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IN THE HIGH COURT OF ORISSA, CUTTACK

W.P.(C) No.15654 of 2016

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

Laxmidhar Pal

.....

Petitioner

-Versus-

State Pollution Control Board
Odisha and another

.....

Opp. Parties

For Petitioner : Mr. U.K. Samal, Advocate

For Opp. Party No.1: Mr. G. Rout, A.S.C.

For Opp. Party No.2: Mr. S.K. Padhi, Sr. Advocate

CORAM: JUSTICE SANJAY KUMAR MISHRA

JUDGMENT

09.12.2022

S.K. MISHRA, J.

1. The Petitioner, who was working as Environmental Scientist in the Office of the State Pollution Control Board, Odisha has preferred the present Writ Petition for quashing of the Departmental Proceeding initiated against him vide

Memorandum dated 21.07.2012, as at Annexure-1, with an alternate prayer to keep the Departmental Proceeding pending till disposal of the criminal case.

2. The factual matrix of the case at hand is that one Sri Deepak Kumar Jena, S/o Sri Basanta Kumar Jena of village: Jamkunda, PS: Baliapal, Dist: Balasore reported in writing to the Balasore Vigilance Police Station alleging therein that the Petitioner while working as Regional Officer, State Pollution Control Board, Balasore Region, allegedly demanded bribe of Rs.5,000/- for issuance of No Objection Certificate. During course of investigation, a trap was laid after making preparation and the Petitioner was caught red handed while allegedly demanding and accepting the bribe of Rs.5,000/- from the complainant and the said money was recovered from his possession. Thereafter, the Petitioner was arrested and forwarded to the judicial custody followed by initiation of vigilance case against him. Accordingly, offence under Section 13(2) read with Section 13(1)(d)/7 of the Prevention of Corruption Act, 1988 was registered against the Petitioner in connection with Balasore Vigilance P.S. Case No.35 of 2011 and in the meantime, charge sheet has been submitted.

3. Thereafter, vide order dated 01.07.2011, the Petitioner was put under suspension. The Petitioner was allowed to go on bail by the learned Special Judge (Vigilance), Balasore on 03.07.2011. He was reinstated in service on 26.06.2012. The Opposite Party No.2-Employer issued a major penalty charge sheet against the Petitioner which was received by him on 23.07.2012. On perusal of the statement of imputations, it was ascertained by the Petitioner that the Disciplinary Proceeding has its genesis with regard to Balasore Vigilance P.S. Case No.35 of 2011 and the subject matter of the Disciplinary Proceeding and that of the Criminal Proceeding is same and the entire proceeding is based on the said Balasore Vigilance P.S. Case. Being aggrieved by the initiation of the said Departmental Proceeding, during pendency of the vigilance case, the Petitioner made a representation to Opposite Party No.2 on 14.08.2012 praying for supply of material documents based upon which, charges were framed against him and also made a further prayer that the Departmental Proceeding be kept in abeyance awaiting decision of the criminal case i.e Balasore Vigilance P.S. Case No.35 of 2011, pending before the Court of learned Special Judge (Vigilance), Balasore on the plea that the submission of objection to the allegations in the Charge

Memo in the Departmental Proceeding at this stage, would disclose his defence, which would be used by the prosecution in the criminal case to his disadvantage. This would seriously prejudice the Petitioner in criminal proceeding because it also pointed out that since the allegations and the attenuating facts and circumstances are same and the witnesses are common in both the proceedings, the Petitioner would suffer strong prejudice in the event the Department Proceeding is allowed to be finalized during pendency of the vigilance case. Besides, it was contended before Opposite Party No.2-Disciplinary Authority that the witnesses, who would be cross-examined in the Departmental Proceeding, would know the defence of the Petitioner and accordingly would mould their evidences in the Criminal Proceeding.

4. When the matter stood thus, the Opposite Party No.2, again after lapse of more than three years, issued a letter dated 29.08.2016 to the Petitioner directing therein to submit his written statement of defence within fifteen days from the date of receipt of the said letter.

5. Being aggrieved by the said communication, the Petitioner has approached this Court with the prayer as detailed above.

6. Though Misc. Case No.14599 of 2016 has been filed along with the Writ Petition for stay of further proceeding pursuant to letter dated 29.08.2016, as at Annexure-3 but, as is ascertained from the order sheet of the case record, neither any notice had been issued to Opposite Party No.2 nor any interim order was passed in the said Misc. Case staying the Departmental Proceeding as prayed for. During pendency of the Writ Petition, the Petitioner on attaining the age of superannuation, retired from the service with effect from 31.01.2021. Thereafter the said fact was brought on record by way of filing an Interlocutory Application for amendment, which was allowed vide order dated 14.03.2022 and the consolidated Writ Petition was filed by the Petitioner on 21.03.2022.

7. In response to the said Consolidated Writ Petition, the contesting Opposite Party No.2 has filed its Consolidated Counter Affidavit on 02.05.2022 reiterating the facts averred in the Writ Petition. That apart, with regard to the averments made in paragraph-7(A) of the Consolidated Writ Petition, in paragraph-11 of the said Consolidated Counter Affidavit it has been stated as follows:

*“11. That the Petitioner in paragraph 7(A) of the writ petition has stated that since he has already been retired from service of the Board w.e.f 31.01.2021 and **in***

the Orissa Pollution Control Board Pension Rules 2011, there is no specific provision to continue the department proceedings which was initiated prior to retirement and as such the departmental proceeding shall be deemed to be closed. The matter was thus thereafter referred to Govt. in the Forest and Environment Department for clarification.

It is humbly submitted that pursuant to aforesaid communication, the Govt. of Odisha, Forest, Environment and Climate Change Department vide letter no.FE-ENV3-CASE-0008-2021 2303/FE&CC dated 18.12.2021 directed the Member Secretary i.e. O.P.-2 to take decision resorting to provisions under Regulation-7 and 8 of the Pension Regulation 2011 with a view to conclude the proceeding which was initiated against Sri Laxmidhar Pal i.e. the Petitioner during his service period as per provisions of Rule-15 of the OCS(CC&A) Rules, 1962. A Copy of the letter dated 18.12.2021 is annexed herewith as Annexure-N/2."

(emphasis supplied)

8. That apart, since the documents appended to the Consolidated Counter Affidavit, as at Annexure-N/2 was incomplete, an additional affidavit was filed by the Opposite Party No.2 on 22.02.2022 appending thereto the letter of the Additional Secretary to Government dated 18.12.2021 addressed to the Member Secretary, State Pollution Control Board, Odisha along with the relevant pages of the provision

under Regulation-7 and 8 of the Pension Regulation-2011, as Annexure-H/2 to the said affidavit.

With regard to the averments made in the Writ Petition to the effect that charges are same in the Criminal Proceeding as well as in the Departmental Proceeding and hence, the Departmental Proceeding shall wait till disposal of the Criminal Proceeding and the communication dated 29.08.2016 directing the petitioner to submit his Written Statement within fifteen days from the date of receipt of said communication is illegal, in Paragraph-6 of the Consolidated Counter Affidavit, it has stated that in view of the ruling of the apex Court, there is no legal bar for taking criminal action and Disciplinary Proceeding simultaneously against the delinquent employee upon the same set of facts.

9. Heard Mr. U.K. Samal, learned Counsel for the Petitioner, so also Mr. G. Rout, learned Additional Standing Counsel for Opposite Party No.1 and Mr. S.K. Padhi, learned Senior Counsel for Opposite Party No.2.

10. Learned Counsel for the Petitioner submits that in view of the Judgments of the apex Court in the case of **Bhagirathi Jena Vrs. Board of Directors, O.S.F.C. and**

others,¹ reported in (1999) 3 SCC 666, so also in the case of **Dev Prakash Tewari Vrs. Uttar Pradesh Cooperative Institutional Service Board, Lucknow & others**,² reported in (2014) 7 SCC 260, Judgment passed by the coordinate Bench of this Court in the case of **Bhagirathi Nayak Vrs. Odisha State Civil Supply Corporation Ltd. & others**,³ reported in 2022(II) OLR 848, admission made by the Opposite Party No.2 in Para-11 of the Consolidated Counter Affidavit, clarification given by the Additional Secretary to Government, Government of Odisha, Forest, Environment and Climate Change Department dated 18.12.2021, as at Annexure-H/2 to the additional affidavit filed on behalf of Opposite Party No.2, so also general conditions for grant of pension, which is on different context, the prayer of the Petitioner to set aside the Disciplinary Proceeding dated 21.07.2012, as at Annexure-1, deserves to be allowed.

11. Mr. Padhi, learned Senior Counsel for Opposite Party No.2 fairly concedes before this Court that there is no such specific provision to continue the Disciplinary Proceeding against the Petitioner after his superannuation, even though the same was initiated prior to his retirement and such

¹ (1999) 3 SCC 666

² (2014) 7 SCC 260

³ 2022(II) OLR 848

Departmental Proceeding shall be deemed to be closed. However, he brings to the notice of this Court with regard to the clarification sought for by the Member Secretary, State Pollution Control Board, Odisha vide letter dated 07.09.2021 and the response of the Additional Secretary to Government vide communication dated 18.12.2021 (supra) and submits that the said Provisions/Regulation-7 & 8 under Chapter-II of the Pension Regulation-2011, is pertaining to payment of pension, so also withholding or withdrawal of pension and is no way related to continuance of Department Proceeding against an employee, who has attained the age of superannuation.

12. In the Case of **Bhagirathi Jena** (Supra), the apex Court in paragraph Nos.6 & 7 held as follows:

*“6. It will be noticed from the above said regulations that no specific provision was made for deducting any amount from the provident fund consequent to any misconduct determined in the departmental enquiry **nor was any provision made for continuance of departmental enquiry after superannuation.***

*7. In view of the absence of such provision in the above said regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. **There is also no provision for conducting a disciplinary enquiry after retirement of the appellant** and nor any provision stating that in case misconduct is established, a deduction could be made from*

retiral benefits. Once the appellant had retired from service on 30.6.1995, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement.”

(emphasis supplied)

13. In the Case of **Dev Prakash Tewari** (Supra), vide paragraphs-5 & 8, the apex Court held as follows:

*“5. We have carefully considered the rival submissions. The facts are not in dispute. The High Court while quashing the earlier disciplinary proceedings on the ground of violation of principles of natural justice in its order dated 10.1.2006 granted liberty to initiate the fresh inquiry in accordance with the Regulations. **The appellant who was reinstated in service on 26.4.2006 and fresh disciplinary proceeding was initiated on 7.7.2006 and while that was pending, the appellant attained the age of superannuation and retired on 31.3.2009. There is no provision in the Uttar Pradesh Co-operative Employees Service Regulations, 1975, for initiation or continuation of disciplinary proceeding after retirement of the appellant nor is there any provision stating that in case misconduct is established a deduction could be made from his retiral benefits.***

*8. **Once the appellant had retired from service on 31.3.2009, there was no authority vested with the***

respondents for continuing the disciplinary proceeding even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority it must be held that the enquiry had lapsed and the appellant was entitled to get full retiral benefits.”

(emphasis supplied)

14. The coordinate Bench in the case of **Bhagirathi Nayak** (Supra) relying on paragraph-39 of the judgment of apex Court in the case of **Chandra Singh Vrs. State of Rajasthan**, reported in AIR 2003 SC 2889 held as follows:

“Thus it is the settled position of law that once employee has superannuated, there is cessation of relationship between the employer and employee. Therefore in absence of any specific Rule as in the present case, it would not be permissible to continue the disciplinary proceeding after superannuation, even if the same was initiated during continuance of service.

15. Admitted by no provision is there in the Rules, 93 referred to herein above which envisages continuance of the department proceeding after the retirement of the incumbent. **Nor the Odisha Civil Services (Classification Control and Appeal) Rules, 1962, which is applicable mutatis mutandis to disciplinary proceeding drawn up under the Rules, 93 provide for continuance of departmental proceeding post retirement.**

15A. It is not in dispute that in the Rules 1993, there is no provision allowing the Corporation to continue with the disciplinary proceeding even after superannuation of an employee.”

(emphasis supplied)

15. In view of the factual matrix of the case at hand as detailed in the forgoing paragraphs, so also applying the law laid down detailed above, the impugned Memorandum dated 21.07.2012, as at Annexure-1 of the Writ Petition is hereby quashed.

16. Accordingly, the Writ Petition stands disposed of. No Order as to costs.



Orissa High Court, Cuttack
The 9th December, 2022 /Prasant