

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 16926 of 2012

Brajendranath Mohanty

.....

Petitioner

Mr. B.K. Nayak, Advocate

Vs.

State of Odisha and Others

.....

Opposite parties

Mr. A.K. Mishra, A.G.A.

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

11.04.2022

Order No.

04.

This matter is taken up through hybrid mode.

2. Heard Mr. S. Roy, learned counsel appearing on behalf of Mr.B.K. Nayak, learned counsel for the petitioner and Mr. A.K. Mishra, learned Addl. Govt. Advocate for the State.

3. The petitioner has filed this writ petition assailing the order dated 31.08.2010 passed in O.A. No.2864(C) of 2002 and O.A. No.1170(C) of 2006 vide Annexure-10, by which the Odisha Administrative Tribunal, Cuttack Bench, Cuttack has held that the period of suspension and absence be treated as leave due, as the petitioner has not worked during that period, in accordance with the principle of “no work no pay”.

4. Mr. S. Roy, learned counsel for the petitioner contended that the observation made by the tribunal to the extent as indicated above cannot sustain in the eye of law, because of the reason that challenging the reversion of the petitioner, he had approached the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.2864(C) of 2002, by which the tribunal passed an interim order keeping the order abeyance. Thereby, when the order of reversion has not been given effect to by virtue of interim order passed by

the tribunal, the finding of the tribunal that the period of suspension and absence will, however, be treated as leave due, as the applicant has not worked during that period, in accordance with the principle of “no work no pay”, cannot sustain in the eye of law.

5. Mr. A.K. Mishra, learned Addl. Govt. Advocate for the State contended that since the petitioner had not rendered service for the period he was under suspension and was absent from duty, he is not entitled to get any benefit as admissible to him. Therefore, the tribunal is well justified in passing the order impugned, which should not be interfered with.

6. Having heard learned counsel for the parties and after going through the records, it appears that the O.A No. 2864(C) of 2002 was filed on 28.10.2002 challenging the reversion order passed by the authority. As such, the tribunal while issuing notice on 29.10.2002, passed an interim order keeping the reversion order abeyance. Admittedly, the petitioner joined as Junior Clerk on 22.08.1977 in the Leprosy Eradication Wing, Jaleswar, under the C.D.M.O., Balasore, and continued in that capacity till 1995, when he posted to work in the District Leprosy Office till 29.06.2000. Thereafter, a D.P.C. was held for promotion of Junior Clerks to the rank of Senior Clerk on 17.01.2000 and the persons, junior to the petitioner, were selected and promoted to Senior Clerk, vide order dated 20.01.2000, and as a consequence thereof, the petitioner filed a representation against such supersession and realizing such mistake, the petitioner was provisionally promoted as a Senior Clerk on ad hoc basis, vide order dated 30.06.2000, by the C.D.MO., Balasore. Such posting was also extended, vide

communication dated 10.12.2001. His pay was fixed as Senior Clerk and increment was granted, though he had been promoted as an ad hoc Senior Clerk only. Another D.P.C. was held on 30.09.2002 with the C.D.M.O., Balasore, as Chairman, and while reviewing service records of the petitioner for the previous five years, the petitioner was deemed unsuitable for promotion on the basis of uncommunicated adverse remarks for the year, 2000, 2001, 2001-2002. As a consequence thereof, the petitioner was reverted, vide order dated 09.10.2002, and posted to Sub-Divisional Hospital, Nilagiri. Accordingly, the petitioner filed O.A No. 2864(C) of 2002 against such reversion order and the tribunal passed an interim order keeping the order of reversion abeyance. As such, the petitioner continued in the promotional post year to year with the approval of DPC. Subsequently, the petitioner was informed, vide letter dated 01.10.2002, that the D.P.C. on 30.09.2002 reviewed his C.C.R. for last five years and some adverse entries were noticed. Thereby, it was contended that the petitioner should rectify those shortcomings. Even though the tribunal passed an order keeping the order of reversion abeyance, but the opposite parties have not complied the same. Therefore, he filed C.P. No. 244(C) of 2002 challenging the interim order passed in O.A. No. 2864(C) of 2002. When the matter was pending, vide order dated 05.04.2006, the petitioner was placed under suspension as per Rule-12(2) of OCS (CC&A) Rules, 1962, which deals with suspension due to custodial detention beyond 48 hours, though he had neither been arrested nor detained. Consequentially, challenging such order of suspension, the petitioner filed O.A No. 1170(C) of 2006 and the tribunal, vide order dated 30.05.2006,

stayed the order of suspension. As a consequence thereof, both O.A. No. 2864(C) of 2002 and O.A. No. 1170(C) of 2006 were heard together and the tribunal, vide impugned order dated 31.08.2010, held that the order of reversion was not justified and accordingly quashed the same, but held that the order of suspension was justified. Accordingly, the tribunal held that the suspension orders for defying the reversion order impugned in O.A. No. 2864 (C) of 2002 were not justified and quashed the order dated 05.04.2006 and corrigendum vide order dated 15.04.2006 of O.A No. 1170(C) of 2006. While passing such order, the tribunal observed that the period of suspension and absence will, however, be treated as leave due as the petitioner had not worked during the period, in accordance with the principle of “no work no pay”. Fact remains, by virtue of the interim order passed by the tribunal keeping the order of reversion in abeyance, the petitioner continued in his post even if he was placed on suspension, and that will not stand on the way to get financial benefits as admissible to him. As such, the observation made by the tribunal that the period of suspension to be treated as leave due, as the petitioner had not worked during that period, in accordance with the principle of “no work no pay”, cannot have justification. For the cause of the employer, if the employee has not discharged his duty and, as such, the employee has been protected by the interim order passed by the tribunal and he has discharged his duty assigned to the post, he cannot be denied the benefit admissible to the post for the period he was placed under suspension. Needless to say that it is the authority who placed the petitioner under suspension and, as such, it is also well known to

the opposite parties that the petitioner has discharged his duty even if he was placed under suspension and the same has been stayed by the tribunal. Thereby, the finding arrived at by the tribunal applying the principle of “no work no pay” cannot sustain in the eye of law, being an outcome of non-application of mind.

7. In view of such position, the order passed by the tribunal is modified to the extent that the period of suspension and absence will be treated as duty and the petitioner shall be entitled to get the wages as due and admissible to the said post, which he is holding. Therefore, the order dated 31.08.2010 passed by the tribunal in O.A No. 2864(C) of 2002 and O.A. No.1170(C) of 2006 is modified to the above extent and the opposite parties are directed to comply with the order within a period of three months from the date of communication of this order.

8. With the above observation, the writ petition stands disposed of.

Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

Alok/Sukanta

(SAVITRI RATHO)
JUDGE