**IN THE HIGH COURT OF****ORISSA**

W.P. (C) No. 9704 of 2005

Decided On: 16.12.2011

Appellants: **Kshnaprava Mohanty**
**Vs.**
Respondent: **State of****Orissa & Ors.**

**Hon'ble Judges/Coram:**
L. Mohapatra, J. & B.K. Patel, J.

**JUDGMENT**

**B.K. Patel, J.**

1. In this writ petition, the petitioner has made prayer to quash order of removal of petitioner from service under Annexure-7 of the opposite party no. 5, Handicapped Welfare Institute, Balasore (for short, 'the Institute'). Opposite parties 1 to 4 represent State of Orissa in the Women & Child Development Department. The Institute has been constituted to run and manage a composite institution for handicapped children. It receives grant-in-aid from the State Government for the school for mentally retired persons. Petitioner's case is that opposite party no. 5 being an aided educational institution is governed under the provisions of OrissaEducation Act, 1969 (for short, 'the Act') and the Rules framed thereunder. By order under Annexure-1 petitioner was appointed as a Teacher, subsequently designated as Special Educator, with effect from 25.4.1988. Initially she was paid consolidated salary of Rs. 500/- which was enhanced to Rs. 1400/- per month after receipt of grant-in-aid. It has been specifically alleged that as the management of the Institute neglected in performing duties for achieving the purpose of the Institute, petitioner and some other staff made representations including representation under Annexure-2 to Government authorities to bring irregularities to the notice of the Government which is represented in the governing body for which management of the Institute bore grudge against the petitioner. Frivolous notices to show cause were issued to harass the petitioner and some other staff. It is alleged that on 28.7.2005 the petitioner was prevented entry into the Institute and on 29.7.2005 she was handed over with a copy of Annexure-7. It is specifically averred that order of removal was passed without following the procedure prescribed under the Act and Rules framed thereunder. She was never apprised of any proceeding against her and she was not given any opportunity of being heard before order of removal was passed. It has also been averred that provision under section 10A of the Act which requires prior approval of competent authority in order to remove a staff from service has not been complied with. Therefore, order of removal has been assailed to be illegal, arbitrary, malafide and violative of principles of natural justice.

2. Separate counter-affidavits have been filed by opposite party no. 1 and opposite party no. 5. Their stand is that the Institute is not governed under the provisions of the Act and Rules framed there under. It has also been pleaded that opposite party no. 5 is a private educational institution registered under the Societies Registration Act and is not amenable to writ jurisdiction.

3. In the counter affidavit filed by the Institute it has been averred that the Institute is a Society registered under the Societies Registration Act for the purpose of welfare and well being of the handicapped persons for whom it manages three schools, i.e., School for Mentally Retarded Children, School for Blind and School for Deaf partly with Government grant-in-aid and partly by collecting donations from public. The meagre Government grant at the rate of Rs. 500/- per boarder per month is not sufficient for which the General Body Members donate in shape of kind to meet the deficiency. Even the grant does not cover the remuneration of cooks, attendants etc. which the management of the Institute bears. It has been alleged that as some of the teaching staff including the writ petitioner created indiscipline and did not discharge their duties for the benefit of the handicapped children, disciplinary actions were taken against them. Therefore, they became hostile towards the Institute. It has been specifically averred that the teaching and nonteaching staff, who get their remuneration from Government grant, are paid through cheques. The writ petitioner was prevented from entry into the school as she was removed from service w.e.f. 22.7.2005. Removal order under Annexure-7 was sent to the writ petitioner through a Security Guard on 23.7.2005 for service. But when the notice was tendered to the writ petitioner in the class room, she adamantly refused to receive it. The Security Guard accordingly submitted report under Annexure-5/B-1. It has further been pleaded that the charges against the petitioner were approved in the Executive Committee Meeting on 28.6.2004 and 18.10.2004, and sent to the writ petitioner on 22.11.2004 through Sweeper-Cum-Chowkidar of the Institute for service. However, the writ petitioner snatched away both the charge-sheets and tried to assault the Sweeper-Cum-Chowkidar whose report is annexed to the counter affidavit as Annexure-5/C. When the Secretary of the Institute subsequently asked the writ petitioner to submit explanation to the charges, she adamantly refused to receive any paper or to submit any explanation to the charges. She never submitted any explanation to the charges. The matter was elaborately discussed in the Executive Committee Meeting on 12.4.2005 and it was decided to afford the petitioner with an opportunity of being heard in person and accordingly she was asked to appear in the next Executive Committee Meeting scheduled to be held on 22.7.2005. Copy of the letter under Annexure-5/D for personal hearing sent for service through a lady Security Guard was not received by the petitioner. In this connection, the lady Security Guard submitted a report under Annexure-5/E. In spite of opportunity being given to the petitioner, she did not appear for personal hearing before the Executive Committee Meeting on 22.7.2005. In such circumstances, after thread bare discussion of the charges, decision was taken for removal of the petitioner from service. Thus, the Institute followed due procedure before the order of removal was passed. It has also been pleaded that the Institute does not receive grant-in-aid under the provisions of OrissaEducation Act, 1969 or Rules made thereunder. The Institute is solely governed by the Rules Governing Grant-In-Aid to Institutions Imparting Education to Handicapped Children, 1985, which has no nexus with the Orissa Education Act and Rules framed thereunder. The Institute is not a recognized and aided educational institution. Procedure adopted by the Institute for the disciplinary proceeding against the petitioner before her removal was within the ambit of power of the Institute.

4. Learned counsel for the opposite party no. 5 raised a preliminary objection with regard to maintainability of the writ petition against the Institute. It was contended that grant-in-aid of the Government is meant for the Institute which is a society and not for the educational institution for the disabled. In resisting the objection it was contended by the learned counsel for the petitioner that it is obvious from the pleadings of opposite party no. 5 as well as opposite party no. 1 that the Institute is regularly getting aid which is being spent towards salary of teaching and non-teaching staff and other requirements of the educational institution. Therefore, the Institute is an aided educational institution as defined under section 3(b) of theAct. Placing reliance on the decision of this Court rendered on 19.2.1991 in O.J.C. No. 4430 of 1989 (Sri Ainthu Swain v. State of Orissa and Others) it was contended that in a dispute of similar nature School for Blind, Deaf and Dumb which is run by the Red Cross and Rotary Society was held to be aided educational institution governed under the Act and amenable to writ jurisdiction of this Court.

5. It is not disputed that the Institute is an educational institution. In the counter affidavit filed by the opposite party no. 5, it has been categorically admitted that the Institute receives grant-in-aid from the Government. It has been pleaded that meagre Government grant @Rs. 500/- per boarder per month is not adequate. It has also been admitted that teaching and non-teaching staff, who get their remuneration from Government grant, are paid through cheques directly from opposite party no. 4. Section 3(b) of the Act lays down that aided educational institution means private educational institution which is eligible to and is receiving grant-in-aid from the state Government, including the educational institution which has been notified by the state Government to receive grant-in-aid. In the above cited decision relied upon by the opposite party no. 5, educational institution run by Red Cross and Rotary Society for the Handicapped receiving Government aid was held to be aided educational institution within the meaning of section 3(b) of the Act and amenable to writ jurisdiction.

6. Moreover, it has been held by this Court in Antaryami Rath v. State of Orissa & Others  : 70 (1990) CLT 642:

There cannot be any doubt inasmuch as the functions discharged by educational institutions have to be regarded as in the nature of public duty as they perform the most useful social function of impartingeducation and that too in accordance with the curriculum prescribed by respective statutory bodies. There can, therefore, be no denial that they discharge a most important public function. This would show that private educational institutions should be amenable to the writ jurisdiction of this Court on the ground that they are performing public duty.

In view of the above, we have no hesitation in holding that the Institute is an aided educational institution and as such amenable to writ jurisdiction of this Court.

7. Main grievance of the petitioner is that she was not given any opportunity of being heard in the disciplinary proceeding which was conducted behind her back. It is contended by the learned counsel for the petitioner that copy of charge was never served on the petitioner. She was not given an opportunity of being heard in person. Before imposing major penalty of removal from service the petitioner was also not given any opportunity of having her say on the proposed punishment. That apart, no prior approval as required under section 10-A of the Act from competent authority was obtained for removal of petitioner from service. Learned counsel for the opposite party no. 5, in reply, submitted that the petitioner herself chose not to submit any explanation and not to participate in the disciplinary proceeding. She refused to receive the charge-sheet tendered to her by one of the employees of the Institute. In this connection, reliance is placed on the report of the said employee in Annexure-5/C. Similarly, another employee of the Institute submitted report in Annexure-5/D to the effect that the petitioner refused to receive notice asking her for personal appearance before the Executive Committee meeting to have her say. Therefore, petitioner has no basis to contend that the disciplinary proceeding was conducted behind her back.

8. Opposite party no. 5 relies upon reports of its employees to urge that notices were tendered to the petitioner who denies such assertion. The Institute being an educational institution dedicated to public duty for welfare of handicapped person ought to have acted in transparent manner. In case the petitioner refused to receive notices, notices should have been sent by registered post to show that in fact notices were issued but refused to receive by the petitioner. Basing on the reports of its own employees, opposite party no. 5 cannot urge that the petitioner was given opportunity to submit her explanation and participate in the proceeding.

9. That apart, having already arrived at the finding that the Institute is an aided educational institution, it is obvious that the Institute is governed under the provisions of the Act and the Rules framed thereunder. Section 10-A of the Act provides that services of a teacher and other members of staff of an aided Educational Institution shall not be terminated without obtaining prior approval in writing of the competent authority. In the present case, it is not disputed that no prior approval of the competent authority has been obtained for removal of the petitioner from service. Therefore, there has been violation of mandatory statutory provision in issuing order of removal under Annexure-7. Hence, order of removal is liable to be quashed. In the result, writ petition is allowed. The impugned order or removal in Annexure-7 is quashed. It is, however, open to the authority to proceed against the petitioner in accordance with law.