

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 11589 of 2012

Siva Durga Prasad Khadanga

.....

Petitioner

Mr. R. N. Parija, Advocate

Vs.

State of Orissa & Others

.....

Opposite Parties

State Counsel

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE S.K. MISHRA

ORDER

06.07.2022

Order No.

11.

This matter is taken up through hybrid mode.

2. Heard Mr. R. N. Parija, learned Counsel for the Petitioner and Mr. A. K. Mishra, learned Additional Government Advocate.

3. The Petitioner has filed this Writ Petition to quash the Order dated 01.11.2022 under Annexure-1 passed by the Orissa Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 1208(C) of 2009 refusing to grant back wages to the Petitioner, though charges leveled against him were not proved and the Disciplinary Proceedings initiated against him were dropped, and further seeks direction to the Opposite Parties to pay the back wages to him along with all increments.

4. Admittedly, a Disciplinary Proceeding vide D.P. No. 1 was initiated against the Petitioner during 2003, pursuant to which he submitted reply and consequentially Enquiry was conducted and out of seven charges he was found guilty of five charges and not guilty of two charges. As a result, second Show-Cause Notice was issued to him. The same was also challenged by him before the Tribunal in O.A. No. 1233(C)/2005, which was disposed of vide

order dated 10.01.2006 directing the Authorities not to enforce the penalty imposed in D.P. No. 1 of 2003 until appeal procedure is completed.

5. During pendency of the D.P. No. 1 of 2003, the Authority initiated another Departmental Proceeding vide D.P. No. 1368/(Dev), dated 24.12.2005 and the Petitioner was put under suspension with immediate effect. On 31.08.2007, the Authority reduced his Subsistence Allowance. Challenging reduction of Subsistence Allowance, he approached the Tribunal by filing O.A. No. 1068 (C) of 2008, which was disposed of vide order dated 21.10.2008 with an observation that the Project Administrator's Report forming basis of the charge be made available to the Petitioner and upon receipt of the said Report, he would file show cause and till then Subsistence Allowance would not be reduced.

6. While the matter stood thus, punishment of compulsory retirement was passed in D.P. No.1 of 2003. Therefore, the Petitioner preferred an Appeal and the Government confirmed the punishment order. Challenging both the punishment Orders and the Order passed by the Government in appeal the Petitioner approached the Tribunal by filing O.A. No.1208(C) of 2009 and the Tribunal, while issuing notice, refused to pass interim order, for which he approached this Court by filing W.P.(C) No.13224 of 2009, which was disposed of vide order dated 10.09.2009 with an observation that in case the Petitioner succeeds in the O.A., he shall be entitled to all benefits and therefore, there is no necessity to pass interim order.

7. The Petitioner challenged initiation of Second Disciplinary Proceeding in O.A. No. 2510 (C)/2010 on the ground that since

the punishment of compulsory retirement has already been passed in First D. P. i.e. D. P. No.1 of 2003, the continuance of Second D.P is bad in law. During adjudication, the Tribunal clubbing three O.As., namely, O.A. No.1208(C) of 2009, in which the punishment order passed in First D.P. was under challenge, O.A. No.2510(C) of 2010, in which continuance of Second D.P. was under challenge, and O.A. No.1068 (C) of 2008 for reference as the same was disposed of on 21.10.2008. The Tribunal, after due adjudication, vide judgment dated 01.11.2011 allowed O.As. No.1208(C) of 2009 and No. 2510(C) of 2010 by quashing both the Disciplinary Proceedings. But, at the same time, though O.A. No.1068(C) of 2008 was disposed of earlier, but the same was again disposed of directing the authority to consider the representation regarding Subsistence Allowance, which could not have been directed by the Tribunal. But, fact remains, in O.A. No. 1068(C) of 2008, the order dated 31.08.2007 reducing the Subsistence Allowance was challenged and it was already disposed of on 21.10.2008. Keeping in view the error apparent on the face of the record, the petitioner filed Review Petition No.37(C) of 2012 to review the judgment only to the extent of wrong disposal of O.A. No. 1068(C) of 2008. The Tribunal, though not indicated in the order but upon consideration of R.P. No.37(C) of 2012, reviewed the judgment and removed the O.A. No. 1068(C) of 2008 from the cause title of the judgment, which is impugned in the present writ petition. Though the judgment was communicated to the Authorities, but they did not reinstate the petitioner and he was allowed to reach the age of superannuation on 31.01.2012.

8. In the impugned Order, the Tribunal found that the Government admitted that Project Administrator's Report, which formed basis of charge in both the Disciplinary Proceedings, was not available. Therefore, the Tribunal held that the charges in both the proceedings are not tenable and accordingly, quashed the same and directed that the Petitioner is entitled to be reinstated in service immediately and at the same time, relying upon the judgment passed in *Vijay Singh V. Union of India*, 2007 (2) SCC (L & S) 664, held that the Petitioner is not entitled to back wages. As such, if the proceedings initiated against the Petitioner were quashed, it is deemed that the Petitioner was continuing in service. Therefore, question of non-grant of back wages to him cannot sustain in the eye of law.

9. Similar question had come up for consideration before the apex Court in *Sardul Singh v. Delhi Administration*, (1991) 3 SCC 346, paragraph-3 whereof reads as follows:

"By the date this order was passed the appellant had reached his normal age of superannuation. The grievance of the appellant is that once the order of compulsory retirement was quashed as legally unsustainable, the Tribunal was not justified in issuing the extracted directive since the proper order would have been to direct his reinstatement in service, that is, to direct the respondents to proceed on the premise that there was no valid order of compulsory retirement against him. We think this contention is well-founded. Once the Tribunal quashed the order of compulsory retirement as unsustainable, the only alternative for it was to direct the respondents to ignore that order and to proceed on the basis that the petitioner had continued in service till the date of his normal retirement, i.e. November 30, 1989. We, therefore, quash the extracted portion and direct the respondents to treat the appellant as having retired in normal course w.e.f. November 30, 1989 on the post which he was occupying at the date of compulsory retirement and pay him the back wages and other monetary benefits and refix his pension accordingly. The appeal is allowed accordingly but there will be no order as to costs."

10. The ratio decided in *Sardul Singh* (supra) is applicable to the Petitioner, as he stands on the same footing. Therefore, the ratio decided in *Vijay Singh* (supra) is not applicable to the case of the Petitioner and the said case is distinguishable. Thereby, denial of back wages referring to *Vijay Singh* (supra) cannot sustain in

the eye of law.

11. In view of law laid down by the apex Court in *Sardul Singh* (supra), the Petitioner is entitled to get back wages, as it is deemed that he has retired in normal course from the post, which he was occupying at the time of compulsory retirement and thus is entitled to get back wages along with all monetary benefits. Therefore, the order dated 01.11.2022 under Annexure-1 passed by the Orissa Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 1208(C) of 2009 refusing to grant back wages to the Petitioner cannot sustain in the eye of law and the same is liable to be quashed and is hereby quashed. Thereby, this Court directs the Opposite Parties to comply with the direction contained hereinbefore with regard to back wages and all other monetary benefits within a period of four months from the date of receipt of this Order.

12. Accordingly, the writ petition is allowed.

(DR. B.R. SARANGI)
JUDGE

(S.K. MISHRA)
JUDGE