

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 323 of 2005

Pradeep Mohan Khora

.....

Petitioners

Mr. M.K. Mohanty, Adv.

Vs.

State of Orissa and Others

.....

Opposite Parties

Mr. S. Rath, ASC

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE S.K. MISHRA

ORDER

22.07.2022

Order No.

11.

This matter is taken up through hybrid mode.

2. Heard Mr. M.K. Mohanty, learned Counsel for the Petitioner and Mr. S. Rath, learned Addl. Standing Counsel appearing for State-Opposite Parties.

3. The Petitioner has filed this Writ Petition seeking to quash the Order dated 10.05.2004 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 2260 (C) of 1999, and to issue direction to the Opposite Parties to allow him to join in service treating the period of absence as duty.

4. The factual matrix of the case in brief is that the Petitioner having been sponsored by the Employment Exchange, was given appointment as Excise Constable by virtue of the appointment order dated 01.08.1989 issued by the Superintendent of Excise, Koraput. Pursuant thereto, the Petitioner joined in service and while continuing as such, he was dismissed from service by the Opp. Party No. 3 w.e.f. 30.04.93 by virtue of office order dated 29.04.93 as per Rule-22 of Orissa Govt. Servants Conduct Rules on the ground that, he had forged his date of birth in his Educational Certificates and got appointment as Excise Constable. After dismissal from service under Annexure-3, the Petitioner preferred an appeal before the Collector, Koraput-Opposite Party

No. 2, as provided under Rule-23 of the O.C.S. and C.C.A Rules, 1962, challenging the order dated 29.04.93 under Annexure-3. The Collector, after considering the materials in proper perspective, allowed the appeal and also directed that the petitioner shall be reinstated in service with immediate effect, pending drawal of proceedings as per the C.C.A. Rules, and it was further directed that the period of dismissal shall be treated as on duty. When the reinstatement order under Annexure-4 was passed, the petitioner suddenly fell ill and his illness continued for about a month and after recovery from illness, the Petitioner approached the Authority concerned with the Medical Certificate which shows that the Petitioner was ill during that period. Though the Petitioner produced the Medical Certificates, yet he was not allowed to join in his duty on the ground that a criminal case was registered against him under Sections 420/468 IPC, which was already considered by the Collector, Koraput, while directing for reinstatement of the Petitioner in service. But in the meantime, the Petitioner faced trial in G.R. Case No.820 of 1993 for the charges under Sections 420/468 IPC, which were framed on the allegation that he had committed forgery of a document with the intention that the document shall be used for the purpose of cheating and, thereby, induced the Superintendent of Excise, Koraput to deliver the appointment order for the post of Excise Constable. After completion of the trial in the G.R. Case No.820 of 1993, the Petitioner was found not guilty under Sections 420/468 IPC. As against the Order of acquittal, State approached this Court by filing Criminal Misc. Case No.3731 of 1999, which was dismissed vide order dated 29.01.2002. Thereby, with dismissal of the Criminal Misc. Case by this Court, right has been accrued in favour of Petitioner to allow him to join as per the direction of the

Collector as Appellate Authority, neither the Petitioner was allowed to join in his post, nor any departmental proceeding was initiated against him. As a consequence thereof, the Petitioner approached the Tribunal and the Tribunal, by the Order impugned, held that the Order of reinstatement passed by the Collector cannot be given much importance, as he was not the Appellate Authority. Consequentially, the Tribunal concluded that fraud has been committed by the Petitioner and, therefore, his service was put to an end.

5. A Counter Affidavit has been filed by the State-Opposite Parties and in Paragraph-4 thereof, it has been specifically admitted that the Collector is the Appellate Authority and is competent to pass the Order of reinstatement and, as such, the Collector passed the Order of reinstatement of the Petitioner. In the Counter Affidavit to the Rejoinder Affidavit filed by the Petitioner in reply to the Counter Affidavit, it has been stated that the Collector is the appellate authority and, as such, the Order passed by the authority is well justified. Since the Order of the Collector has not been complied with, the Petitioner approached the Tribunal and the Tribunal vide order dated 10.05.2004 passed the Order impugned. Aggrieved by the Order passed by the Tribunal, the Petitioner has approached this Court by filing the present Writ Petition.

6. Mr. M.K. Mohanty, learned Counsel for the Petitioner vehemently contended that the Collector is the Appellate Authority which has been admitted in the Counter Affidavit filed by Opposite Parties No.2 and 3 and also in the Counter to the Rejoinder Affidavit filed by Opposite Parties No.1 to 3. It is admitted fact that the Collector, being the Appellate Authority, has passed the order of reinstatement. But the Tribunal, without any

application of mind, passed the Order impugned with erroneous findings, which cannot sustain in the eye of law and the same is liable to be quashed.

7. Mr. S. Rath, learned Addl. Standing Counsel appearing for State-Opposite Parties contended that if the Collector is held to be the Appellate Authority, then the Order passed by him to initiate departmental proceeding against the Petitioner has not yet been complied with. Meaning thereby, after the reinstatement order was passed, till date no proceeding has been started against the Petitioner. It is contended that the Tribunal may be erroneous to the extent that the Collector is not the Appellate Authority, but so far as forged document is concerned, that requires thorough investigation and, as such, the Petitioner has to be examined on that score. Consequentially, he seeks for dismissal of the Writ Petition.

8. Having heard learned Counsel for the Parties and after going through the records, this Court finds that admittedly as per the direction given by the Collector, no Departmental Proceeding has been initiated. The Opposite Parties, as is asserted, are contemplating to initiate disciplinary proceeding against the Petitioner. Therefore, the observation made by the Tribunal that the Collector is not Appellate Authority, cannot sustain and consequentially the Order impugned has to be quashed. But since the Collector has passed order to initiate a Departmental Proceeding against the Petitioner, let the Petitioner be reinstated in service and the Departmental Proceeding be initiated against him, as directed by the Collector, but he may be placed under suspension, in view of the reliance placed by learned Counsel for the Petitioner in the case of ***P.S.E.B. & Ors. V. Leela Singh***, 2007 AIR SCW 2023, Paragraph-8 whereof, reads thus:-

“8. For the reasons aforementioned, while setting

aside the order of termination passed as against the respondent, we also set aside the order dated 15.06.2001 passed by the Administrative Member of the appellant-Board upon giving liberty to the appellant-Board to initiate a full-fledged departmental proceedings against the respondent. The respondent may be reinstated in service but he may be placed under suspension. Appellant shall refund the amount which has been deducted from respondent's salary pursuant to the aforementioned order passed by the Administrative Member of the appellant-Board in the meanwhile. The appeal is allowed with the aforementioned direction."

9. Having regard to the facts and circumstance, as well as the law laid down by the apex Court, as discussed above, the Order dated 10.05.2014 passed by the Tribunal in O.A. No. 2260 of 1999 is hereby quashed. The Departmental Proceeding, as per the direction of the Collector, shall be initiated against the Petitioner by placing him under suspension. Needless to mention, for the selfsame charges, since the Petitioner has already been acquitted from criminal case and such order of acquittal has been confirmed in revision, the Disciplinary Authority shall take into consideration such aspect, while considering the case of the Petitioner with regard to initiation of the Departmental Proceeding.

10. With the aforesaid observation and direction, the Writ Petition stands allowed.

Issue urgent certified copy as per Rules.

(DR. B.R. SARANGI)
JUDGE

(S.K. MISHRA)
JUDGE