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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO: 165 OF 1992

Date of decision: April 30, 1992.

Nabin Chandra Padhi : Petitioner

-Versus-

Union of India and others : Opp. Parties.

For the Petitioner : M/s Bijan Ray, C. Choudhury,
Advocates.

For the Opp. Parties : Mr. A. K. Misra, Sr. St. Counsel (CAT)

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THE HONOURABLE MR. K.P. ACHARYA, VICE CHAIRMAN

AND

THE HONOURABLE MR. C.S. PANDEY, MEMBER (ADMN.)

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1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporters or not?
3. Whether Their Lordships wish to see the fair copy of the judgment? Yes.

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JUDGMENT

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 K.P. ACHARAYA, V.C. In this application under section 19 of the Administrative Tribunals Act, 1985, it is prayed to quash the Annexure-3 with a direction to the Opposite Parties to permit the applicant to continue in the present post.

2. Shortly stated the case of the Petitioner is that, he is a school teacher functioning under the State of Orissa and attached to the Upper Primary School, Bhimpur Dist. Ganjam, Orissa under the immediate administrative control of the District Inspector of Schools, Berhampur, Opposite Party No.3. As per the prevalent practice, the Primary School Teachers are being engaged as Extra Departmental Branch Post Master. The Petitioner was accorded permission by the District Inspector of Schools, Berhampur to act as Extra Departmental Branch Post Master of Bhimpur. Hence the Petitioner is discharging the duties and functions of an Assistant Teacher and also as Extra Departmental Branch Post Master. The District Inspector of Schools has questioned the authority of the petitioner to render part time service as Extra Departmental Branch Post Master and has also held that one can not hold charges of ~~two posts~~. Subsequently, vide letter No.785 dated 5th February, 1992, the D.I. Schools withdrew of such permission and according to the Petitioner, the D.I. Schools has deprived of the petitioner of his right to earn and therefore, the order/ withdrawing permission should be quashed.

3. On 10th April, 1992, notice was issued to the

Opposite Parties to show cause as to why this application should not be allowed. Counter has been filed in this case, in which, it is stated that the timings of the post office was clashed with the timings of the school and therefore, continuance of the petitioner as Extra Departmental Branch Post Master of the said post office is detrimental to the interest of the Public. In this regard, complaints were received from the public and therefore, the SDP has called for explanation from the petitioner.

4. We have heard Mr. C. Shoudhury learned Counsel for the Petitioner and Mr. Aswini Kumar Misra learned Standing Counsel for the Opposite Parties. At the outset Mr. Choudhury relied upon an order passed by a Division Bench of the Orissa State Administrative Tribunal dated 8.4.92 passed in O.A. 434 of 1992 read with M.P. 762 of 1992 which runs thus:

" Heard. In the meantime, Petitioner may not be compelled to handover charge of the Branch Post Office, Bhimpur till 4.5.92. The Misc. petition is accordingly disposed of".

5. Relying on this observation of the State Administrative Tribunal it was contended by Mr. Choudhury, that the Petitioner being in possession of a legal order, he cannot be compelled to hand over the charge of the said post office. No dispute was presented before us that under Section 15 of the Administrative Tribunals Act, 1985, State Administrative Tribunal could exercise jurisdiction over the officers belonging to State of Orissa and therefore, it was submitted on behalf of the Opposite Parties that the order in question is without jurisdiction and it was

further submitted that an order without jurisdiction is ab initio, null and void. However, we do not like to express any opinion in detail over this issue but we would only say that the State Administrative Tribunal should legitimately exercise jurisdiction over nobody else except the State Government officers. Perhaps this aspect was not placed before the Division Bench of the State Administrative Tribunal when the above quoted order was passed. Therefore, we do not find any merit in the aforesaid contention of Mr. Choudhury.

6. Annexure '3' ^{contains} an order passed by the Senior Superintendent of Post Offices stating that the permission accorded by the D I. Of Schools, Bhimpur to act as teacher cum Extra Departmental Branch Post Master, Bhimpur having since been withdrawn, the petitioner has been directed to handover charge of the Post Office as and when required by the SDIP concerned. This order is sought to be quashed. We would not express any opinion on the order passed by the D.I. of Schools withdrawing permission because under the statutes we have no jurisdiction over the State Government officers. But the fact remains as to whether we would quash the Annexure-3.

7. Since the timings of the Branch Post Office and the Schools clashes with each other, there is substantial force in the contention of Mr. Misra that the Petitioner should not be allowed to continue as Extra Departmental Branch Post Master, Bhimpur Post Office and therefore, Annexure-3 should be sustained. We are in fullest agreement with the

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aforesaid submission of Mr. Misra because the Post Offices have been installed for the convenience of the general public and not for ~~his~~ convenience. The timings of the school and the Post Office having clashed, the petitioner will not be in a position to render faithful services either of the institutions especially because the school imparts education for the future of so many children. That apart we are not in favour of the view that a single person should earn his livelihood from double sources. In these hard days and in view of the socialistic pattern of the society food must be divided equally between the living beings. Keeping all these in view, we are of the opinion that the Petitioner should choose either ^{to} become an Extra Departmental Branch Post master or a School teacher. The Senior Superintendent of Post Offices, Berhampur Division is directed to make a written communication with the Petitioner by Registered Post with A. D. informing him that he should take a decision as to which of the post he would like to occupy. Fifteen days time be given to the petitioner to take his decision. Thereafter if the petitioner holds both the posts and does not quit one of them, the Superintendent of Post Offices would be at liberty to take ~~stringent~~ ^{mm} action according to law against the petitioner. But at the same time, we would express our disapproval in the language employed by the Senior Superintendent of Post Offices stating that the Petitioner should hand over charge when required by the S.D.I. P. concerned. It is expected from the Senior Superintendent of Post offices to fix a particular date for handing over the charge. We do not think that

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Sr. Supdt. of Post Offices was justified in giving a blank cheque to the Petitioner. However, a positive date must be indicated by the Sr. Supdt. of Post Offices directing the Petitioner to hand over the charge of the said Post Office if he intends to continue as teacher.

8. Thus, the application is accordingly disposed of leaving the parties to bear their own costs.

Sd/- C.S. Pandey

MEMBER (ADMINISTRATIVE)

30 Jul 97

Sd/K.P. Acharya

VICE CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench/K. Mohanty/30.

