

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No.3106 of 2013

Subash Chandra Nayak

....

Petitioner(s)

Mr.S.Behera, Advocate

-versus-

State of Odisha & Anr.

....

Opposite Party(s)

Mr.R.K.Samal, Standing
Counsel, S & M.E. Deptt.

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
21.03.2022**

Order No.

1.

1. Heard learned counsel appearing for the parties.

2. This writ petition involves the following relief:

“Under the circumstances, it is humbly prayed that this Hon’ble Tribunal may graciously be pleased to quash the memo No.7221 dated 02.08.2013 under Annexure-2 and the order dated 21.12.2013 passed by the B.E.O. under Annexure-4;

Or pass any other order/orders as this Hon’ble Tribunal may think fit and proper in this case.”

3. Short background involving the case is that petitioner after completing B.A. B.Ed. course joined in service in a Primary School on 18.4.1982. While petitioner was working as Sub-Inspector of Schools, Jhumpura Block, the Headmaster, Durgapur U.P. School lodged F.I.R. alleging that the petitioner demanded Rs.300/- to release his salary and in the process, petitioner while receiving a sum of Rs.300/-, on being trapped, was taken to custody and subsequently released on bail. Facts disclose that involving above complain and trap, a Vigilance Case was initiated vide VGR Case No.18 of 2003 and subsequently renumbered

as T.R.No.116 of 2007. This vigilance case finally concluded with judgment dated 22.07.2013 convicting the petitioner for a period of six months and with fine of Rs.1,000/-. Further, so far allegation under Section 7 of the Prevention of Corruption Act, there is further conviction of rigorous imprisonment of one year and fine of Rs.2,000/-. Challenging the order passed in Vigilance case, petitioner preferred Crl. Appeal No.382 of 2013, which is pending and the petitioner is in bail and also enjoying an order for stay of realization of fine. It has also been further disclosed that based on conviction, the petitioner though was placed under suspension but, however, at a subsequent point of time, he was allowed to work as Headmaster. It is claimed that on the date of filing of this application, petitioner was 56 years of age, as mentioned in the verification of the petition. In the meantime, the Block Education Officer basing upon eviction of the petitioner passed order at Annexure-4 dismissing the petitioner from his service. Challenging the impugned order at Annexure-4, petitioner has preferred the present application.

4. Mr.Behera, learned counsel for the petitioner challenges the impugned order on two premises; firstly, the order of dismissal passed by the Block Education Officer, who is competent to deal with disciplinary matter involving a Headmaster making the impugned order not sustainable in the eye of law. Further, there is also no following of the provision of 18(1) of the Orissa Civil Services (C.C.A) Rules, 1962 (for short "The Rules,1962"). Referring to a circular dated 6.7.2013 of the School & Mass Education Department, Government of Odisha, drawing attention through it, Mr.Behera, learned counsel for the petitioner contended that from the above date the District Education Officer became the disciplinary authority. In addition to the above ground, Mr.Behera, learned counsel also took this Court to the provision at Rule 18 of the Rules, 1962 and contended that even assuming there is conviction involving the petitioner provision involving the rule should have been followed. It is on both count,

Mr.Behera, learned counsel challenges the impugned order and requested this Court for setting aside the order at Annexure-4.

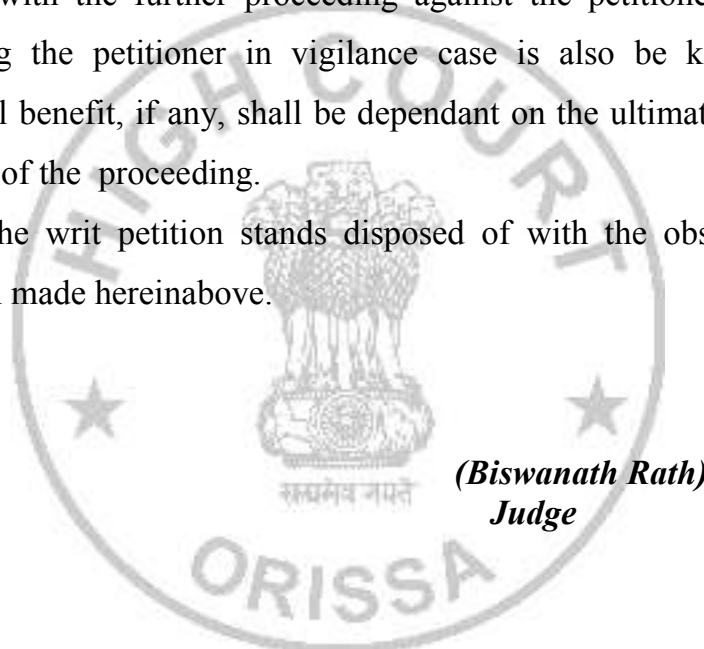
5. This Court observes, even though the application was filed in the year 2013 in the Tribunal and being taken up by this Court on closure of the Tribunal. From the order-sheet, this Court nowhere finds notice involving the said application has ever been issued. There is also no counter as a consequence.

6. Mr.Samal, learned Standing Counsel appearing for the School & Mass Education Department showing his willingness to argue the matter in absence of counter however on oral submission did not dispute to the reliance of the office order/circular dated 6.7.2013 produced herein prescribing the District Education Officer being the Disciplinary Authority. In the circumstance, this Court finds for the clear provision in the circular dated 6.7.2013 authorizing the District Education Officer to act as Disciplinary Authority, the impugned order having been passed by the Block Education Officer on 21.12.2013 undisputedly much after the above circular bringing a in the decision of the Disciplinary Authority, the order at Annexure-4 remains unsustainable being passed clearly by an incompetent authority. Question arose here for the conviction of the petitioner in disposal of VGR Case No.18 of 2003, on interfering in the order at Annexure-4 and setting aside the same, what should be the position of the petitioner? Answering this, this Court observes, the petitioner is already a convict in disposal of VGR Case No.18 of 2003. However, the petitioner has already an attempt through appeal bearing Crl. Appeal No.382 of 2013, claimed to be pending in this Court with an order of bail and stay realization of fine. There is clear submission that Crl. Appeal is still pending. This Court here also takes into account the position of the petitioner at the time of passing of the order at Annexure-4.As claimed by learned counsel for the petitioner, petitioner was discharging his duty of Headmaster at the time of such dismissal. In the event of taking out the impugned order at

Annexure-4, petitioner position should be relegated back to day behind the order of dismissal dated 21.12.2013.

7. It is in the process, however since the impugned order is interfered on technical ground, this Court while setting aside the order at Annexure-4 and further looking to the position of the petitioner already crossed the age of superannuation long since observes in the event the Disciplinary Authority chooses to proceed with a fresh Departmental Proceeding, it will be open to the Disciplinary Authority involving the petitioner in a duly constituted proceeding and disposing the same under the provision of rule 18 of the Rules, 1962. While dealing with the further proceeding against the petitioner, conviction involving the petitioner in vigilance case is also be kept in mind. Financial benefit, if any, shall be dependant on the ultimate outcome in disposal of the proceeding.

8. The writ petition stands disposed of with the observation and direction made hereinabove.



(Biswanath Rath)
Judge