

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 7396 of 2018

Harihara Behera

.....

Petitioner

Mr.R.K. Patnaik, Advocate

Vs.

*Principal, Chief Conservator of
Forests and others*

.....

Opposite Parties

Mr. S.N. Nayak, ASC

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

05.05.2022

Order No.

03.

This matter is taken up through hybrid mode.

2. Heard Mr. R.K. Patnaik, learned counsel appearing for the petitioner and Mr.S.N. Nayak, learned Additional Standing Counsel for the State-opposite parties.

3. The petitioner files this writ petition seeking to quash the order dated 20.03.2018 passed by the Orissa Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 2162 (C) of 2012 and to direct the opposite parties to regularize the period with effect from 01.04.2007 to 29.12.2007 and extend all benefits in accordance with law.

4. Mr. Patnaik, learned counsel for the petitioner contended that though the petitioner has discharged his duty, but he his claim was rejected by the Principal Chief Conservator of Forests, pursuant to the direction issued by the tribunal dated 03.04.2007 in O.A. No. 420 of 2007. Thereby the tribunal has not applied its mind while passing the order impugned. Therefore, he approached this Court in the present writ petition.

5. Mr. S.N. Nayak, learned Additional Standing Counsel for the State contended that since the petitioner has not discharged his duty with effect from 01.04.2007 to 28.12.2007, he is not entitled to get any salary as claimed by him. As such the tribunal has not committed any error while passing the order impugned warranting any interference at this stage.

6. Having heard learned counsel for the parties and after going

through the record, it is evident that the petitioner while working under Boudh Forest division was deployed to Baliguda Forest Division. Instead of adhering to the deployment order dated 24.02.2007, the petitioner challenged the same in O.A. No. 428 of 2007. The tribunal disposed of the said order dated 03.04.2007 directing opposite party no.1 to dispose of the representation of the petitioner by passing a speaking order, by treating the paper book as the representation within a period of three months. It was also directed that till the decision is taken the deployment order issued shall kept in abeyance. By the time the tribunal passed the order, the petitioner has already been relieved from Boudh Forest Division by the Range Officer Purunakatak on the instruction of the DFO on 01.04.2007 and therefore, the order of keeping the redeployment order in abeyance had become infructuous. The petitioner again approached the Tribunal in O.A. No. 1185 of 2017 for release of salary from April, 2007 onwards. The tribunal vide order dated 21.08.2007 disposed of the original application by directing opposite party no.1 to treat the application along with annexures as representation and dispose of the same by speaking order. Therefore, the DFO, Baliguda, without receiving any instruction from the Principal Chief Conservator of Forests, could not have released the salary from April, 2007 onwards in favour of the petitioner.

7. In the counter affidavit filed by the state before the tribunal a stand has been taken that the petitioner after his relieve from Purunakatak Range on 01.04.2007 had never joined in his official duty. He was only allowed to join in his official duty vide order dated 28.12.2007 pursuant to which, he joined on 29.12.2007. But subsequently the Principal Chief Conservator of Forests has rejected earlier representation as per the order passed by the Tribunal in O.A. No. 428 of 2007 and directed him to join at Baliguda Forest Division. The petitioner had also filed the rejoinder affidavit stating therein that the relieve order was not proper as he was relieved by the Range Officer, Purunakatak, who has no competency to pass such an order by relieving the petitioner from 01.04.2007 as per the

order of the DFO, Boudh Division and order of the Principal Chief Conservator of Forests in the redeployment order. As the petitioner has not discharged his duty from the date of relief, i.e. 01.04.2007 till 28.12.2007, he has not been paid his salary for the said period. But fact remains, he has joined the new place of posting on 29.12.2007. Therefore, the period which has been shown as the petitioner has not discharged his duty, i.e. from 01.04.2007 to 28.12.2007, the salary having not been paid, he has approached the tribunal claiming the benefit for such period. But the tribunal directed to consider the representation. The representations was rejected by the Principal Chief Conservator of Forests. The tribunal instead of passing an order of regularization of service from 01.04.2007 to 28.12.2007 and the manner of regularization of such period, has only dismissed the original application on the ground that no direction can be given to the opposite parties 2 and 3 for payment of salary to the applicant for the said period.

8. Needless to say that since the petitioner was an employee, if that period will not be taken into consideration with regard release of salary, then there will be a discontinuation of service of the petitioner. Therefore, the tribunal ought to have applied his mind and passed an order, how such period is to be treated, if the petitioner has not discharged his duty. As such, the tribunal has committed error apparent on the face of the record to the extent of making a statement that no direction can be given for payment of salary to the applicant for the said period. The error which has been committed by the tribunal by making such observation cannot have any justification. Rather, it is open to the opposite parties to treat that period as leave due and admissible to the petitioner and also to regularize the service of the petitioner so as to enable him to get the consequential benefits.

9. It has also been brought to the notice of the court, at this point of time, that the petitioner has also been promoted to the higher post. Therefore, unless the period in question is regularized, he may face some difficulty, even at the time of superannuation from service.

10. In that view of the matter, this court disposes of the writ petition by modifying the order passed by the tribunal dated 20.03.2018 in O.A. No. 2162 (C) of 2022, to the extent that the opposite parties shall treat the period from 01.04.2007 to 28.12.2007 as leave due and admissible to the petitioner and regularize such period for enabling the petitioner to get the service and financial benefits.

11. With the above modification, the writ petition stands disposed of.

(DR. B.R. SARANGI)
JUDGE

Arun/Puspa

(SAVITRI RATHO)
JUDGE

