

(2024) 05 OHC CK 0113

Orissa High Court

Case No: Writ Petition (C) No. 12309 Of 2016

Sri Babarao Himirika

APPELLANT

Vs

State Of Odisha And  
Others

RESPONDENT

Date of Decision: May 14, 2024

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Code of Criminal Procedure, 1973 - Section 239
- Child Labour (Prohibition and Regulation) Act, 1986 - Section 14(3)(a), 9(2)

Hon'ble Judges: Sashikanta Mishra, J

Bench: Single Bench

Advocate: G. Padhi, K.C. Rajguru Mohapatra, S.N. Patanaik

Final Decision: Allowed

### Judgement

Sashikanta Mishra, J

1. The petitioner has filed this writ petition with the following prayer:-

“It is, therefore, prayed that this Hon’ble Court may graciously be pleased to;

i. Admit this writ application.

ii. Call for the records.

iii. Issue a writ of Mandamus or any other appropriate writ/writs by quashing the impugned order dated 23.02.2016 vide Annexure-8 issued by the Opposite

Party No.2 to disengage the petitioner from the post of Sikshya Sahayak and further allow the petitioner to continue in his post.

iv. Issue RULE NISI calling upon the opposite parties to show cause as to why the impugned order dated 23.02.2016 under Annexure-8 shall not be quashed and

also his service shall not be regularized considering the uninterrupted length of service.

v. If the opp. parties do not show cause or show insufficient cause issue a writ of certiorari or any other writ/writs order/orders, direction/directions quashing the impugned order dated 23.02.2016 by the opp. party No.2 under Annexure -8.

And may pass any such other order/orders, direction/directions as this Honâ€™ble Court deem fit and proper.

And for this act of kindness, the petitioner as in duty bound, shall ever pray.â€™

2. The facts of the case, briefly stated, are that the petitioner was initially engaged as Swechasevi Sikshya Sahayak (SSS) on a fixed monthly

honorarium of Rs.1500/- and posted to U.P. School, Matikona in the district of Rayagada as per order dated 03.12.2003 issued by the Chief Executive

Officer, Zilla Parishad-cum-Collector, Rayagada. While working as such, a decision was taken to disengage persons similarly situated as the petitioner

for which they approached this Court in W.P.(C) No.11191 of 2010. By order dated 17.05.2012, this Court disposed of the writ petition directing the

Secretary in the Department of School and Mass Education Department to consider the representation of the petitioner. In the meantime, by order

dated 04.05.2011, the petitioner was re-engaged and posted at Matikona, PUPS. While working as such, it was alleged that he had committed criminal

act by engaging 17 children (14 girls and 3 boys) of the school for plucking cotton in his own field at Bhakuraguda, 8 kilometers away from their

village, for three days till they were rescued by members of the Child Welfare Committee (CWC) on 12.01.2015. The Block Education Officer

deputed the Asst. Block Education Officer (A.B.E.O) to enquire into the matter. The A.B.E.O. submitted his report on 13.01.2015 holding the

allegations to be true. Such finding was based upon the purported confession of guilt by the petitioner during such enquiry. The matter being placed

before the Collector, without following due procedure of law, he issued an order of disengagement of the petitioner on 14.01.2015. The petitioner

challenged the said order before this Court in W.P.(C) No.17073 of 2015. By order dated 16.10.2015, this Court held that the rule of natural justice

had been violated during the inquiry. As such, the matter was remanded to the Collector to take a fresh decision after granting opportunity of hearing

to the petitioner. The petitioner was thereafter directed to appear before the Collector on 24.11.2015 and 08.12.2015 and his statement was recorded.

Ultimately, by order dated 23.02.2016, the Collector held that the disengagement of the petitioner is justified. It is the further case of the petitioner that

he had also received notice from the Asst. Labour Commissioner, Rayagada for violation of Section 9(2) of the Child Labour (Prohibition and

Regulation) Act, 1986 (for short, the Act) pursuant to which he had submitted his reply and the matter was pending. On such facts, the petitioner

approached this Court with the prayer as mentioned before. Subsequently, the petitioner filed an Additional Affidavit enclosing copy of order dated

02.08.2017 passed by the learned Nyaydhikari, Gram Nyayalaya, Kolnara at Rayagada in 2(c) CC No.3 of 2016, whereby he was discharged from

the offence under Section 14(3)(a) of the Act, as the Court did not find any prima facie material to proceed against him. It is therefore stated that in

view of his discharge in the criminal case on the same charge, the order of disengagement warrants interference.

3. Counter Affidavit has been filed by the District Project Coordinator-Opposite Party No.3. After referring to the admitted facts relating to

disengagement of the petitioner, the details of the allegation leveled against the petitioner and how the same was proved during inquiry have been

stated including the fact that the petitioner confessed of not informing the parents of the students at the time of engaging them. As regards discharge

in the criminal case, it is stated that as per the settled position of law, acquittal in a criminal case is not conclusive proof of the suitability of the

candidate in the post concerned. Mere acquittal or discharge cannot always lead to the inference that he was falsely involved. In any case, it is always

open to the employer to consider the antecedents and examine whether the person is suitable for appointment to the post. Since the petitioner was

engaged in a noble profession like teaching that shapes the character, caliber and future of others, no leniency should be shown to him.

4. Heard Mr. G.K.Padhi, learned counsel for the petitioner and Mr. S.N. Patanaik, learned Addl. Government Advocate for the State.

5. Mr. Padhi makes a two-fold argument-firstly, no enquiry was actually conducted and the statement of the petitioner was recorded mechanically and

by force and secondly, the petitioner was discharged in the criminal case on the same set of charges as the Court did not find prima facie evidence to proceed against him. The only thing that was proved during the inquiry conducted by the ABEO is that the petitioner had invited the students to attend the village festival for cattle pooja. It was also never proved that he owned the cotton field. According to Mr. Padhi, the Collector without taking above facts into consideration mechanically accepted the inquiry report, which therefore, warrants interference.

6. Mr. S.N. Patanaik, on the other hand, would argue that it is no longer open to the petitioner to question the inquiry report since he had fully participated in the inquiry and had submitted his statement, recorded in question answer form, on which he had also signed. The CWC members had rescued the children from the cotton field and therefore, the plea that the petitioner had invited the children to attend village festival is nothing but an afterthought. Mr. Patanaik further argues that mere discharge from the criminal case cannot automatically exonerate the petitioner from any disciplinary action. Moreover, the petitioner was engaged as a teacher which is a noble profession and he is therefore expected to exhibit proper character and integrity. Since the fact finding authority, after due enquiry, has found him guilty, this Court sitting in writ jurisdiction may not interfere with such finding.

7. It is evident from the pleadings and submissions made that the petitioner while working as Shishkya Sahyak allegedly engaged 17 children (14 girls and 3 boys) of the school for plucking cotton from his field at a place called Bhakurgoda, 8 kilometers away from the village for three days. It is stated that the members of the Child Welfare Committee rescued the children on 12.01.2015 and submitted complaint to the Block Education Officer. The Block Education Officer deputed the ABEO to conduct an enquiry and he proceeded to the village in question on the same day, conducted field enquiry and also submitted his report on the same day. Basing on such report, the Collector initially issued the disengagement order against the petitioner on 14.01.2015, which being set aside by this Court in W.P.(C) No.17073 of 2015, was remanded to the Collector for fresh consideration

after granting opportunity of hearing. The Collector took note of the enquiry report submitted by the ABEO, which contains the statement of the petitioner wherein he denied the allegation of engaging the students in his cotton field but admitted to have invited them to the village to participate in the village festival, named "Cattle Pooja". It is again mentioned that two days back "he informed the students to inform their parents/aged members about plucking of cotton". He then confessed his fault of informing the parents through the students for the purpose. The Collector has reproduced the statement of the petitioner given before the A.B.E.O. in presence of C.R.C.C. in the impugned order. He also perused the copy of the attendance register of the students enclosed to the report of the ABEO showing them absent for several days between the period from 05.01.2015 to 13.01.2015. Since the petitioner has signed at the bottom of his statement, it was treated as his confession. Viewed discretely, the report of A.B.E.O. does not inspire confidence, particularly, due to the fact that the petitioner has specifically denied the allegation of engaging students for plucking cotton from his field. Significantly, no independent witness was examined by the A.B.E.O. Even the members of Child Welfare Committee, who are said to have rescued the students and also submitted the initial complaint, were also not examined nor their statements recorded. In other words, there are several unexplained gaps in the case projected by the B.E.O./A.B.E.O. against the petitioner, which the Collector appears to have glossed over. Moreover, the so-called enquiry appears to have been conducted in a hasty manner, being commenced and concluded on the same day. It is trite that in a departmental action, the principles of preponderance of probability are to be followed. Since an alternative plausible explanation has been provided by the petitioner, i.e. of inviting the children to the village to attend "Cattle Pooja" and in the absence of any concrete or definite evidence showing the children to have been engaged in a cotton field, the finding must tilt in favour of the petitioner, rather than the department. Moreover, the Collector has himself not conducted any enquiry but relied heavily upon the report of the ABEO for which it cannot be said that there was application of independent and judicial mind by him.

8. Significantly, the criminal case registered against the petitioner on the same facts also ended in discharge of the petitioner. As per Section 239

Cr.P.C., power is vested in the Magistrate to discharge the accused if he considers the charge against him to be groundless. It is true that as per the

settled position of law, acquittal in a criminal case does not automatically entitle a delinquent to be exonerated from a disciplinary proceeding, but in the

peculiar facts and circumstances of the case as narrated hereinbefore, this Court is of the considered view that the discharge of the petitioner from

the criminal case only fortifies the conclusion arrived at by this Court that there was no definite material or evidence to substantiate the allegation

against the petitioner. Of course, the order of discharge by the criminal court was passed subsequent to passing of the impugned order by the

Collector, but this Court has already held that even considered independently, the impugned order has no legs to stand. Since it is the question of

livelihood of a person, which is included within the Right to Life guaranteed under Article 21 of the Constitution, it was incumbent upon the authorities,

particularly the Collector, to have insisted upon definite and clear-cut evidence of the alleged misconduct before taking the drastic step of disengaging

the petitioner from service.

9. For the foregoing reasons therefore, this Court is of the view that the impugned order of disengagement of the petitioner from service cannot be

sustained for want of definite and/or acceptable evidence to substantiate the allegations.

10. In the result, the writ petition is allowed. The impugned order under Annexure-8 is hereby quashed. The Opposite Party-Authorities are directed to

re-instate the petitioner in service granting him continuity in service from the date of disengagement till his actual reinstatement notionally. In other

words, the petitioner shall not be entitled to any financial benefits for the period during which he did not render any work to the Government. This

order shall be carried out within two months from the date of production of certified copy of this order.

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