

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO. 14499 of 2021

Committee of Management Tentulidihi Petitioner
Service Cooperative Society Ltd.

Mr. Jajati Keshari Khuntia, Advocate

-versus-

State of Odisha and others Opp. Parties

Mr. Ajodhya Ranjan Dash,
Additional Government Advocate
(For Opposite Party Nos.1 to 3)

Mr. K. Roy, Advocate
For Opposite Party No.5)

Mr. Chittaranjan Pattnaik, Advocate
(For Opposite Party No.6)

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

31.10.2022

Order No.

19. 1. This matter is taken up through hybrid mode.
2. The judgment and order dated 31st March, 2021 (Annexure-8) passed by learned Cooperative Tribunal, Odisha, Bhubaneswar in Service Dispute Case No.15 of 2017 is under challenge in this writ petition.
3. Mr. Khuntia, learned counsel appearing for the Petitioner-Cooperative Society submits that para-12 of the impugned order reflects the grounds on which the punishment imposed by the Committee of Management was turned down and order of dismissal of Opposite Party No.6 was set aside. For better appreciation of facts, para-12 of the impugned order is reproduced here under:-

“12. After thorough scrutiny of the matter it appears that due opportunity was provided to the Plaintiff to defend his case in the said disciplinary proceeding. Hence the

allegation of the Plaintiff on this score merits no consideration. But, the report dated 22.06.2016 of the Enquiry Committee prepared by the members of the Managing Committee of the Society on the basis of which major punishment was imposed on the Plaintiff seems to be not fair and proper. The Managing Committee of Tentulidihi S.C.S. is the appointing as well as the disciplinary authority which had framed draft charges against the Plaintiff. In the instant case it is noticed that same members of the Managing Committee including the President were appointed as members of the Enquiry Committee to inquire into the draft charges against the Plaintiff. Such action of the committee is absolutely improper, unjustified and violates the principle of natural justice. Further the disciplinary authority has not considered the representation of the Plaintiff in its right perspective. As it appears the extreme step of removing the Plaintiff from the service has been taken out of malice and vindictiveness. Therefore, the action by the authority is found to be a total malafide. The punishment inflicted on the Plaintiff which is quite grave and serious is also found to be disproportionate to the charges framed.”

3.1 It is his submission that the Committee of Management of Tentulidihi SCS is the appointing as well as disciplinary authority, which has framed the charges and after conducting due enquiry and providing adequate opportunity of hearing, imposed punishment of dismissal of Opposite Party No.6 from service of the society. The Tribunal took exception to the fact that the members who were in the Committee of Management including the President were appointed as members of the Enquiry Committee to enquire into the draft charges against the Plaintiff/Opposite Party No.6. It is, therefore, held that such action of the Committee is absolutely unjust and improper and violative of principles of natural justice. It is his submission that since the Committee of Management is the appointing as well as the Disciplinary Authority of Opposite Party No.6, no exception should have been taken by the Tribunal imposing punishment

on Opposite Party No.6. The Committee of Management of the Society is empowered under the provisions of its bye-law to initiate disciplinary proceeding and impose punishment on the Opposite Party No.6 after conducting due enquiry and giving due opportunity to Opposite Party No.6 to participate in the disciplinary proceeding. He, further submits that the Disciplinary Authority has considered the representation of Opposite Party No.6 in its proper perspective and imposed the punishment of dismissal from service. The Tribunal, without assigning any reason, recorded a finding that the representation of Opposite Party No.6 was not considered in its right perspective. Further, the Tribunal without assigning any reason further observed that steps taken to remove the Opposite Party No.6 from service, was the outcome of malice and vindictiveness. Mr. Khuntia, therefore, submits that the impugned order is not sustainable in the eye of law; therefore, the same should be set aside.

4. Mr. Roy, learned counsel for Opposite Party No.5, the President of the Committee of Management of the Petitioner-Society supports the submission of Mr. Khuntia, learned counsel for the Petitioner.

4. Mr. Pattnaik, learned counsel for Opposite Party No.6, submits that so far as finding of the Tribunal that Committee of Management of Tentulidihi SCS should not have enquired into the charges made against Opposite Party No.6 is concerned, the same is erroneous. The Committee of Management of the Petitioner Society is competent to initiate Disciplinary Proceeding and take action against the delinquent, if any, including the Opposite Party No.6 in accordance with law, but

the charges framed against Opposite Party No.6 was not specific and that the self-same Committee of Management has already reinstated the Opposite Party No.6 in service, the Opposite Party No.6 had filed a detailed representation against the proposed punishment. The same was not properly considered by the Committee of Management of the Petitioner Society. As such, the Tribunal has committed no error in holding the dismissal of Opposite Party No.6 to be bad in law. Taking into consideration that the dismissal of Opposite Party No.6 was not proper, the self-same Committee has already reinstated Opposite Party No.6, the documents to that effect has been exhibited before the Tribunal. As such, the order of dismissal by the Committee of Management was an outcome of malice and vindictiveness, as rightly observed by the Tribunal. He further submits that the writ petition is not maintainable, as the Opposite Party No.6 has already been reinstated in service. He, therefore, prays for dismissal of the writ petition.

5. Considering the rival contentions made by learned counsel for the parties and on perusal of record, this Court observes that since the finding of the Tribunal to the effect that the Committee of Management of Tentulidihi SCS being the appointing as well as the Disciplinary Authority, could not have framed charges against Opposite Party No.6, enquired into the charges leveled against Opposite Party No.6 and imposed punishment, are not sustainable, as submitted by Mr. Khuntia, learned counsel for the Petitioner and conceded by Mr. Pattnaik, learned counsel for Opposite Party No.6. As such, the finding to that effect is set aside.

6. So far as finding with regard to consideration of representation of Opposite Party No.6 is concerned, this Court is of the considered opinion that the Tribunal has not discussed anything as to how representation of Opposite Party No.6 is not considered properly. The finding of malice and vindictiveness are of serious magnitude. While arriving at such conclusion, the Tribunal ought to have discussed as to how the consideration of representation of Opposite Party No.6 is not proper and is outcome of malice and vindictiveness. Such a finding in absence of any discussion and material to that effect, is not sustainable.

6.1 Mr. Pattnaik, learned counsel submits that the Opposite Party No.6 had explained the same in his representation, which was not properly considered. For that reason, the Tribunal has held the consideration of the representation to be the outcome of malice and vindictiveness. Such a contention is not acceptable, inasmuch as the impugned order does not reflect any such ground to come to the find that the representation was not properly considered. Law is well-settled that the Court while exercising power under Articles 226 and 227 of the Constitution, should not lightly interfere with the imposition of punishment, which has been imposed by the Disciplinary Authority after a proper inquiry. Taking into consideration the charges framed and after making a due enquiry, the Disciplinary Authority has imposed punishment of dismissal of Opposite Party No.6 from service. Further ground taken by Mr. Pattnaik, learned counsel for Opposite Party No.6 is not borne out from the impugned order. Thus, this Court has no hesitation to hold that the impugned order is not sustainable in the eyes of law.

Accordingly, the impugned is set aside and the punishment imposed by the Disciplinary Authority is upheld.

7. The writ petition is allowed to the aforesaid extent. But, in the circumstances, there is no order as to cost.

8. Interim order dated 24th June, 2021 passed in IA No.6413 of 2021 stands vacated.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge

