

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.34817 OF 2022

In the matter of an application under Section
24-C of the Orissa Education Act, 1969.

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Prafulla Kumar Sahoo **Petitioner**

-versus-

State of Orissa & Others **Opp. Parties**

For Petitioner :M/s. D.N. Rath, Advocate

For Opp. Parties :M/s. R.N. Mishra,
Additional Govt. Advocate
Mr. S.K. Das, Advocate
(for Opp. Party No.4)
Mr. S.K. Dash, Advocate
(for Opp. Party No.5)

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 13.04.2023 and Date of Order: 02.05.2023

Biraja Prasanna Satapathy, J.

The Present Writ Petition has been filed challenging the order passed by the Opp. Party No.5 on 11.10.2022 and 01.12.2022 under Annexure-4 & 6 and with a further prayer to direct the Opp. Party Nos.1 to 4 to

allow the Petitioner to discharge his duty as Headmaster-in-Charge of the School and with a further prayer to restrain the Opp. party No.5 from interfering with the functioning of the Petitioner as In-Charge of Headmaster of Christ Collegiate School, Cuttack.

2. The factual matrix giving rise to filing of the present Writ Petition is that the Petitioner with having qualification of B.A, B.Ed. was initially appointed as a trained matric teacher on 01.10.1991 in Christ Collegiate School, Cuttack. The appointment of the Petitioner was also approved by the Opp. Party No.3 vide his order dated 11.12.1991 under Annexure-1 series.

2.1. It is contended that the school in question i.e. Christ Collegiate School, Cuttack being an aided educational institution, the Managing Committee of the school was reconstituted as provided under Rule 28(1) of the Orissa Education (Establishment, Recognition and Management of Private High School) Rules, 1991. The last such reconstituted governing body so approved by Opp. Party No.3 on 16.02.2022 under Annexure-2 series is valid for a period of three years.

2.2. It is also contended that the Petitioner while continuing as against a trained Matric post, he was promoted to a Trained Graduate post w.e.f 23.09.2015 vide order issued by Opp. Party No.3 under Annexure-3. Since the Petitioner was promoted as against a Trained Graduate post, taking into account his eligibility and seniority, he was allowed to continue against the post of Headmaster In-charge of the School w.e.f the year 2019. However, it is contended that while the matter stood thus, Opp. Party No.5 without having any authority placed the petitioner under suspension vide order dated 11.10.2022 under Annexure-4. The Petitioner on receipt of the said order, when moved Opp. Party No.3 for his interference vide representation dated 17.10.2022 under Annexure-5, Opp. Party No.5 initiated a Disciplinary proceeding against him, so communicated vide letter dated 01.12.2022 under Annexure-6.

2.3. It is contended that since Christ Collegiate School is a Minority Managed Aided Educational Institution, the service condition of the employees of the school is governed under Odisha Education (Minority Managed Aided Educational institutions Employees' Method of Recruitment and Conditions of service) Order, 2003. It is contended

that the said order came into force w.e.f 01.04.2003 and as per Order-2 of the said order, the same shall apply to the employees of Primary Schools, Upper Primary Schools, M.E Schools, Junior and Senior Basic Schools, Secondary Schools and Madrassa established and managed by the Minority Communities. As provided under Rule-3(h) of the said Order, “Minority Educational Institution” are such educational institutions other than those meant for exclusively imparting religious instruction, which are established and administered by minority (both religious and linguistic) communities under Article 30 of the Constitution of India. It is also contended that Chapter-III of the 2003 Order deals with the service condition of employees of Aided minority (managed) educational institution and Chapter-IV of the 2003 Order also deals with disciplinary action that can be taken against the employees.

2.4. It is contended that as provided under Order-21(e) ‘Suspension’ has been defined as one of the penalty and as provided under Order-22, the Managing Committee or the Governing body as the case may be, may impose any of the penalties specified under Order-21 on any employee. It is contended that since the school in question is having a

duly approved managing committee, so approved vide order under Annexure-2 with its term till 15.02.2025, it is only the Managing Committee, who is competent to place the petitioner under suspension and Opp. Party No.5 being not the managing committee is not competent to issue any such order of suspension as well as direct for initiation of proceeding against the Petitioner vide Annexures-4 and 6. Accordingly, challenging the competency of Opp. Party No.5 in placing the petitioner under suspension vide Annexure-4 and initiation of the proceeding under Annexure-6, the Petitioner is before this Court in the present Writ Petition.

2.5. Mr. D.N. Rath, learned counsel appearing for the Petitioner vehemently contended that since the school in question is a minority managed aided educational institution and the service condition of the institution is governed under the 2003 Order, Opp. Party No.5 is not at all competent to place the petitioner under suspension as well as initiate the proceeding under Annexures-4 & 6 respectively and the said order are not sustainable in the eye of law.

3. Mr. R.N. Mishra, learned Additional Government Advocate appearing for Opp. Party No.2 on the other hand

made his submission basing on the stand taken in the counter affidavit.

3.1. It is contended that Christ Collegiate School, Cuttack though is established by a Group of people belonging to Christian community, but at the time of its establishment, there was no statutory GIA Policy nor there was any mechanism to give a separate treatment to any institution as minority educational institution. However, pursuant to a Resolution issued by the Ministry of Home Affairs, Govt. of India, a Minorities Commission was established to safeguard the interest of the minorities in the country. The National Commission For Minorities Act which came into force in 1992 created the Minority Commission. The Minorities Commission was later known as National Commission of Minorities and it initiated steps for recognition of Minority Educational institution in the country. The National Commission for Minority Educational Institution Act, 2004 is exclusively meant to regulate the affairs of Minority Educational Institution.

3.2. It is also contended that Christ Collegiate School is receiving grant-in-aid prior to 1994 and for all practical purposes, it is an aided educational institution. But as provided under the National Commission for Minority

Educational institution Act, 2004, Christ Collegiate School has not yet applied for being declared as a Minority Educational Institution, even though it is established by the members of the Minority Community and it claims to be a Minority Educational Institution.

3.3. Mr. R.N. Mishra, learned Additional Govt. Advocate contended that in absence of any such certificate issued by the National Commission, Christ Collegiate School cannot claim it to be a Minority Educational Institution in the eye of law. It is contended that since no such certificate has been obtained by the Christ Collegiate School, the School being an aided Educational institution, is governed by the 2003 Order and as provided under the said order, it is only the Managing Committee, who is competent to take disciplinary action against its employees. Since the school in question having its approved managing committee vide order at Annexure-2, Opp. Party No.5 is not competent to take any disciplinary action against the employees of Christ Collegiate School. It is accordingly contended that the impugned order of suspension and initiation of the proceeding, so issued against the petitioner by the Opp. Party No.5 is not sustainable in the eye of law.

4. Mr. Sameer Kumar Das, learned counsel appearing for Opp. Party N0.4-Managing Committee also supported the contention raised by the learned counsel for the Petitioner as well as learned Additional Govt. Advocate. It is contended that by virtue of the approval made to the Managing Committee under Annexure-2, Opp. Party No.4 is continuing as Secretary of the Managing Committee of the Christ Collegiate School, Cuttack. Since the school in question has not yet been declared as a Minority Educational institution by the National Commission for Minority Educational Institution, New Delhi and no such certificate has been obtained as on date, it cannot be treated as a Minority Managed Institution and accordingly protected under Article 30 of the Constitution of India. It is contended that in absence of any such certificate so obtained from the National Commission for Minority Educational Institution, Opp. Party No.5 is not competent to take any disciplinary action against the employees of Christ Collegiate School.

4.1. It is also contended that the service condition of the staffs of the Christ Collegiate School is governed under 2003 Order and as provided under Order- 22 of the said Order, it is only the Managing Committee which is

competent to take disciplinary action against its employees. Since the impugned order of suspension under Annexure-4 and the initiation of the proceeding under Annexure-6 has been initiated by Opp. Party No.5, the said orders are not sustainable in the eye of law.

In support of his aforesaid contention, Mr. Das relied on a decision of this Court in the case of **Dr. Shyamal Ku. Saha Vs. State of Odisha & Others**, passed in **W.P.(C) NO.2207 of 2012 and batch, vide judgment dt.26.6.2012**. This Court in Paragraph 33 of the said judgment has held as follows:

“ I am directed to say that the Stewart Science College, Cuttack and Christ College, Cuttack being Minority Institutions are not governed and or Orissa Education Act, 1969 and rules framed there under as those the Institutions have been established and being administered by the Christian Minority. They are making the appointments of Lecturers by their own selection without taking candidates from the Adhoc merit panel prepared by this Directorate as well as from the Selection Board on the grounds that they are Minority Institutions. Although these two Institutions are being managed and administered by the Minority Community, the Staff of the Institutions are receiving direct payment since the date of its introduction in the aided Colleges. In this connection, it may be mentioned here that previously Government in their letter No.22369/EYS, dated 27.08.79 had decided that the payment of salaries to the Staff of these two Institutions through direct payment of salaries to the Staff of these two Institutions through direct payment system should be stopped, a copy of the order based on this decision was communicated to both the Institutions in this Directorate Memo NO.32484 dtd.25.07.79. But subsequently Government in their No.27085/EYS, dated 03.08.79 have kept the said orders in abeyance and decided that pending finalization of the matter, the existing arrangement for making payment of salaries to the staff

directly may continue Govt. order in the matter is awaited.”

In the last paragraph request has been made that Government order in the matter may be communicated at an early date. It is also worthwhile to observe that State Government have taken conflicting and contradictory stands with regard to the status of the Stewart Science College in different Writ Petitions. In W.P.(C) NO.2207 of 2012 stand of the Government is that Stewart Science College is a Minority Educational Institution entitled to protection under Article 30. However, in W.P.(C) NO.7762 of 2004 stand of the Government was that the present Management or Governing Body having not established the College cannot claim the protection of administration of the College as envisaged under Article 30 of the Constitution. In fact, learned Single Judge has categorically observed in the decision extracted above that the main ground on which the State resisted the rights of the Management was that the said College was established by BCTA and its management was handed over to the Diocese and as such the Diocese having not established the College has no rights to manage the institution. Also, in the counter affidavit filed on behalf of Director, Higher Education in W.P.(C) No.7579 of 2008 it has been pleaded that the impugned resolution passed by the Management in contravention of Government Resolution dated 9.3.1999 issued under the Act prescribing that Principals of Non-Government Aided Colleges may be appointed from among Readers/Lecturers (Selection Grade) is to be ignored as the same is illegal and the Management is estopped from deviation from the prescribed Rule framed by the Government since the College is receiving grant-in-aid on direct payment scheme. Vascillating stands of the State Government make the situation worse. Thus, learned Single Judge has not only placed reliance on the order of the Commission which did not relate to Stewart Science College, but also has not taken note of conflicting and contradictory stands of the State Government. Therefore, judgment passed by the learned Single Judge in Governing Body of Stewart Science College, Cuttack and another (W.P.(C) No.7762 of 2004) (supra) cannot be held to have finally determined the status of Stewart Science College as a Minority Educational Institution. Instead of entertaining the writ application, the learned Single Judge ought to have directed to get the dispute adjudicated by competent fact finding authorities in accordance with the mandate of Hon'ble Supreme Court in Manager, St. Thomas U.P. School Kerala and another vs. Commissioner & Secy. to General Education Deptt. and others (supra).”

5. Mr. S.K. Dash, learned counsel appearing for Opp. Party No.5 on the other hand made his submission basing on the stand taken in the counter affidavit so filed by Opp. Party No.5.

5.1. It is contended that since Christ Collegiate School, Cuttack is a Minority Educational Institution; it is protected under Article 30 of the Constitution of India. Though the service condition of the employees of the school is subject to the 2003 order, but it will apply so far as it does not infringe the rights of the minorities to administer the School.

5.2. Mr. Dash also contended that the provisions contained under Orissa Education (Establishment, Recognition and Management of Private High School) Rule, 1991 is not applicable to Christ Collegiate School, as it is managed by the Minority Community notwithstanding the approval of the Managing Committee by the Opp. Party No.3 under Annexure-2.

In support of his aforesaid submission, Mr. Das, learned counsel relied on a decision of this Court in the case of **St. Catherine Girls' High School Vs. State of Orissa & Others**, reported in **2002 (suppl.) OLR 452**.

This Court in Paragraph 18 of the said judgment has held as follows:

“18 Thus it is wholly irrelevant whether at the initial stages the management of the School was voluntarily complying with some provisions of the Education Code or the Rules framed by the State Government and sending the constitution and reconstitution of the Managing Committee for approval of the appropriate authorities. Besides, a minority institution may on its own follow the principle or policy contained in any Statute, or Rules so long as the same does not clash with its right of freedom of management, voluntary submission to certain general rules, regulations or restrictions is totally different from the state’s insistence on compliance with the provisions of the Statute, Rules and Regulations interfering with the freedom of management guaranteed under Article 30 of the Constitution. So constitution or reconstitution of the Managing Committee on the pattern laid down in the Education Code or any Rule and sending those for approval cannot affect the minority status of the School if it is otherwise found to be an institution established by the minorities within the meaning of Article 30 of the Constitution. Direct payment of salaries to the teachers deduction of P.F amount etc. are all unilateral acts of the State Government and those are not at all relevant for the purpose of determination of the real character of the School.”

5.3. It is also contended by the learned counsel appearing for Opp. Party No.5 that since the petitioner was appointed as a Headmaster in-Charge of the school vide order issued in his favour on 25.05.2019 under Annexure-5 by the Opp. Party No.5 and Petitioner submitted his joining to Opp. Party No.5 through the Headmaster on 27.05.2019, it cannot be said that the Opp. Party No.5 has no authority with regard to the functioning of the petitioner as Headmaster In-charge of the School. It is contended that

the appointment of the Petitioner as Headmaster In-charge of the school by Opp. Party No.5 vide order at Annexure-A/5 since was not disclosed by the Petitioner in the present Writ Petition, the Writ Petition is not maintainable for such suppression of facts. Mr. Dash in support of such submission relied on a decision of the Hon'ble Apex Court, reported in (2013) 2 SCC 398.

5.4. It is also contended that as per the Constitution and bye-law of the Cuttack Christian Education Board which is a registered Society, the Apex body of the Society is managing the affairs of the Christ Collegiate School. It is also contended that the Managing Committee of the School, so constituted, is as per the decision taken by the Apex Body and the executive Committee of the said Board is competent to take action against the Headmaster except action of dismissal from service. It is only the general body of the Board which is competent to approve the dismissal from service of the Headmaster. It is also contended that even though the 2003 order is applicable, but since the said order is silent in respect of the authority of the Managing Committee to take disciplinary measures against the Headmaster, the Opp. Party No.5 as the Secretary of the Board, is competent to take disciplinary action a

against the Headmaster. It is also contended that as provided to the proviso to Section 2 of the Orissa Education Act, 1969, no Rule can be made to infringe the rights of the minority to administer the institution.

In support of his aforesaid submission, Mr. Dash, learned counsel for Opp. Party No.5 relied on a decision of the Hon'ble Apex Court reported in AIR 2003 SC 355.

5.6. It is accordingly contended that as per the bye-law framed by the Board, it is the Board, which is competent to take disciplinary action against the Headmaster of the School. Since the Petitioner was appointed as a Headmaster by the Board vide order at Annexure-A/5, it is the Board which is only competent to take action and the Opp. Party No.5 as Secretary of the Board since has passed the impugned order at Annexures-4 & 6, it requires no interference of this Court.

6. I have heard Mr. D.N. Rath, learned counsel appearing for the Petitioner, Mr. R.N. Mishra, learned Additional Govt. Advocate appearing for Opp. Party Nos.1 & 2 and Mr. S.K. Das, learned counsel appearing for Opp. Party No.4 and Mr. S.K. Dash, learned counsel appearing for Opp. Party No.5.

On the consent of the learned counsel appearing for the parties with due exchange of pleadings, the matter was heard at the stage of admission and disposed of by the present order.

7. Having heard learned counsel for the parties and after going through the materials available on record, it is found that the Petitioner is continuing as Headmaster In-charge in Christ Collegiate School, Cuttack.

7.1. Though it is not disputed that Christ Collegiate School is a minority managed aided educational institution, but the school since has not obtained as yet the certificate issued by the National Minority Commission declaring the school as a Minority Managed Institution, the claim made by the Opp. Party No.5 that Opp. Party No.5 is competent to take action against the Petitioner, as the school is a Minority Aided Educational institution, cannot be accepted. After coming into force of the National Commission of Minority Educational institution Act, 2004, the school has to make an application before the Commission for its declaration as a Minority Managed Educational institution. Since no document has been filed by Opp. Party No.5 showing such certificate having been obtained from the Commission, the stand taken by the Opp. Party No.5 that

the school is a Minority Managed Educational Institution, is not acceptable. In absence of any such certificate and the school being an aided educational institution with having duly constituted Managing Committee, so approved under Annexure-2, Opp. Party No.5 is not competent to take any disciplinary action against the Petitioner.

7.2. As provided under 2003 Order, it is only the Managing Committee which is competent to take disciplinary action against its employees. Since the school is having a duly constituted approved managing committee, so approved vide order under Annexure-2, placing reliance on the provision contained under Order-22 of 2003 order, it is the view of this Court that Opp. Party No.5 is not competent to take any action against the Petitioner with issuance of the order under Annexures-4 & 6. The approval of the Managing Committee made vide Order dt.16.02.2022 is also never challenged by Opp. Party No.5 as admitted by the learned counsel appearing for Opp. Party No.5. It is also found that since the school in question has not obtained the certificate from the National Commission for Minority Educational Institution which was held by this Court in its judgment dated 26.6.2012 in the case of Dr. Shyamal Kumar Saha, as cited (supra), the plea

taken by the Opp. Party No.5 that Christ Collegiate School is a Minority Educational institution, is not acceptable to this Court.

7.3. Therefore, in view of the discussions made hereinabove, it is the view of this Court that Opp. Party No.5 is not competent to issue the order under Annexures-4 & 6. Therefore, this Court is inclined to interfere with the said order. While interfering with the same, this Court quash the order under Annexures-4 & 6 and allow the Petitioner to continue as Headmaster In-charge of the school as before.

The Writ Petition is accordingly disposed of with the aforesaid observation and direction.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court
Dated the 2nd May, 2023/sangita