

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 10146 of 2018

Application under Article 226 and 227 of the Constitution of India.

Bichitrananda Barik Petitioner

-Versus-

State of Odisha and others Opp.Parties

Advocate(s) appeared in this case:-

For Petitioner : Mr. J.K. Rath, Sr. Advocate
With M/s. Durgesh Narayan Rath,
P.K. Rout & A.K. Saa, Advocates.

For Opp. Parties: Mr. P.K. Panda,
Standing Counsel for School &
Mass Education Department.

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

21st February, 2023

SASHIKANTA MISHRA, J. In this writ application, the petitioner impugns the order dated 01.06.2018 passed by the District Project Co-ordinator SSA, Jagatsinghpur, whereby 30 days notice was served upon him for his removal from engagement as Sikshya Sahayak (Junior Teacher contractual).

2. The facts of the case are that the petitioner was engaged as Sikshya Sahayak vide engagement order dated 05.01.2015 issued by the Chief Executive Officer, Zilla Parisad-cum-Collector, Jagatsinghpur. The petitioner joined as such on 10.01.2015. On 26.04.2018, the District Education Officer, Jagasinghpur issued a show cause notice containing certain allegations asking the petitioner to reply by 30.04.2018. He submitted his reply within the stipulated date denying all the allegations. No further communication was made to him till issuance of the impugned notice dated 01.06.2018, copy of which is enclosed as Annexure-5 to the writ petition.

3. A counter affidavit has been filed by the District Project Co-ordinator (opposite party No.4) justifying the action taken against the petitioner. It is stated that on receipt of allegations against the petitioner, the matter was enquired into and it was found that the same are correct. Since the petitioner is a contractual employee, the notice under Annexure-5 was issued. It is further stated that in view of the agreement executed by the petitioner at the time of his appointment as Junior Teacher (Contractual), he was

duty bound to maintain the decorum and conduct expected of a teacher.

4. Heard Mr. J.K. Rath, learned Senior Counsel along with Mr.D.N. Rath, learned counsel for the petitioner and Mr. P.K. Panda, learned Standing Counsel for School and Mass Education Department.

5. It is submitted by Mr. Rath, learned Senior Counsel that the petitioner was appointed on the orders of the CEO, Zilla Parisad-cum-Collector, Jagatsinghpur and as such, he is also the disciplinary authority. The show cause notice under Annexure-3 as well as the impugned notice under Annexure-5 was issued by the District Education Officer and District Project Co-ordinator respectively, both of whom lack jurisdiction or authority to do so. According to Mr. Rath, none other than the CEO, Zilla Parisad-cum-Collector has the authority to take such action against the Sikshya Sahayak/Junior Teacher (Contractual). Mr. Rath further contends that even otherwise, the petitioner was never called upon to attend the so-called enquiry and therefore, he had no knowledge whatsoever regarding holding of the same. Moreover, by not

allowing him to participate in the enquiry, he was deprived of the opportunity to defend himself appropriately against the allegations. Since the findings of the so called enquiry have been utilized to take the proposed adverse action against him, the same is entirely untenable in the eye of law.

6. Mr. P.K. Panda has supported the issuance of the impugned notice by submitting that the allegations against the petitioner are grave and serious and in any case, he being a contractual employee, the detailed procedure prescribed for taking disciplinary action against a regular government servant is not applicable to him.

7. Having considered the rival contentions noted above and having perused the materials on record, this Court is of the considered view that the impugned order under Annexure-5 cannot be sustained in the eye of law for the reasons indicated hereinafter.

8. The show cause notice dated 26.04.2018 was issued by the District Education Officer, Jagatsinghpur. There is no dispute that the CEO, Zilla Parisad-cum-Collector is the appointing authority in so far as Sikshya

Sahayak/Junior Teacher (Contractual) is concerned. It is well evident from the engagement order dated 05.01.2015, copy of which has been enclosed as Annexure-1. As such, the CEO, Zilla Parisad-cum-Collector is also the disciplinary authority. Any action proposed to be taken against the incumbent for any misconduct in employment has to be necessarily taken up by the CEO-cum-Collector. To such extent therefore, the District Education Officer cannot be said to have any authority to issue the show cause notice unilaterally to the petitioner. That apart, from the counter affidavit filed by the opposite party no.4 it transpires that some sort of enquiry was conducted in the matter wherein, the statements of some students including their parents were obtained. Under whose authority and what manner such enquiry was conducted, if at all, is not forthcoming from the records.

9. A perusal of the impugned notice under Annexure-5 shows that the findings of the enquiry have been relied upon and apparently form the basis for issuing the impugned notice of disengagement. This Court is not impressed with the argument that being a contractual

employee no rules or procedure are required to be followed before disengaging him. It is rather the settled position of law that even in case of a contractual employee the rules of natural justice are required to be followed to the hilt. In the instant case, as already stated, the enquiry was conducted entirely behind the back of the petitioner, inasmuch as he was not given any opportunity to participate and to have his say therein.

10. In such view of the matter, the so called findings of the enquiry cannot be accepted.

11. In the result, the writ petition is allowed. The impugned notice under Annexure-5 is hereby quashed. It is however, made clear that it shall be open to the disciplinary authority to proceed against the petitioner for his alleged misconduct strictly in accordance with law. It is further made clear that this Court has not expressed any opinion on the merits of the case.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 21st February, 2023/ A.K. Rana, P.A.