

**B.P.DAS, J & B.K.MISRA, J.**

W.P.(C) NO.13471 OF 2009 (25.02.2011)

**BALADEB PRASAD CHAKRABARTY**

.....Petitioner.

.Vrs.

**UNION MINISTER OF DEFENCE-CUM-  
CHAIRMAN,BOARD OF GOVERNORS & ORS.**

.....Opp.Parties.

For Petitioner - M/s. J.K.Rath, D.N.Rath, S.N.Rath  
& P.K.Rout.

For O.Ps. 1 to 3 - Mr. S.D.Das, Assistant Solicitor General of India

For O.P. 4 - M/s. P.Pattnaik, J.Mohanty & P.Rath

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***B.P.DAS, J.***

The petitioner, who was initially working as an Assistant Master under the establishment of Sainik School, Bhubaneswar, has filed this writ petition challenging the order dated 6<sup>th</sup> May, 2009 passed by the Wing Commander, Officiating Principal of the Sainik School, terminating his services, vide Annexure-24 and the notice dated 13<sup>th</sup> June, 2009 issued by the Principal of the Sainik School informing him that his request for voluntary retirement was granted by the competent authority with effect from 1<sup>st</sup> June, 2009 and he was relieved from service as Assistant Master (TSG English) with effect from 31<sup>st</sup> May, 2009, vide Annexure-26.

2. The brief facts leading to filing of this writ petition are that the petitioner was appointed as an Assistant Master by the Principal of the Sainik School, Bhubaneswar, and he joined the said post on 9.1.1981. While continuing as such, the petitioner was confirmed as Assistant Master on 4.5.1984 with effect from the date of his initial appointment, i.e., 9.1.1981. In the year 1988, the seniority of the petitioner was altered by the Management of the School for the reasons best known to them. Aggrieved thereby, the petitioner made a representation for restoration of his seniority over some teachers, who were given a march over him in the seniority list, but the same was not attended to. Thereafter, he was forced to file a writ petition before this Court bearing O.J.C. No.2671/1988 challenging the fixation of his seniority. While disposing of the said writ petition, this Court by order dated 2.11.1988 directed the Honourary Secretary, Sainik Schools, O.P.2, to consider the case of the petitioner vis-à-vis the persons, whose placement in the seniority list had been challenged by the petitioner in that proceeding and to take a decision on the same. The Management took a decision affirming their earlier decision to treat such persons, namely, Sudarsan Mallick and Md.Abdul Sakul, to be senior to the petitioner in the grade of Assistant Master. Challenging the said decision of the Management, the petitioner filed O.J.C. No.2855/1989. This Court while disposing of the writ petition by judgment dated 2.8.1993 declared the petitioner as senior to the aforesaid persons and directed the school authorities to rate the petitioner above them.

In terms of the aforesaid judgment, though the gradation list was corrected, yet the consequential financial benefit was not extended to the petitioner. When the petitioner was not considered for promotion to the post of Post Graduate Teacher, he filed a writ petition bearing W.P.(C) No.11150/2005 praying, inter alia, for a direction to extend the benefits in terms of the judgment passed in O.J.C. No.2855/1989 and for consideration of his case for promotion to the post of Post Graduate Teacher. The said writ petition is still pending.

3. While things stood thus, a show cause notice dated 22.4.2009 was issued to the petitioner by the Officiating Principal of the School (Annexure-21) alleging that the petitioner did not attend his duty on 14<sup>th</sup> April, 2009 and he was directed to explain within three days as to why suitable disciplinary action as deemed fit under the relevant provisions of SSS R & S 1997 would not be taken against him for dereliction of duty and infringement of conduct rules. The petitioner submitted his reply on 24.4.2009 refuting such allegation and stating that he had performed his duty on 14.4.2009. Thereafter, depriving the petitioner from getting arrear salary, the impugned order of termination dated 6<sup>th</sup> May, 2009 in Annexure-24 was issued. According to the petitioner, while communicating the said order of termination, the Officiating Principal along with the Registrar, Sr. Master and some henchmen of the said Principal surrounded him and compelled to write down to have applied for voluntary retirement from service and took an application from him. Immediately, on the next date, i.e., 7.5.2009 the petitioner intimated this fact to the Honorary Secretary, Sainik Schools Society, O.P.2, vide Annexure-25, relevant portion of which is quoted herein below :-

“.....That, the Officiating Principal, Wg.Cdr. R.K.Mall of Sainik School, Bhubaneswar has terminated services of B P Chakrabarty on 6.5.2009 forthwith (Annexure-1) a teacher having 28 years services at Sainik School, Bhubaneswar and coerced/forced/compelled him with the Registrar, Sainik School, Bhubaneswar, Sqn. Ldr. A.K.Das and three teachers Viz. Senior Master Sri S.K.Garai, Sri H S Das and Sri T P Rath at the Offg. Principal's office on 06.May 2009 at 11.30 hrs, B P Chakrabarty was compelled to pen a Voluntary Retirement Application. This voluntary retirement application was against my will and I don't want it. This application may please be ignored, cancelled and may not please be taken into consideration because this application was signed and submitted by me under mental duress on 06.05.2009. I appeal before you sincerely and earnestly to cancel it, Sir.”

4. When the writ petition came up for admission, this Court by its order dated 27.10.2009 directed issuance of notice to opposite party nos. 4 & 5 by special messenger. After service of notice, the opposite parties entered their appearance through their Counsel. By order no.5 dated 6.11.2009 this Court passed the following orders :-

“Opposite parties have entered appearance through counsel and prays for two weeks time to file counter-affidavit.

Put up the matter in the week commencing from 23.11.2009.

Counter-affidavit, if any, be filed in the meantime.”

In the order passed on 24.11.2009, it has been noted that a preliminary counter affidavit was filed by opposite party no.4 in Court on that day. From the record, we do not find any preliminary counter affidavit but a petition under Order 14 Rule 2 of C.P.C. by O.P.4 is there with the record, in which O.P.4 has prayed to decide the question of maintainability of the writ petition as preliminary issue and to dismiss the case as not maintainable. Today when the matter was taken up, Ms.Bahal appearing on behalf of Mr.P.Pattnaik, learned counsel for O.P.4 sought for an adjournment. As we find that besides Mr.P.Pattnaik, two more counsel are appearing for O.P.4 and this is a case of the year 2009 and pertains to termination of service, we refused to adjourn the case.

5. Let us now examine the question whether the writ petition is at all maintainable, as raised by O.P.4 in the petition filed under Order 14 Rule 2 of the Civil Procedure Code. The main ground taken by O.P.4 in his petition is that since an alternative remedy is available to the petitioner under the Sainik Schools Society Rules and Regulations, 1997 (herein after “Rules”), this writ petition is not maintainable, particularly when the petitioner has filed an appeal before the appellate authority.

6. Mr.J.K.Rath, learned counsel for the petitioner, submits that this is a case where the service of the petitioner has been terminated by the O.Ps. blatantly violating the principle of natural justice and without following the procedures contemplated in the Rules governing the service condition of the employees of the Sainik Schools.

In such a case, even if the petitioner has filed an appeal and the same was kept pending, there was no illegality in approaching the Court by invoking the extraordinary jurisdiction under Article 226 of the Constitution of India.

On examining the allegation of the petitioner that his service has been terminated in violation of principle of natural justice and without following the procedures prescribed in the Rules governing the service condition of the petitioner, our attention was drawn to the provisions contained in Chapter-X (Discipline) of the Rules dealing with penalties and the procedures for awarding such penalties. Rule 10.01, which deals with penalties, empowers the Principal to impose the penalties indicated therein including the major penalties on any member of the staff. According to Mr.Rath, the Officiating Principal, who has passed the impugned order of termination, which is a major penalty, has no jurisdiction to pass such an order. As no counter affidavit has been filed in this case, there is nothing to show that the Officiating Principal has ever been empowered to function as Principal of the School and exercise the powers of the Principal including the power of imposition of penalties as provided in Chapter-X (Annexure-28). Moreover, the procedures for awarding major penalties, as prescribed in Sub-Rules (a) and (b) of the Rules, have not been followed in the case of the petitioner. Sub-Rules (a) and (b) of Rule 10.07 of the Rules provides thus :-

“10.07(a) No penalty specified in sub-rules 10.01(b) (iii), (iv) and (v) shall be made except after an inquiry, held as far as possible, in the manner provided in this rule.

(b) Where the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an employee, it may appoint, under this rule, an authority to inquire into the true thereof.”

7. Save and except issuing a show cause, no inquiry was conducted in the instant case giving an opportunity of hearing to the petitioner to put forth his case. The only allegation made against the petitioner, as stated in the show cause notice (Annexure-21) is that the petitioner remained absent from duty on 14<sup>th</sup> April, 2009 without any prior intimation or permission from the authority. In his reply to the show cause, the petitioner stoutly denied such allegation but the authorities proceeded with the order of termination without going for an inquiry as provided under Rule 10.07 of the Rules before imposing the major penalty. That apart, after the major penalty was awarded, the opposite parties utilized the application for voluntary retirement from service purported to have written by the petitioner, which according to the petitioner, was obtained under pressure on 6.5.2009 and on the next date, i.e., 7.5.2009 the petitioner filed an application before the Honorary Secretary detailing the circumstances, under which the application for voluntary retirement was obtained from him, and requesting him to ignore/cancel the voluntary retirement application as the same being against his will. The said application was filed on 7<sup>th</sup> May, 2009 and the O.Ps. without considering the application of the petitioner requesting them to ignore his application for voluntary retirement, the same was accepted on 13<sup>th</sup> June, 2009. For the sake of argument, if we accept the plea of the O.Ps. that the application for voluntary retirement was submitted by the petitioner on his own free will under normal circumstances and not under any pressure, the law is well settled that the applicant can withdraw such application before it was accepted. Even if the purported application for voluntary retirement of the petitioner was withdrawn on the next date, i.e., on 7.5.2009, the authorities without taking any action on the same accepted the said application on 13<sup>th</sup> June, 2009.

8. Under the facts and circumstances as detailed herein above, we have no hesitation to hold that the order dated 6<sup>th</sup> May, 2009 passed by the Officiating Principal of the Sainik School, Bhubaneswar in Annexure-24 and the notice dated 13<sup>th</sup> June, 2009 issued by the Principal of the Sainik School in Annexure-26 have been passed in an arbitrary and whimsical manner without following the procedures prescribed under law. Hence, both the order and notice are quashed.

The petitioner shall be deemed to be continuing in service and he shall be given all past service benefits within a period of three months from the date of communication of this order. The petitioner shall continue to occupy the quarters allotted to him. Let a writ to the above effect be issued to the opposite parties at the cost of the petitioner.

The writ petition is accordingly allowed. No cost.

Writ petition allowed.