

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 15191 OF 2012

Sakir Hussain

..... Petitioner
Mr. Agasti Kanungo, Adv.

-versus-

Union of India & Ors.

..... Opposite Parties
Mr. Ramesh Ch. Swain, CGC
For Opposite Party No.1 to 3.
Mr. Kailash Ch. Kar. CGC.

CORAM:
JUSTICE V. NARASINGH

ORDER
29.03.2022

Order No.
04.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. A. Kanungo, learned counsel for the petitioner and Mr. R.C. Swain, learned Central Government Counsel for the Union of India.
3. The petitioner, who was working as Constable in CISF was initially terminated as per the Order dtd. 31.07.2008 against which he preferred appeal, the Appellate Authority considering the grievance of the petitioner passed the following order;

“ Hence, it is ordered that the petitioner be re-instated in service with immediate effect and he will report in CISF Unit RSP Rourkela within 15 days of receipt of the order failing which the order will stand automatically cancelled without further information. The intervening

period from the date of termination to re-instatement is proposed to be treated as Dies-non on principal of 'no work , no pay'. The individual is given an opportunity of making representation against the aforesaid proposal within 15 days after joining duty."

4. On a bare perusal of the Appeal Order, reinstating the petition it can be seen that an opportunity was extended to the petitioner to make a representation against the period to be treated as "Dies Non" otherwise known in common parlance, as no work no pay. It was directed by the Appellate Order that such representation was to be preferred within a period of 15 days after joining his duty. Admittedly, the petitioner preferred such representation at Annexure-3 on 07.07.2009 and on consideration of the same by the impugned order at Annexure-4 the Deputy Commandant, rejected his appeal on the ground of delay. The reason for rejection in verbatim is quoted hereunder;

"ON PERUSAL OF THE CASE IG/ES HAS REJECTED HIS APPEAL DUE TO TIME BARRED"

5. Learned counsel for the petitioner states that once he has been reinstated as his termination was ex-facie unlawful, treating the period as 'Dies non' is patently illegal and such illegality is compounded by rejection of the appeal on the ground of delay and it is also asserted that the delay has occasioned for reasons beyond his control, and there are no willful laches or negligence as such in not preferring the appeal within the time stipulated by the Appellate Authority.

6. Per contra, the learned counsel appearing for the CISF referring to the counter affidavit has stated that the petitioner was given ample opportunity to prefer an appeal and in fact fairness of the authorities is exemplified by the fact that the petitioner was reinstated on consideration of his appeal and since the petitioner has chosen not to prefer an appeal within the time as stipulated, his case does not merit any further consideration.

7. Admittedly, the petitioner's services was terminated on a wrong assumption that criminal cases is pending against him which was found to be incorrect on verification. Therefore, the period from the date of termination till the reinstatement order was passed, was treated as 'Dies Non'.

8. On perusal of the record, it is seen that the petitioner had in fact preferred an appeal and as already stated the same was rejected solely on the ground of not having been preferred within the time limit, as evidenced from the tenor of the order impugned and recital in the Counter Affidavit.

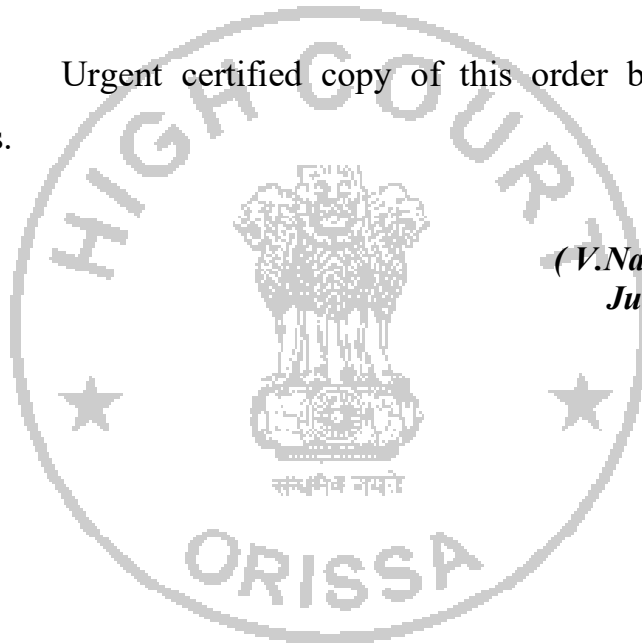
9. On consideration of materials available on record and taking into account the submission made across the Bar, this Court is of the considered view the cause of justice and equity would be sub-served if the petitioner is given an opportunity to prefer an appeal vis-à-vis the 'Dies Non' period from 31.07.2008 to 26.05.2009.

10. Hence, it is directed that if the petitioner prefers an appeal to the prescribed authority within a period of four weeks hence, the same shall be disposed of on its own merit and if possible to give the petitioner an opportunity of hearing. The order at Annexure-4 dtd. 25.08.2009 rejecting the appeal of the petitioner is hereby quashed.

11. The writ petition is thus stands disposed of.

10 Urgent certified copy of this order be granted as per rules.

Balaram



(V.Narasingh)
Judge