

IN THE HIGH COURT OF ORISSA AT CUTTACK
WPC (OAC) NO.160 OF 2017
Hemalata Mohanta **Petitioner**

-versus-

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

COROM:
JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER
28.9.2022

Order No

- 2.** **1.** This matter is taken up through Hybrid Mode.
- 2.** Heard Mr. K.C. Sahu, learned counsel for the petitioner and Mr. Y.S.P. Babu, learned A.G.A
- 3.** The present writ petition has been filed by the petitioner challenging the order of termination passed by Opp. Party no.4 under Annexure-2 dated 14.12.2016. It is submitted that the petitioner was appointed as a contractual Staff Nurse (NRHM) under Zillar Swasthya Samiti, Keonjhar vide order issued on 10.10.2012 under Annexure-1.
- 4.** It is submitted that while so continuing the order of termination was issued on 11.12.2016 under Annexure-2 without issuing any show-case or without affording any opportunity of hearing. Mr. Sahu further submitted that since the petitioner was appointed as a contractual staff Nurse, her service condition is covered by the Odisha Group-C and Group-D Post(Contractual Appointment) Rules, 2013. It is further submitted that as provided under Rule 6 of the said Rules, the provision of OCS(CCA) Rules, 1962 is applicable to the case of such contractual employees. Accordingly, Mr. Sahu submitted that since the said provision has not been complied with, prior to issuance of the order of termination under Annexure-2, the said order is to be interfered with by this Court. It is also

submitted that the order of termination passed under Annexure-2 since was stayed by the learned Tribunal, while issuing notice in the matter on 16.1.2017, the petitioner is continuing in her post till date.

5. Mr. Sahu in support of his submission also relied on two decisions of the Hon'ble Apex Court reported in (2000) 1 ATT (SC) 416 and (2001) 2 ATT (SC) 413. In the 1st such reported decision, in (2000) 1 ATT (SC) 416, Hon'ble Apex Court in para 6 held as follows:-

“A probationer, like a temporary servant, is also entitled to certain protection and his services cannot be terminated arbitrarily, nor can those serves be terminated in a punitive manner without complying with the principles of natural justice.”

6. Similarly in the other decision in (2001) 2 ATT (SC) 413, Hon'ble Apex Court in para 3 held as follows.

3. *The learned Counsel appearing for the appellants vehemently contended that since the respondent had not approached the Court for redressing his grievances for unduly long period, the High Court committed error in interfering with the order of termination notwithstanding the fact that without initiating any proceeding and without following the prescribed procedure, the order of termination has been passed. We are unable to sustain this argument. On the conceded position that the termination order had been passed without following the prescribed procedure and without even initiating a proceeding and the concerned authority having been given the right to take such appropriate action in accordance with law afresh, the impugned order is unassailable.*

6. Making all such submission, Mr. Sahu learned counsel for the petitioner submitted that since prior to issuance of impugned order of termination, the petitioner was never given an opportunity of hearing, the said order is illegal and liable to be interfered with by this Court.

7. In spite of notice being issued since 16.01.2017, no counter has been filed nor any Interlocutory Application for vacation of stay has been filed by the opp. parties. However, it is submitted that since the petitioner was negligent in her duty, she has been rightly terminated under Annexure-2.

8. Heard learned counsel for the parties.

9. After going through the materials available on record, this Court finds that prior to issuance of the impugned order of termination under Annexure-2, the petitioner was never issued any show-cause nor any opportunity of hearing was given. Therefore, taking into account the provision contained under Rule 6 of the 2013 Rules and the decision of the Hon'ble Apex Court as cited (supra), this Court finds that the impugned order has been passed in complete violation of the principles of natural justice. Hence, this Court is inclined to quash the said order under Annexure-2 and while quashing the same, this Court directs opp. party no.3 to allow the petitioner to continue in her post as before. However, it is observed that opp. party no.3 is at liberty to take appropriate action as provided under OCS (CCA) Rules, 1962, if it is so desirable at present.

10. The Writ Petition is disposed of with the aforesaid observation and direction.

(Biraja Prasanna Satapathy)
Judge

Sangita