.06.2011 is to be treated as duty. But since, the Petitioner has not discharged his duty for the said period, the Petitioner is not entitled to get any financial benefit and the said period is to be treated notionally for all purposes.

15. In view of such finding of this Court, the date of regularization of the Petitioner be also antedated and he is to be treated as regularized in his service, on completion of 6 years of service i.e. w.e.f.08.09.2015. The Opp. Party No.3 is further directed to pass appropriate order in the light of the decision of this Court and extend such benefits as due and admissible in favour of the Petitioner. The Opp. Party No.3 is directed to complete the entire exercise within a period of 3 months from the date of receipt of this order.

16. With the aforesaid observation and direction, the Writ Petition is disposed of. There shall however be no order as to cost.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 20th of April, 2022/Sneha

