

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No. 3560 of 2017

S. Rajendra Kumar ... **Petitioner**
Mr. L.K. Mohanty, Advocate
- Versus -

State of Odisha and others **Opposite Parties**
Mr. R.N. Acharya,
Standing Counsel for School and Mass
Education Department

CORAM:
JUSTICE SASHIKANTA MISHRA

ORDER
14.07.2022

Order No.
08.

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioner and learned Standing Counsel for School and Mass Education Department.
3. The petitioner has filed the present application seeking the following relief:

“In view of the facts stated in Para-6 above the applicant prays for the following relief(s):-

- (a) The Original Application be allowed.*
- (b) The Respondents, especially, the Respondent No.3 be directed to reinstate the Applicant in his former post at U.G. High School, Brusava with all service benefits;*
- (c) The period of suspension be treated as duty with all service benefits;*
- (d) Such other order/orders be passed granting complete relief to the applicant.”*

4. The facts of the case are that after going through a regular selection process, the petitioner was selected as a Trained Graduate Teacher of Gajapati district on contractual basis by order dated 18.02.2013 of the District Education Officer, Gajapati (opposite party No. 3) and was posted in the U.G. High School,

Brusava against a regular vacant post. As per the terms of such engagement, the contract was valid for one year to be renewed every year. As such, the petitioner was required to execute agreement for such engagement every year. While the petitioner was working as such, on an FIR being lodged against him relating to the death of his wife, he was arrested in a criminal case and taken to custody on 16.09.2015 which was registered against him under Sections 498-A/306 of IPC. The petitioner being in jail custody could not attend to his duties and as such, the opposite party No. 3 placed him under suspension with immediate effect from 16.09.2015 as per order dated 23.01.2016. In the trial however, the petitioner was fully acquitted of the charges. The petitioner thereafter submitted a representation before opposite party no. 3 on 25.04.2016 stating the fact of his acquittal in the criminal case and prayed for reinstatement in service in his earlier post. Opposite party No. 3 requested the IIC of Kashinagar Police Station to submit a factual report, whereupon the said IIC intimated the fact of acquittal of the petitioner from the criminal case by letter dated 22.06.2016. Further, the Headmaster of U.G. High School, Brusava requested the opposite party no.3 by his letter dated 05.08.2016 to reinstate the petitioner in his former post as after his suspension there was no Science Teacher in the School. However, the opposite party no. 3 requested the Director, Secondary Education, Odisha to issue necessary instruction regarding reinstatement of the petitioner by his letter dated 14.12.2016. Since no action was taken in the matter the petitioner submitted several representations, the last being on 07.06.2017.

As the above exercise did not yield any positive result, the petitioner approached the erstwhile Odisha Administrative Tribunal in OA No. 3560 (C) of 2017 which has since been transferred to this Court and registered as the instant Writ Petition.

5. A counter affidavit has been filed by opposite party no. 3. It is stated that the petitioner being absent from duty since 17.09.2015, his engagement has not been renewed after 28.02.2016 and as such his engagement stands terminated with effect from 01.03.2016 as per the terms and conditions of the contract agreement signed by the petitioner at the time of his engagement. Reference has been made to the clarification issued by the Director Of Secondary Education by letter dated 24.11.2017 wherein citing the above ground it has been stated that no clarification is required to be issued for regularization of the teacher as the employee concerned is no more in engagement.

6. The petitioner has filed a rejoinder stating that the question of his unauthorized absence does not arise as he was in judicial custody from 16.09.2015 to 23.02.2016. It is further stated that as per the settled position of law the principles of natural justice were required to be followed before terminating the services of the petitioner. It is specifically pleaded that the order dated 24.11.2017 was never served upon the petitioner.

7. An additional counter has been filed by opposite party no. 3 stating that the service of the petitioner was on contract basis and the contract for the session 2016-17 could not be renewed as the petitioner was absent from duty as on 28.02.2016. Since the petitioner was no longer in service, the question of his

reinstatement or even renewal of contract with effect from 01.03.2016 does not arise.

8. Heard Sri L.K. Mohanty, learned counsel for the petitioner and Sri R.N. Acharya, learned Standing Counsel for the School and Mass Education Department.

9. It is argued by Sri Mohanty that the petitioner having been appointed against a regular post, though on contractual basis, could not have been disengaged without adhering to the principles of natural justice, inasmuch as he was not given any opportunity of hearing nor his representation considered in the proper perspective. It is further submitted that the order dated 24.11.2017 passed by opposite party no. 3, which can be treated as an order of disengagement, was never served upon the petitioner and therefore the same cannot be acted upon as per the law laid down by the Apex Court in the case of *Dulu Devi vs. State of Assam* reported in *(2016) 1 SCC 622*. Since several vacancies still exist, the petitioner should be reinstated in his former post.

10. Sri R.N. Acharya, on the other hand, has contended that this is not a case of disengagement but non-renewal of contract beyond 28.02.2016, which is because of continued absence of the petitioner. While it is true that his absence was due to his being in judicial custody, the same not being within the knowledge of the concerned authorities at the relevant time, the contract was not renewed. Moreover, the petitioner being a purely contractual employee does not have any lien over the post in question nor can he claim any right of appointment/engagement against it.

11. From the facts narrated above it is clear that there is no order of disengagement of the petitioner as such. As stated by Sri Acharya, the petitioner's contract of engagement as a Trained Graduate Teacher was not renewed in the academic session of 2016-17 with effect from 01.03.2016. There is no dispute that the petitioner was in judicial custody in connection with a criminal case but then fact also remains that he was fully acquitted from the charges in the said case. In his representation, copy of which is enclosed as Annexure-3 to the Writ Petition, the petitioner has stated all the relevant particulars of the criminal case as also of his acquittal therefrom. Such fact also appears to have been specifically intimated by the opposite party no. 3 to the Director of Secondary Education in his letter dated 15.12.16, enclosed as Annexure- C/3 to the Counter along with the views of Headmaster of the School and the Block Education Officer of Gumna Block. In reply to such letter of the opposite party no. 3, the Director of Secondary Education in his letter dated 24.11.2017 has simply stated that as the engagement of the petitioner has not been renewed after 28.02.2016, his engagement stands terminated from 01.03.2016. Firstly, a copy of such letter does not appear to have been served upon the petitioner even though the same materially affects his employment. The specific averment of the petitioner in this regard made in his rejoinder has not been refuted by the state authorities in their Additional Counter. Therefore, notwithstanding the fact that the petitioner was a contract teacher, a copy of the letter which adversely affects his livelihood, should have been served upon him. Secondly, there is nothing in the letter

dated 24.11.2017 to show that the specific grounds taken by the petitioner in his representation to justify his absence from duty during the relevant period or the submissions of opposite party no. 3 in his letter dated. 15.12.2016 along with the views of the Headmaster of the School and B.E.O. of Gumna Block was considered. Though it is stated at the bar that there is no provision to grant opportunity of personal hearing yet the principles of natural justice mandate that at least the grounds taken in the representation should be considered by the authority with due application of mind before disposing of the same. After perusing the letter dated 24.11.2017 of the Director, Secondary Education this Court is left with no doubt that the grounds taken by the petitioner have not been taken into consideration at all for which said order becomes liable to be interfered with.

12. For the following reason therefore, this Court deems it proper to set aside the order dated 24.11.2017 of the Director, Secondary Education and to direct him to consider the grounds raised by the petitioner in his representation as forwarded by the opposite party no.3 in his letter dated 15.12.2016 and to pass necessary orders afresh by affording an opportunity of personal hearing to the petitioner. The above exercise shall be concluded within a period of two months from the date of receipt of a copy of this order or on production of certified copy thereof by the petitioner, whichever is earlier.

13. The writ petition is disposed of accordingly.

(Sashikanta Mishra)
Judge