

HEADING OF DECISION IN CIVIL SUITS
IN THE COURT OF 1st ADDL.SENIOR CIVIL JUDGE,
BHUBANESWAR

***Present :- Pranab Kumar Routray, LL.M,
1st Addl. Senior Civil Judge,
Bhubaneswar.***

C.S. No.413/2009

1. Orissa State Non-Gazetted Officers Co-ordination Committee, at Karmachari Bhawan, Block No.10, Unit-V, Bhubaneswar, Dist. Khurda, represented through its Chief General Secretary, Sri Braja Kishore Nanda.
2. Sri Braja Kishore Nanda, aged about 50 years, S/o Late Baikunthanath Nanda, At present working as Caretaker, S.C.B Medical College, Cuttack, At/Po/P.S- Mangalabag, Dist. Cuttack, And the Chief General Secretary of Orissa State Non-Gazetted Officers Co-ordination Committee.

.....**Plaintiffs**

---**Versus**---

1. Pravas Kumar Sahoo, aged about 58 years, S/o Late Dibakar Sahoo, at- Hakimpada, P.O/P.S/Dist- Angul, Former Head Clerk, Office of Tahasildar, Angul, At/P.O/P.S/Dist- Angul.
2. Sri Sudhansu Sekhar Pati, aged about 50 years, S/o Late Hema Chandra Pati, At present working as Pharmacist, Capital Hospital, At-Jharpada Zonal Dispensary, Jharpada, Bhubaneswar, Dist. Angul.
3. Satyanarayan Hota, aged about 39 years, S/o Manoj Kumar Hota, at Saranda, P.O-Murusundhi, P.S/Dist- Boudh, At present working as Jr. Clerk, Office of the Divisional Forest Officer (Territorial), Boudh and Addl.General Secretary of Orissa State Non-Gazetted Officers' Co-ordination Committee.

4. State of Orissa, represented by the Principal Secretary to Home Department, Govt. of Orissa, at Secretariate Building, Sachivalaya Marg, Bhubaneswar, District- Khurda.

..... **Defendants**

COUNSEL APPEARED

For Plaintiffs : Sri Deba Kanta Mohanty & associates

For Defendant

no.1 : Sri Jatindra Mohanty

no.2 : Sri Surya Narayan Das & associates

no.3 : None

no.4 : Sri Raj Krishna Mohanty, Govt. Pleader

Date Of Conclusion Of Argument : **03-08-2015**

Date Of Judgment : **12-08-2015**

J U D G M E N T

This is a suit for declaration and permanent injunction.

2. Plaintiff's case in brief is that, plaintiff no.1 is Orissa State Non-Gazetted Officers Co-ordination Committee is recognized by Government of Odisha vide its letter no.9762/A-7/72 dtd.15-03-1972 which is formed with the aims and objectives to co-ordinate the activities of the associations, unions and federations of Non-gazetted Officers working under the State Government, so as to secure, protect and promote their legal rights and interest in relation to their service matter. As per the constitution of plaintiff no.1

committee, there shall be an Executive Council consists of the office bearers elected in the State Level Conference. Members of the Executive Council shall be elected from amongst the members of the co-ordination committee. In the year 2008, the Home Department of Government of Odisha allowed holding of 13th Triennial Conference of the committee at Bhubaneswar. Accordingly conference was held and office bearers were elected for a term of three years. Such election of the office bearers was duly communicated to Home Department who approved the same and circulated to all concerned authorities. Plaintiff no.2 was elected as the Chief General Secretary of the Committee for a term of three years. Defendant no.1 was elected as the President. Plaintiff no.2 took over charge with immediate effect and started his official functioning. While the matters stood thus, defendant no.1 being encouraged by some of its political patronizers involved himself in anti association activities and acted against the constitution. He was projected as a candidate for Lok Sabha constituency, Dhenkanal. Paper publication was made in the matter wherein it was mentioned that if he would get the ticket from Biju Janata Dal then five lakh government servants of the State would render support. After such publication in the newspaper a complaint petition was filed before Chief Election Commissioner, Odisha, demanding de-recognition of the committee. This fact was immediately brought to the knowledge of plaintiff no.2 who immediately gave a paper publication stating that the committee never permitted defendant no.1 to contest in the General Election as a

candidate from any political party. So, defendant no.1 hatched a conspiracy to destabilise the committee. He all on a sudden issued official order dtd.15-04-2009 wherein plaintiff no.2 was purportedly removed from the post of Chief General Secretary of the committee and one Satyanarayan Hota (Defendant no.3) was appointed in the said post. This removal was done without holding Executive Council meeting and without issuing any show-cause notice to plaintiff no.2. Plaintiff no.2 gathered information about his removal from the paper publication dtd.18-04-2009. So, he immediately called an emergency State council meeting and in the meeting held on 26-04-2009, the committee declared his removal from the post of Chief General Secretary as illegal and unconstitutional by rejecting all charges framed against him and at the same time the committee unanimously dismissed defendant no.1 from the post of President as well as the primary membership and he was replaced by one Sarbeswar Mishra, the working President of the committee. Such resolution dtd.26-04-2009 was communicated to Home Department, Government of Odisha. As a matter of fact, soon after his removal from the committee, defendant no.1 retired from government service on 30-04-2009 and ceased to be a member of the committee as per the constitution. In such background, plaintiff no.2 by letter dtd.01-05-2009 requested the Home Department not to make any correspondence with defendant no.1 in any official matters. But the plaintiff no.2 learnt that defendant no.1 circulated a notice to call State Level Conference of the committee on 11-05-2009 at Soochana Bhawan, Bhubaneswar and Home Department by its

notification no.21981 dtd.05-05-2009 allowed the members of the committee to take special leave on 11-05-2009 to attend the said conference. Plaintiff no.2 further gathered information that defendant no.1 was making attempt to hold the 14th State Level conference of the committee on 11-05-2009. Hence, the plaintiff challenges the decision of defendant no.1 to hold State Level conference on 11-05-2009 is illegal, unauthorised and unconstitutional. It is specifically averred that defendant no.3 clarified in the press note that plaintiff no.2 is still continuing as the Chief General Secretary for all purpose. Thus, defendant no.3 himself disowned the alleged appointment made by defendant no.1 in his order dtd.15-04-2009. It is also averred that in spite of due knowledge of the pendency of the suit and interim restraint order State Level conference was illegally organised on 11-05-2009 for which this court on the same day i.e on 11-05-2009 passed an interim order that the resolution passed in the said State Level conference of the committee shall not be given effect to. Apprehending approval of resolution, plaintiff no.2 filed writ petition before the Hon'ble High Court on the same day i.e on 11-05-2009. But the Home Department hastily issued government order on 12-05-2009. This fact was brought to the notice of Hon'ble High Court and it was directed that Home Department shall not take any action to give effect to the resolution passed in the State level conference dtd.11-05-2009. Defendant no.2 intervened in the said writ petition and prayed to vacate the interim order, but Hon'ble High Court directed the plaintiff to implead Home Department as a party to this suit. It is further pleaded

that assuming that removal of plaintiff no.2 is legal, then the legal resultant vacancy is to be filled up from the existing office bearers and no fresh election is permissible as per the constitution. It is further pleaded that Home Department has accorded approval to the elected office bearers of the 13th Triennial State level conference held in the year 2008 and such approval is to survive for a period of three years as per the constitution. Therefore, the Home Department is not authorised to issue government order dtd.12-05-2009 giving approval to another elected body in the next order and hence such approval is per say illegal. Hence, the plaintiff has filed this suit praying that be it declare that he is continuing as Chief General Secretary and that defendant no.1 is no more a valid member and is also not the President and that defendant no.1 is not eligible to issue notice dtd.01-05-2009 to hold 14th State level conference and the said notice be declared as void and that the 14th State level conference held on 11-05-2009 and the entire resolution passed therein is ab initio void and that the approval given by Home department vide order no.23361 dtd.12-05-2009 is ab initio void and for permanent injunction restraining defendant no.1 from holding 14th State level conference, restraining defendants or any person(s) claiming to be the office bearers of plaintiff no.1 committee and restraining the Home Department of Government of Odisha from acting upon for giving approval to the Government order no.23361 dtd.12-05-2009 and with cost.

3. Defendant no.1 has filed written statement challenging the suit on its maintainability, cause of action and also refuted the plaint averments. It is admitted that the plaintiff no.1 committee had been duly recognised by Government of Odisha. It is denied that the last amendment of the constitution made in 13th Triennial Conference held on 16th and 17th February,2008. At the same time, it is submitted that the amendment of term of office bearers from 2 years to 3 years have been made arbitrarily and the same has not been approved by Government nor it has been accepted by the committee. It is denied about existence of any post of Chief General Secretary and that he is responsible to carry on correspondence on behalf of plaintiff no.1 committee. It is denied that plaintiff no.2 was elected as Chief General Secretary of plaintiff no.1 committee for a term of three years. It is also denied that defendant no.1 was projected as a candidate for Lok Sabha constituency, Dhenkanal rather plaintiff no.2 in order to bring defendant no.1 to his control spread such false message. That due to anti organisational activity, plaintiff no.2 was removed from the post of Chief General Secretary and in his place defendant no.3 has been appointed by this contesting defendant in exercise of power under Clause-6(ii) & (iii) of Constitution which has been rectified in the next general body meeting held on 11-05-2009. Further, the alleged meeting held on 26-04-2009 at the instance of plaintiff no.2 and any resolution passed in the said meeting is not binding on this defendant. It is admitted that this contesting defendant retired

from government service w.e.f 30-04-2009 as per clause-7(a) of the constitution and that the members of co-ordination committee of the Executive Council and the office bearer shall hold office for a term of 2 years or till their successor is elected provided that it shall be opened to any of the affiliated units to replace any of its representative in the co-ordination committee at any time during the term. When defendant no.1 retired on 30-04-2009, he is to continue as president till his successor is appointed. Regarding the election held on 11-05-2009, it is specifically pleaded that this defendant removed plaintiff no.2 from the post of General Secretary and plaintiff no.2 removed this defendant from the post of president and, therefore, Home Department being the administrative department had given permission for holding of State Level Conference on 11-05-2009 to elect new office bearers of the association. It is also pleaded that plaintiff no.2 not being sponsored by any of the affiliated unit of the association is not entitled to hold the office of General Secretary and his continuance as General Secretary was illegal as per their approved constitution. Hence, it is claimed that there is no illegality in termination of plaintiff no.2 and the suit is liable to be dismissed.

4. During pendency of the suit a compromise was effected between the plaintiff no.2 and defendant no.1 and this defendant has withdrawn the allegations made by him in the written statement and admitted that removal of plaintiff no.2 is illegal and the notice issued on 01-05-2009 to hold election is also illegal and plaintiff no.2 is entitled to continue in the management of the association and to conduct next election of

plaintiff no.1 committee. The compromise has been allowed by Hon'ble High Court vide order dtd.30-07-2014 in W.P.C no.483 of 2013.

5. Defendant no.2, the real contesting defendant filed a separate written statement challenging the suit on its maintainability, cause of action, non-joinder of parties, locustandi of plaintiff no.2 to bring the suit on behalf of plaintiff no.1. It is pleaded that a retired Government employee can be treated as a valid member of the committee and it is not correct to say that any non-gazetted employee working under the government can be taken as a member of the committee and can participate in the conference/election of the committee. This defendant also denied that only the Chief General Secretary shall remain responsible to carry on correspondence on behalf of co-ordination committee and that the term of office bearers is for 3 years rather it is for 2 years, and, hence, plaintiff no.2 has not been elected for 3 years. It is denied about existence of any post of Chief General Secretary and about newspaper publication in favour of defendant no.1 projecting him a candidate for Lok Sabha constituency, Dhenkanal. It is pleaded that plaintiff no.2 was involved in anti organisational activity for which he was removed. Hence, the letter issued by defendant no.1 on dtd.01-05-2009 is legal and valid and that plaintiff no.2 in order to stop the conference/election held on 11-05-2009 has filed the present suit. It is challenged that the emergency meeting of the association held on 26-04-2009 at Barunei Temple is not legal as plaintiff no.2 has not obtained prior permission from the government. It is specifically pleaded

that plaintiff no.2 is not a primary member of any of the affiliated units of the association and he is not entitled to hold the office of General Secretary and therefore his continuance as such is illegal as per by-law. Hence, it is prayed for dismissal of the suit.

6. Defendant no.3 has not filed written statement and has been set ex parte.

7. Defendant no.4, State of Odisha represented by the Principal Secretary to Home Department has been made party defendant by order dtd.03-06-2009 of Hon'ble High Court in W.P.C No.7381 of 2009 to the suit and has filed a separate written statement and submitted that plaintiff no.1 committee is a recognised association by Home department vide its letter no.9762 dtd.15-03-1972. The amendment made in the constitution including the 13th Triennial Conference held on 16th and 17th of February, 2008 has not been approved by the government in Home department rather plaintiff no.1 committee has arbitrarily changed the term of office bearers from 2 years to 3 years and redesignated the post of General Secretary to Chief General Secretary. Home Department in their letter dtd.25-07-2005 and reminder dtd. 28-03-2008 asked for certain information from plaintiff no.2 regarding amendment of constitution but plaintiff no.2 has not furnished any reply as yet. That due to anti organisational activities, the President has removed plaintiff no.2 from the post of Chief General Secretary and appointed defendant no.2 in the said post. That, there is no specific procedure prescribed in the constitution for removal of the office bearers. However, analysing clause-7(a) and (b), the

term of office bearers is 2 years and if there is vacancy i.e to be filled up by co-ordination committee only for the unexpired portion of the term. That the removal of plaintiff no.2 by defendant no.1 is legal and the same has been rectified in the general body meeting held on 11-05-2009. Defendant no.1 removed plaintiff no.2 and plaintiff no.2 removed defendant no.1. Under such circumstances, Home department had given permission for holding of State Level Conference on 11-05-2009 for election of the new office bearers of the association. It is specifically pleaded that the contention of the plaintiff that approval of Home Department to the elected office bearers elected through the election held on 11-05-2009 by the Home department is violation of the injunction order of this court is incorrect because the interim injunction order dtd.11-05-2009 and subsequent order dtd.11-08-2009 have been suspended by Hon'ble High Court vide their order dtd.26-08-2009 in Misc.case no.1048/2009 and therefore the present elected office bearers of the association are continuing till further orders in the case. It is specifically averred that plaintiff no.2 not being a primary member of the co-ordination committee as his prior nomination from the affiliated unit i.e the Orissa Ministerial Officer Association has been withdrawn, has no locustandi to agitate the matter by filing this case. Hence, it is prayed for dismissal of the suit.

8. With the aforesaid pleadings on record the following issues are settled :

ISSUES

- 1) Is the suit maintainable ?
- 2) Whether there is cause of action to file the suit ?
- 3) Whether the suit is bad for non joinder and misjoinder of necessary parties ?
- 4) Whether the suit is hit by the principles of estoppel and acquiescence and the provisions of Order 1 Rule 8 of C.P. Code ?
- 5) Whether the plaintiffs are entitled for a decree to the effect that the plaintiff no.2 is continuing as the Chief General Secretary of the Orissa State Non-Gazetted Officers co-ordination committee, Bhubaneswar and shall continue as such till 17-02-2011 ?
- 6) Whether the plaintiffs are entitled for a declaration that the Defendant no.1 is no more a valid member as well as the president of the aforesaid committee who has been legally removed from the state council in the meeting held on 26-04-2009 and has ceased to be a primary member of the aforesaid committee consequent upon his retirement?
- 7) Whether the plaintiffs are entitled for a decree for declaration that the defendant no.1 is not eligible to issue the notice dtd.01-05-2009 to hold the 14th State level Conference of the Committee on 11-05-2009 at Suchana Bhawan, Bhubaneswar and such issuance of notice is void and for declaration that the aforesaid conference and the entire resolution passed therein is ab initio void and not enforceable?

- 8) Whether the plaintiffs are entitled for a decree of permanent injunction restraining the defendant no.1 or any person claiming to be the office bearer/convener from holding the 14th State Level Conference of the aforesaid committee held on 11-05-2009 and from giving effect to the resolution passed therein?
- 9) Whether the plaintiffs are entitled for a declaration that the approval given by the Home Department of Government of Orissa vide Order no.2336 dtd.12-05-2009 in favour of the newly elected body in the said conference dtd.11-05-2009 is void and not enforceable and so also for a decree of permanent injunction restraining the Home Department of Government of Orissa from acting upon or giving approval to the aforesaid order?
- 10) To what relief(s) the plaintiffs are entitled ?

9. The plaintiff no.2 has examined himself as the sole witness P.W.1 who produced and proved documents vide Exts.1 to 21, list of which is appended at the foot of judgment. On the other hand one Sarbeswar Nanda, Under Secretary to Government of Orissa, Home Department has been examined as D.W.1 from the side of defendant no.4 who produced and proved Exts.A to G. Defendant no.2 has examined himself as D.W.2 and during cross-examination the original resolution copy of 11th State Level Conference held on 16th and 17th of January,2001 marked as Ext.A-1. One Anil Kumar Mohanty, is examined as D.W.3 and one Gagan Bihari Bhanja, one of the organising secretary is examined as D.W.4.

With the aforesaid evidence on record the issues as framed are to be answered.

FINDINGS

Issue no.5

10. This issue is the principal issue in this case, hence, taken up at first for decision. At the outset it is pertinent to reflect that plaintiff no.2 was elected as General Secretary of plaintiff no.1 association in the 13th Conference held on 16th and 17th February, 2008 but he was removed by defendant no.1, the President of plaintiff no.1 association by issuing an order on dtd.15-04-2009 vide Ext.13 and subsequently defendant no.1 issued notice on dtd.01-05-2009 to conduct 14th Conference and election of the office bearers and accordingly election was held on 11-05-2009. At this juncture, it is further pertinent to reflect that there was a compromise effected between plaintiff no.2 and defendant no.1 by virtue of order dtd.30-04-2014 of Hon'ble High Court passed in W.P.(c) No.483 of 2013 wherein defendant no.1 has admitted that removal of plaintiff no.2 vide order dtd.15-05-2004 is illegal and void, the notice issued by him on 01-05-2009 is illegal and unconstitutional and that 14th Conference held on 11-05-2009 under his presidentship and election of the office bearers held in the meeting pursuant to election notice dtd.01-05-2009 is also illegal and unconstitutional and that plaintiff no.2 shall continue to be the Chief General Secretary. In the said compromise, defendant no.1 himself has admitted that on being retired from Government service on 30-04-2009 he ceased to be a member of plaintiff no.1 committee as per the Constitution. Defendant no.2 is O.P. no.2 in the said Writ petition but has not challenged the said order.

11. Admittedly 13th Conference was held on 16th and 17th February, 2008 and office bearers were elected in the State Conference and plaintiff no.2 was elected as General Secretary. He is claiming the post to be the Chief General Secretary whereas defendants are claiming that the post is “ General Secretary ”. Plaintiff no.2 is claiming that term of the office is for 3 years whereas defendants are claiming that the term is for 2 years. There is no dispute that 14th Conference and election of office bearers was held on 11-05-2009. But this Court passed restraint order directing not to give effect the 14th Conference and the election which was confirmed by learned District Judge in F.A.O 101/2010 and by Hon'ble High Court vide order dtd.03-05-2012 in W.P.(c) no.8045 of 2011 directing both parties are restrained from continuing as elected body of the committee. In the said order it was also directed to this Court to decide the question whether the suit has become infructuous due to efflux of time.

12. Defendant nos.2 and 4 are contesting the case tooth and nail. The main disputes are : (i) Whether President of plaintiff no.1 committee has the authority to remove the General Secretary ; (ii) If General Secretary is removed, what is the recourse available to fulfill the said post ; (iii) Whether 14th Conference and the election held on 11-05-2009 is legal and valid and (iv) Another question raised by defendant nos.2 and 4 is that plaintiff no.2 was not a valid member at the time of election held in 2008 and therefore his election is invalid.

13. Evidence both oral and documentary adduced from the side of plaintiffs and defendants are bulky in nature for which the required portion of oral evidence and the relevant documents will be reflected for just decision of the dispute. So far as authority of defendant no.1 to remove plaintiff no.2 is concerned, it is the evidence of defendant no.2 as D.W.2 in para 6 that plaintiff no.2 by suppressing the fact that he is not a primary member of unit association has been elected to plaintiff no.1 association and thereafter District Association as well as other units raised voice which he tried to suppress the same by gaining over the President. It is further deposed that in fact the then President defendant no.1 did not support plaintiff no.2 for which he made conspiracy against defendant no.1 and involved him in anti organisational activity for which defendant no.1 on dtd.15-04-2009 removed him from his post by a reasoned order after observing due formalities. Similarly D.W.1, Under Secretary to Government in Home Department on behalf of defendant no.4 has deposed that plaintiff no.2 is not representing any of the affiliated associations and as such he can not remain in the post of General Secretary. Plaintiff no.2 represented in the Coordination Committee on behalf of Odisha Ministerial Officers' Association but as per Order no.282 dtd.18-04-2005, he was expelled for a period of 3 years from the primary membership of the said association. He also produced and proved the said order no.282 dtd.18-04-2005 vide Ext.E. In para 11 of his examination-in-chief he has deposed that the President defendant no.1 has removed plaintiff no.2 from the post of

Chief General Secretary for anti organisational activities and plaintiff no.2 has also removed defendant no.1 from the post of President though he has no such power conferred in the Constitution. It is further deposed by him that under such circumstances, Home Department being the administrative department had given permission for holding the 14th State Level Conference on 11-05-2009 to elect the newly office bearers of the Committee on the request of President after removal of plaintiff no.2 from the post of Chief General Secretary. D.W.3 has not deposed in his examination-in-chief about the authority of President to remove General Secretary. D.W.4 has deposed that plaintiff no.2 is not a primary member of any unit association and therefore he can not be member of plaintiff no.1 association. But he has not deposed a single word in his examination-in-chief about removal of plaintiff no.2 rather deposed that the so called amendment of bye law of plaintiff committee including 13th Triennial Conference held on 16th and 17th of February, 2008 has not been approved by Home Department and the term of office bearer has not been changed from 2 years to 3 years and the post of General Secretary has not been redesignated to Chief General Secretary. He has deposed in para 6 that on 11-05-2009 election of plaintiff no.1 committee was conducted under the supervision of Home Department as per bye law wherein defendant no.2 was elected as General Secretary and Antaryami Pradhan was elected as President.

13(a) On careful perusal of cross-examination of the aforesaid witnesses, in para 24, D.W.1 has admitted that plaintiff no.2 was elected as General Secretary in 2005 election and in 2008, the 13th Triennial State Level Conference of plaintiff no.1 committee was held in which plaintiff no.2 was elected as Chief General Secretary and further admitted that election of 2005 and 2008 has been approved by Home Department and was circulated to all Heads of Department and all Collectors of the State. It is further admitted by him that in both the elections of 2005 and 2008, Government has acknowledged plaintiff no.2 as the General Secretary of plaintiff no.1 association. He further admitted that unless a member is valid member of plaintiff no.1 association, he can not be elected as office bearer nor the Government can approve it. The said witness further admits that they have been recognising plaintiff no.2 as a valid member of plaintiff no.1 association till the dispute arose in 2009. He further admits that plaintiff no.2 was allowed to participate in a meeting of Hon'ble Chief Minister as the office bearer till the dispute arose in 2009 and several communications were also made with him. D.W.1 in para 25 has admitted that the approval of Home Department in Ext.11 in respect of election of the year 2008 is to remain valid for 2 years and therefore plaintiff no.2 should have worked as office bearer till 2010 as per Ext.11. From the cross-examination of this witness who deposed on behalf of Government in Home Department i.e. defendant no.4 clearly shows that plaintiff no.2 was a valid member and his election in

2008 was approved by Government and he acted as Chief General Secretary till the dispute arose in 2009. It is further found from his evidence that plaintiff no.2 should have worked as office bearer till 2010. In para 27 this witness also admits that plaintiff no.2 was a valid member till he was expelled by defendant no.1 in 2009.

13(b) In para 17 of cross-examination, D.W.2 has deposed that he did not know if plaintiff no.2 was dismembered by defendant no.1 by order dtd.15-04-2009 vide Ext.13. He also did not know if defendant no.3 was posted as General Secretary in place of plaintiff no.2 pursuant to such dis-membership. As regards to authority of President to remove General Secretary, D.W.2 has been cross-examined and in para 20 he has deposed that as per Clause 7 of the bye law, the office bearer of association can be removed only by Executive Council which consists of 22 to 23 office bearers. In para 22, this witness admits that no one has challenged validity of membership of plaintiff no.2 or his right to contest any election.

13(c) D.W.3 in para 20 of his cross-examination has deposed that he admitted that he did not have any idea about the election in 2008 wherein plaintiff no.2 was elected as General Secretary and defendant no.1 as President. He has further admitted that he has no idea about order of defendant no.1 vide Ext.13 by which plaintiff no.2 was dismembered from the association. In para 22 he has admitted that the election of plaintiff no.2 was approved by Government. D.W.4 in para 14 of his cross-examination could not say as to

who was elected as General Secretary in the 13th Triennial Conference held on 16th /17th February, 2008 as referred to in para 5 of his evidence-in-chief. He even could not say who was elected as General Secretary on 11th and 12th Triennial State Level Conference of plaintiff no.1 association.

14. While appreciating evidence of the aforesaid witnesses, it is first required to reflect that the election of plaintiff no.2 as General Secretary or Chief General Secretary in 2008 has not been challenged in any Court. There is no counter claim filed by any of the defendants challenging his election in 2008. So it is the case of no party that whether election of plaintiff no.2 is valid or not. Hence, no finding is at all required on this point. This apart, the witness from the side of defendant no.4 has admitted that plaintiff no.2 was a valid member till the dispute arose in 2009.

15. So far as authority of defendant no.1 to remove plaintiff no.2 is concerned, none of the aforesaid witnesses could strongly depose that under what authority defendant no.1 removed plaintiff no.2. Simply deposing in examination-in-chief that plaintiff no.2 was involved in anti organisational activity for which the President defendant no.1 has removed him will not prove that defendant no.1 has authority to remove him. This apart, D.W.2 the main contesting defendant has admitted in para 20 of his evidence that as per Clause 7 of bye law, an office bearer of association can only be removed by Executive Council. Be that as it may, when plaintiff no.1 committee has a Constitution / bye law, the said

document can only say about the procedure of removal of any office bearer and about the authority with the President to remove the General Secretary and also about the fulfillment of post of any office bearer in case of removal/resignation etc. It is claimed by plaintiff no.2 that Ext.3 is the amended Constitution of plaintiff no.1 committee whereas defendants are disputing the same on the ground that it has not been approved by the Coordination Committee in its next meeting. However, Ext.B, the Constitution of the Committee is undisputed. Article 6(a) (i) speaks about the powers of President and the said Article says that the President can also entrust any work to any member of the Coordination Committee and of the Executive Council in furtherance of the aims and objects of the Coordination Committee. He shall exercise such other issues as have been provided in this Constitution. Article 7 of the Constitution speaks about terms of the members of Coordination Committee, of Executive Council and the office bearers. Article 7(b) speaks that in case of any office bearer ceases to be a member of the Coordination Committee or to be an office bearer by reasons of resignation, replacement or otherwise, the resultant vacancy will be filled up by the Executive Council by nomination from amongst the members of the Coordination Committee and such nominated office bearer shall hold office till the vacancy is filled up by the Coordination Committee in its next meeting for only the unexpired portion of the term.

15(a) Article 7 speaks about term of office bearer and fulfillment of vacancy in case of resignation/replacement etc. of any office bearer by the Executive Council by nomination from amongst the members of Coordination Committee. Under such circumstances, it can not be interpreted Article 6(a)(i) in the manner that it says President is empowered to remove any elected member rather Article 6 speaks that President can entrust any work to any member of the Coordination Committee and the Executive Council which is for the betterment of the association. Hence, considering the compromise effected between plaintiff no.2 and defendant no.1 wherein defendant no.1 has admitted that removal of plaintiff no.2 is illegal and considering the oral evidence of the witnesses from the side of defendants and particularly considering the relevant articles/clauses of the Constitution of plaintiff no.1 committee it is safely held that President defendant no.1 has no authority to remove plaintiff no.2. That apart, it is the stand of plaintiff no.2 that he was removed all of a sudden without giving opportunity to file show cause. But there is no counter to such stand of plaintiff no.2. Hence, principle of natural justice has also been violated. Considered from all angles, irresistible conclusion is drawn that removal of plaintiff no.2 in the midst of his tenure is not as per the Constitution and therefore illegal.

16. Now it is to be examined what was the recourse available before plaintiff no.1 committee to fulfill vacancy of any office bearer. There is no necessity to analyse the evidence of any witness in this regard because Ext.B is the

vital document which can speak on this. It is very clearly mentioned in Article 7 about term of office bearers and fulfillment of vacancy of office bearers in case of resignation, replacement or otherwise. It clearly speaks that the resultant vacancy will be filled up by the Executive Council by nomination from amongst members of the Coordination Committee and such nominated office bearer shall hold office till the vacancy is filled up by the Coordination Committee in its next meeting for only the unexpired portion of the term. When the Constitution is clear about fulfillment of the vacancy, there was no necessity to appoint defendant no.3 in place of defendant no.2 without following procedure and to issue letter on dtd.01-05-2009 to hold election on 11-05-2009. This apart, it is the available evidence on record that defendant no.1 retired from service on 30-04-2009. Though the Constitution is silent on the point whether membership of a member of plaintiff no.1 committee will be ceased on his retirement but considering the aims and objects of the Constitution it can be said that the aims and objects are to secure, protect and promote rights and interest of non-Gazetted Officers and not retired officers. Hence, defendant no.1 has also no authority to issue letter on dtd.01-05-2009 to hold election on 11-05-2009 and therefore the election held on the said date is not valid.

17. It is already held that the removal of plaintiff no.2 is illegal. Hence, he is to continue till his term is over. There is dispute about term of the office bearer. Ext.B speaks that the term of office bearer is for 2 years or till their

successors are elected or if the affiliated units replace its representative in the Coordination Committee at any time during a term. It is forcefully argued by learned counsel for defendant no.2 that all the prayers of plaintiff no.2 has become infructuous and it is also directed by Hon'ble High Court that this Court should see whether the suit has become infructuous due to efflux of time. The election held in the year 2009 is under challenge. Nobody is functioning as elected body in view of restraint order by this Court and order of Hon'ble High Court. But when it is already held that issue of notice by defendant no.1 on dtd.01-05-2009 is illegal and consequently the election held on 11-05-2009, then naturally the approval of the same by defendant no.4 is void. The election of defendant no.2 as the General Secretary is also void. Next remains whether the term of plaintiff no.2 is upto 2010 or 2011. Whether resolution in 13th Conference has been approved by Government or by the next meeting of the State Level Coordination Committee by 2/3rd members as per Clause 10(e) of the bye law, is not the subject matter of dispute. But Clause 7 of the bye law says that the office bearer shall continue till his successors are elected. Under such circumstances, it can not be held that the prayer of plaintiff no.2 has become infructuous. In view of the matter, plaintiff no.2 shall continue in his elected post till his successor comes as per Clause 7 of the Constitution.

This issue is answered accordingly.

Issue nos.6 and 7

18. In view of findings under issue no.5 and compromise it is held that defendant no.1 is no more a valid member as well as President of plaintiff no.1 committee. No order is required to be passed on removal of defendant no.1 in State Council meeting held on 26-04-2009 is whether valid or invalid.

18(a) 14th State Level Conference and election was held on 11-05-2009 in pursuance to the notice issued by defendant no.1 on 01-05-2009. When the notice issued by defendant no.1 is held invalid, the election held on 11-05-2009 before completion of the term of 13th Conference and election is also held to be void and therefore the entire resolution passed in the 14th Conference on 11-05-2009 is inoperative. These issues are answered accordingly.

Issue nos.8 and 9

19. It is already held that election held on 11-05-2009 is not valid and the resolution in 14th State Level Conference is also inoperative and not binding. Hence, the approval given by the Home Department of Government of Odisha vide Order no.2336 dtd.12-05-2009 for decision of newly elected body in the Conference dtd.11-05-2009 is not enforceable. In view of this finding, no order is required to be passed on the prayer of permanent injunction against defendant no.4. So far as the other prayer i.e. to restrain defendant no.1 from holding 14th State Level Conference, no cause of action exists, and, hence, infructuous. These issues are answered accordingly.

Issue nos.1, 2, 3 and 4

20. These issues are formal in nature. In view of compromise by defendant no.1, the suit is not hit by provision of Order 1 Rule 8 of C.P.C. The plea of estoppel, acquiescence and non joinder and mis joinder of necessary parties is evasive. In view of findings under the aforesaid issues there is cause of action to file the suit and the suit so filed is maintainable.

Issue no.10

21. It is already held that removal of plaintiff no.2 is illegal and he is to continue in his elected post till his successor comes in view of Clause 7 of the Constitution/Bye-law. He was elected in 2008. In the said election defendant no.1 was elected as President but he is not a member of plaintiff no.1 committee on being retired from Government service. Election of defendant no.2 has been declared invalid. Though bye law is silent about approval of Government but it is found from the letters of plaintiff no.2 and from his pleadings that Government in Home Department is the Nodal Agency and approves the resolution and plaintiff no.1 committee is a recognized committee of Government of Odisha. Plaintiff no.1 Committee used to send every matter to the Government. Under such circumstances, for the interest of thousands of members of plaintiff no.1 association, applying principle of equity, plaintiff no.2 is directed to take steps for holding of election in coordination with Home Department, defendant no.4 within a period of three months.

Hence, it is ordered.

ORDER

The suit be and the same is decreed on contest against defendant nos.2 and 4, ex parte against defendant no.3 and on compromise against defendant no.1. It is hereby declared that the notice dtd.01-05-2009 issued by defendant no.1 to hold 14th State Level Conference of the plaintiff no.1 committee on 11-05-2009 is invalid and the resolution passed on 11-05-2009 is inoperative and the approval given by Government of Odisha in Home Department vide Order no.2336 dtd.12-05-2009 is inoperative and not binding and that plaintiff no.2 is continuing in the post of General Secretary of plaintiff no.1 committee till his successor comes. It is directed that plaintiff no.2 to take steps to hold election in coordination with defendant no.4 within a period of three months.

***1st. Addl. Senior Civil Judge,
Bhubaneswar***

The judgment is typed to my dictation by the typist attached to this Court directly on the computer provided under E-Court Project, corrected and pronounced by me in the open Court today i.e. on this 12th day of August, 2015 under my seal and signature.

***1st. Addl. Senior Civil Judge,
Bhubaneswar***

List of Witnesses examined for the Plaintiffs:

P.W.1: Sri Braja Kishore Nanda;

List of Witnesses examined for the Defendants :

D.W.1 Sri Sarbeswar Nanda;

D.W.2 Sri Sudhansu Sekhar Pati;

D.W.3 Sri Anil Kumar Mohanty;

D.W.4 Sri Gagan Bihari Bhanja;

List of Documents marked as Exhibits for the Plaintiffs:

Ext.1: Original money receipts as life member of the committee;

Ext.2 Memo No.48076 dtd.24-10-2005 of Home Deptt. alongwith enclosures (seven sheets);

Ext.3 Original proceeding of 13th Triannual Conference of the committee;

Ext.4 Suspension letter of defendant no.2 vide no.214 dtd.05-09-2005 issued by the committee to defendant no.2 with a copy of Home Department ;

Ext.5 Home Deptt. Circular no.49674 dtd.05-11-2005 alongwith the enclosures (three sheets) ;

Ext.6 Home Deptt. Circular no.48075 dtd.24-10-2005 issued to all Collectors ;

Ext.7 Attested copy by Under Secretary of Home Department of letter dtd.30-04-2007 of Collector, Bargarh;

Ext.8 Attested copy of reply of Home Deptt to Collector, Bargarh;

Ext.9 Circular of Home Deptt no.7836 dtd.14-02-2008;

- Ext.10 Attested copy of letter no.03 dtd.21-02-2008 of the committee with enclosures(two pages) relating to amended constitution ;
- Ext.11 Home Deptt. Circular no.11114 dtd.23-02-2008 with enclosures(five sheets) relating to district of office bearers ;
- Ext.12 Xerox attested copy of Home Deptt. Note sheet of page 14,15 and 16 ;
- Ext.13 Impugned order dtd.15-04-2009 of defendant no.1 to P.W.1 ;
- Ext.14 Resolution dtd.26-04-2009 of P.W.1's Committee;
- Ext.15 Office copy of letter issued by P.W.1 send to Home Deptt. on 27-04-2014 alongwith enclosures i.e Ext.14 ;
- Ext.16 Office copy of letter vide no.227 dtd.01-05-2009 issued by P.W.1 send to Home Deptt;
- Ext.17 Election notice issued by Defendant no.1 on dtd.01-05-2009 ;
- Ext.18 Home Department attested copy of letter of Defendant no.3 dtd.08-05-2009 to Home Department;
- Ext.19 Minutes of discussion issued by Home Deptt. dtd.05-09-2007 with enclosures (five sheets) ;
- Ext.20 Minutes of Home Deptt dtd.14-08-2008 with enclosures (nine sheets) ;
- Ext.21 Minutes of G.A Deptt dtd.02-03-2009 with enclosures (three sheets) ;

List of Documents marked as Exhibits for the Defendants :

- Ext.A Authorisation letter issued by Home Deptt. ;
- Ext.A/1 Signature of joint secretary to Govt. in Home Deptt.
- Ext.B Copy of by law of plaintiff no.1 organisation ;
- Ext.C Copy of letter of Home Deptt. vide no.35496 dtd.25-07-2005 to the General Secretary of plaintiff no.1 organisation ;
- Ext.D Copy of letter of under secretary of Home Deptt. vide no.16937 dtd.28-03-2008 to the Chief General Secretary of plaintiff no.1 organisation ;
- Ext.E Copy of order no.282 dt.18-09-2005 issued by Odisha Ministerial Officers association to Home deptt vide memo no.285 dtd.18-09-2005 ;
- Ext.F Copy of letter of Addl. Secy. to Govt. vide no.21981 dtd.05-05-2009 to all R.D.Cs., all Collectors, all Dist Judges to grant one day special C.L on 11-05-2009 to all members and delegates of plaintiff no.1 organisation;
- Ext.G Copy of letter no.23361 dtd.12-05-09 issued by Addl. Secy. to Govt. in Home Deptt to all Deptt. of Govt. all heads of deptt, Member Board of Revenue, all R.D.Cs., all Collectors, all S.Ps, Commission of police communication the proceeding of 14th State Level conference of plaintiff no.1 organisation held on 11-05-2009;
- Ext.G/1 Copy of resolution of the 14th State Level Conference of plaintiff no.1 organisation;
- Ext.G/2 List of office bearers selected in the said onference

***1st. Addl. Senior Civil Judge,
Bhubaneswar***

