

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 2232 OF 2016

Shradhakar Behera

**..... *Petitioner*
*Mr. N.Biswal, Adv.***

-versus-

Orissa Lift Irrigation Corporation

**..... *Opposite Party*
*Mr. Satyabrata Mohanty, Adv.***

**CORAM:
JUSTICE V. NARASINGH**

**ORDER
28.06.2022**

**Order No.
05.**

1. This matter is taken up through Hybrid Arrangement (Virtual/ Physical Mode).
2. Heard learned counsel for the parties.
3. The petitioner who at the relevant time was working as a Junior Engineer (Civil) has assailed the order dtd. 14.08.2015 at Annexure-3 passed by the sole Opposite party-Managing Director, Orissa Lift Irrigation Corporation, by which, while directing his past service prior to 10.12.2010 to be taken into account for superannuation benefit and condoning the breakage in service from 10.12.2010 to 29.08.2012 treated the period of removal from 10.12.2010 to 29.08.2012 as Extra Ordinary Leave(EOL) by taking recourse to Rule 91(3) of the Orissa Service Code (hereinafter referred to as 'OSC') and further stating that the said period of leave will count towards increment.

4. For convenience of ready reference para-3 of the said order dated 12.08.2015, which is bone of contention is quoted hereunder.

“ xx xx xx

3. The removal period from 10.12.2010 to 29.08.2012 of Sri Behera may be treated as E.O.L. under Rule 91(3) of OSC **but the said period of leave will count towards increment.**”

5. The uncontroverted factual position by the learned counsel for the petitioner Mr. Biswal is extracted hereunder.

“1. **9.02.1984:-** The petitioner was appointed as Junior Engineer (Civil) under the Opposite Party Corporation.

2. **18.09.2008:-** Disciplinary Proceeding was initiated against the petitioner vide order No. 1261 dtd. 18.09.2008.

3. **6.03.2010:-** The above Disciplinary Proceeding was disposed of with the punishment i.e., Suspension period from 13.06.2008 to 31.05.2009 be treated as such and he should not hold L.I. Sub-Division for a minimum period of 3 years from the date of reinstatement .

4. **8.11.2010: -** That while the petitioner was suffering the punishment all on a sudden, the disciplinary authority issued show cause notice to the petitioner for “Removal” in the disciplinary proceeding which was disposed of vide order dtd. 06.03.2010.

5. **10.12.2010:-** The petitioner was “Removed” from service (**Annexure-1, pages-7 & 8 of the Writ Petition**)

6. **20.12.2010:-** The petitioner filed Appeal before the Chairman, Orissa Lift Irrigation Corporation Ltd. As against the order dtd. 10.12.2010 passed by the Managing Director.

7. **25.08.2012:-** That as per the order dtd. 24.08.2012 passed by the Chairman, OLIC, the Managing Director being the Disciplinary Authority has withdrawn the punishment imposed by him vide order No. 21628 dtd. 10.12.2010. **(Annexure-2, page-9 of the Writ Petition)**

8. **29.08.2012:-** That as per the order dtd. 25.08.2012 the petitioner was reinstated in service.

9. **05.08.2013:-** The petitioner filed a representation for regularization of the removal period i.e. 10.12.2010 to 29.08.2012.

10. **14.08.2015:-** The Opposite party passed the impugned order dtd. 14.08.2015 treating the period i.e. from 10.12.2010 to 29.08.2012 as EOL **(Annexure-3, page-10 of the Writ Petition)."**

6. It is not in dispute that considering the appeal of the petitioner filed before the Chairman of the Orissa Lift Irrigation Corporation, the Appellate Authority withdrew the order of punishment of removal by order dated 24.08.2012 and accordingly, the petitioner was reinstated in service.

7. Referring to Annexure-3, paragraph-3 thereof which is the grievance of the petitioner, learned counsel for the petitioner has taken this Court to the provisions of Rule 91 of the Orissa Service Code in general and specifically Clauses- 2 & 3 thereof. For convenience of reference the Rule 91(2) of the OSC which is

germane for just adjudication and Rule 91(3) which has been referred to in the impugned order are quoted hereunder.

“91(2)-Where such competent authority holds that the Government servant has been fully exonerated or in the case of suspension, that it was wholly unjustified, the Government servant shall be given the full pay to which he would have been entitled had he not been dismissed, removed, compulsorily retired or suspended, as the case may be, together with any allowances of which he was in receipt to his dismissal, removal or suspension.

91(3)(a) In the case of dismissal, removal and compulsory retirement when a Government servant who is not completely exonerated of the charges, is reinstated in service, it shall be open to the Competent authority to decide not to allow any pay or allowances to him.

(b) In the case of suspension when a Government servant, not having been exonerated of the charges fully, is reinstated in service, he may be allowed subsistence allowance only for the period of suspension as admissible under Rule 90.”

8. On a bare perusal of the language of Rule 91(3) which has been referred while passing the impugned order, it is seen that ex facie the same is not attracted in the case at hand.

Inasmuch as condition precedent for such clause comes into play when the Government servant “is not completely exonerated.”

9. It is not dispute that in the case at hand that the petitioner had suffered the punishment imposed without assailing the same

and in the face of it, it was not open to the authority to again pass an order of removal which was subsequently withdrawn and the petitioner was allowed to join.

10. Mr. Mohanty, learned counsel for the Corporation relies on the assertion made in the counter affidavit and submits that the petitioner is no way prejudiced inasmuch as the Corporation taking a lenient view had condoned the break of service from 10.12.2010 till reinstatement on 29.08.2012 and it is further stated that there is no infirmity in treating the removal period as EOL in terms of Rule 91(3) of the OSC.

11. On a bare reading of Paragraph-3 of the impugned order, it can be seen that the removal period was treated as EOL under Rule 91(3) as aforesaid, but in the same breath it has been mentioned therein that the said period will count towards increment. It is worth reiterating that the order of removal was withdrawn by the Chairman as Appellate Authority and the petitioner was reinstated in service.

12. In the considered opinion of this Court the impugned order treating the period from 10.12.2010 to 29.08.2012 as EOL is ex facie untenable. Once it is stated that the period of leave will count towards increment, it does not stand to reason as to how the same period can be treated as EOL under Rule 91(3) of the OSC.

13. On the face of it the order passed by the authority is the outcome of gross non-application of mind and dehors the rules and there is no iota of doubt that the petitioner case cannot come within the mischief of Rule 91(3) of the OSC, which has been

relied upon to treat the period of removal (which was later on recalled as per the order passed by the Chairman in appeal) as EOL.

14. On a conspectus of materials on record with reference to the relevant Rules this Court is of the considered view that the impugned order dated 14.08.2015 at Annexure-3 directing the period from 10.12.2010 to 29.08.2012 as EOL under Rule 91(3) of the Orissa Service Code is liable to be set aside and it is directed that the petitioner shall be entitled to the emoluments as due and admissible and such payment shall be made within a period of six months from the date of receipt/production of the certified copy of this order.

15. The writ petition is accordingly disposed of.

16. There shall be no order as to costs.

(*V.Narasingh*)
Judge

Dhal