

ORISSA HIGH COURT: CUTTACK

W.P(C) NO. 4809 of 2015

In the matter of an application under Articles 226 and 227 of the Constitution of India.

AFR State of Odisha & Anr. Petitioners

-Versus-

Manoj Kumar Pradhan &
Anr. Opp. Parties

For Petitioners : Mr. S. Rath,
Addl. Standing Counsel

For Opp. Parties : M/s. Rajjeet Roy, R.K. Sahoo,
S.K. Singh & S. Sourav,
Advocates
[O.P.No.1]

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HONOURABLE MR JUSTICE S. K. MISHRA**

DECIDED ON : 25.07.2022

DR. B.R. SARANGI,J. The State-Petitioners have filed this Writ
Petition seeking to quash the Order dated 04.09.2014
passed in O.A. No.2780 of 2013, by which the Odisha
Administrative Tribunal, Bhubaneswar, has quashed

the Order dated 24.06.2011 under Annexure-1 to the O.A. passed by the Government directing to treat the suspension period of Opposite Party No.1 as leave due and admissible so as to regularize his service and Order dated 17.06.2013 under Annexure-4 to the O.A., issued by the Government rejecting the prayer of Opposite Party No.1 for reconsideration of his suspension period as 'duty' were quashed and direction has been given to the Petitioners to pass appropriate Order treating the period of suspension as duty and release the salary for the said period within a period of three months from the date of receipt of the copy of the said Order.

2. The factual matrix of the case, in brief, is that Opposite Party No.1, while working as Marking Inspector, Gudvella Block, Bolangir, was placed under suspension, as he was implicated in a Vigilance Case in CTR No.24/58 of 2006/2007 under Section 13(2) read with Section 13(1)(d) of P.C. Act and Section 7 of the P.C. Act. Subsequently, after trial of the Vigilance Case, he was acquitted of the charges by the Special Judge (Vigilance), Bolangir. Thereafter, he made grievance

before Opposite Party No.1 for regularization of his service in respect of the period of suspension, i.e. from 22.06.2002 to 02.02.2003. The State Government, vide Office Order dated 24.06.2011, directed to treat the said period of suspension as leave due and admissible so as to regularize his service. It is contended that similarly situated Government employees, who were acquitted of in the vigilance case, their suspension period was treated as duty. But so far as Opposite Party No.1 is concerned, he was discriminated and his representations for treating the period of suspension as leave due and admissible, were rejected. Therefore, he approached the Odisha Administrative Tribunal, Bhubaneswar, by filing O.A. No.2780 of 2013 and the Tribunal, vide Order dated 04.09.2014, disposed of the said O.A. directing the Petitioners to treat the period of suspension of Opposite Party No.1 from 22.06.2002 to 02.02.2003 as duty and release his salary for the said period within a period of three months. Being aggrieved by the said Order, the Petitioners have approached this Court by filing this Writ Petition.

3. Mr. S. Rath, learned Additional Standing Counsel appearing for the State Petitioners, contended that the Order dated 04.09.2014 passed by the Tribunal, directing to treat the period of suspension of Opposite Party No.1 as leave and release his salary for the said period within a period of three months, is contrary to the provisions of Rule-91(4) of the Odisha Service Code. He further contended that even though Opposite Party No.1 was acquitted of the criminal charges, he is not entitled to get the salary during the period of suspension. Therefore, the order so passed by the Tribunal cannot be sustained in the eye of law.

4. Mr. Rajjeet Roy, learned Counsel appearing for Opposite Party No.1, contended that the Tribunal is well justified in passing the Order dated 04.09.2014, in O.A. No.2780 of 2013. As such, since Opposite Party No.1 was acquitted of criminal case, he is entitled to get the benefit of treating the period of suspension as duty and the salary for the said period, as due and admissible to him, in accordance with law. Thereby, the order so passed by the Tribunal cannot be

said to be illegal so as to warrant interference of this Court at this stage.

5. This Court heard Mr. S. Rath, learned Additional Standing Counsel appearing for the State Petitioners, and Mr. Rajjeet Roy, learned Counsel appearing for Opposite Party No.1, through hybrid mode. Pleadings have been exchanged between the parties and with the consent of learned Counsel for the Parties, the matter is being disposed of finally at the stage of admission.

6. On the basis of undisputed facts, as mentioned above, the only consideration is to be made whether Opposite Party No.1 is entitled to get the salary for the suspension period, i.e., from 22.06.2002 to 02.02.2003, after acquittal of the criminal case in CTR No.24/98 of 2006/2007?

7. There is no dispute that in a Vigilance Case bearing Sambalpur Vigilance P.S. Case No.29 dated 21.05.2002, registered under Section 13(2) read with Section 13(1)(d) of P.C. Act and Section 7 of P.C. Ac, for demanding and accepting illegal gratification of

Rs.2000/-, the Opposite Party No.1 was placed under suspension vide Office Order dated 22.06.2002. As a consequence thereof, he was placed under suspension on 22.06.2002. But pending finalization of case, he was reinstated in service, vide Office Order dated 27.01.2003, with a direction that his date of reinstatement will be effective from the date of his joining. The Vigilance case bearing CTR No. 24/98 of 2006/2007, was disposed of by the learned Special Judge (Vigilance), Balangir, vide Order dated 11.02.2010 with the following Order:

"I am constrained to hold that the prosecution has miserably failed to prove its case against the accused beyond all reasonable doubt. I, therefore, find that the accused not guilty of the offence u/s 13(2) read with 13(1)(d) of P.C. Act and Section 7 of P.C. Act and acquit him u/s Section 248(1) of Cr.P.C."

8. After disposal of the said case, Opposite Party No.1 filed representation on 11.05.2011 for regularization of his service in respect of the period of suspension, i.e. from 22.06.2002 to 02.02.2003. But the competent Authority, i.e. Commissioner-Cum-Secretary to Govt., Food Supplies & Consumer Welfare Department, passed Order dated 24.06.2011 under

Annexure-1 to the O.A. stating therein that the period of suspension of Opposite Party No.1 shall be treated as leave due and admissible so as to regularize his services.

9. The Petitioner again submitted his representation dated 21.09.2012 to the Commissioner-Cum-Secretary to Govt., Food Supplies and Consumer Welfare Department, Odisha. But the same was also rejected vide Order dated 17.06.2013, under Annexure-4 to the O.A., stating that the matter may be treated as closed, as decision of the Government to treat the period of his suspension from 22.06.2002 to 02.02.2003, as leave due and admissible, has already been communicated to all concerned vide Office Order dated 24.06.2011.

10. Being aggrieved by the said Order, Opposite Party No.1 approached the Odisha Administrative Tribunal, Bhubaneswar, by filing O.A. No.2780 of 2013 with a prayer to quash the Office Order dated 24.06.2011, under Annexure-1 to the O.A. and Order dated 17.06.2013, under Annexure-4 to the O.A.,

and issue direction to the Petitioners to treat the period of suspension from 22.06.2002 to 02.02.2003 as duty and regularize the said period accordingly.

11. The Tribunal, vide Order dated 04.09.2014, disposed of the said O.A. by quashing Annexures-1 & 4 to the said O.A. and directed the Petitioners to pass appropriate order treating the period of suspension as duty and release the salary of the Opposite Party No.1 for the said period within a period of three months from the date of receipt of a copy of the Order. Challenging the said Order, the Petitioners have approached this Court by filing this Writ Petition.

12. For just and proper adjudication of the case, Rule-91(2) and (4) of the Odisha Service Code are extracted below:

"91. Xxx xxx xxx

(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 prior to his dismissal, removal or suspension.

Xxx xxx xxx

(4) in a case failing under clause (2) the period of absence from duty shall be treated as a period spent on duty for all purposes.”

13. On perusal of the aforesaid provisions, it is made clear that in a case falling under Sub-Clause (4), the period of absence from duty shall be treated as a period spent on duty for all purposes. Similarly, in terms of Sub-Clause (2), if the Government servant is fully exonerated or in the case of suspension, it is held to be 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 prior to his dismissal, removal or suspension. Therefore, the period of absence from duty of Opposite Party No.1 shall be treated as a period spent on duty for all purposes.

14. In view of such position, if Opposite Party No.1 was acquitted of in a Vigilance Case and the learned Special Judge (Vigilance), Bolangir, passed order that Prosecution miserably failed to prove its case

against Opposite Party No.1 beyond all reasonable doubt and found that he was not guilty of the offence U/s 13(2) read with Section 13(1)(d) of P.C. Act and Section 7 of P.C. Act, the period, i.e., from 22.06.2002 to 02.02.2003, for which he was placed under suspension should be treated as duty and he is entitled to get salary for the said period in accordance with law. As a consequence thereof, the Order dated 04.09.2014 passed by the Tribunal in O.A. No.2780 of 2013, treating the period of suspension as duty and directing the Petitioners to release the salary of Opposite Party No.1 for the period he was placed under suspension, cannot be said to be arbitrary, unreasonable and illegal so as to cause interference of this Court. Rather it is because of the action of the Petitioners, Opposite Party No.1 has been deprived of discharging his duty during the period of his suspension and there is no reason to treat the period of suspension as duty and release his salary for the said period as due and admissible to him.

15. In that view of the matter, the Writ Petition merits no consideration and the same is

accordingly dismissed. The State Petitioners are directed to treat the period of suspension, i.e. from 22.06.2002 to 02.02.2003 as duty and release all financial benefits as due and admissible to Opposite Party No.1 as expeditiously as possible, preferably within a period of two months from the date of communication/production of certified copy of this Judgment.

S. K. MISHRA, J.

I agree.

(DR. B.R. SARANGI)
JUDGE

(S. K. MISHRA)
JUDGE

Orissa High Court, Cuttack
The 25th July, 2022, Alok

