

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.3931 OF 2009

Kishore Chandra Samantaray ***Petitioner(s)***
Mr.A.K.Mishra,Adv.

-versus-

Orissa Power Generation Corporation, Bhubaneswar and others ***Opposite Party(s)***
Mr.D.P.Nanda,Sr.Adv.

CORAM:
JUSTICE BISWANATH RATH

ORDER
15.12.2022

Order No.

07.

1. Heard learned counsel for the Parties.
2. The Writ Petition involves the following prayer:-

“Under the circumstances, it is humbly prayed that this Hon’ble court may be pleased to issue a writ in the nature of writ of mandamus in quashing the Annexure-24, i.e. communication dated 6.9.07, Annexure-28 i.e. letter dated 7.11.08 and the order dated 21.2.09, Annexure-30 and to allow the writ petition with a direction to the Ops to give all service benefits including financial benefits retrospectively. And pass such other order/orders as the Hon’ble court may deem fit and proper in the ends of justice.

And for this act of kindness, the petitioner as in duty bound shall ever pray.”

3. Background involving the case herein is that even though the Petitioner was initially recruited to the post of Executive Assistant vide Annexure-1, subsequently on being asked to face an interview vide Annexure-2, it appears, the Petitioner being selected vide Annexure-3 on 20.03.1995 was appointed as Executive Assistant. But however for

condition at Clause-4 contended therein, Petitioner was to continue in probation for a period of one year. There is material establishing that in course of employment there has been sanctioning of annual increment starting from Annexure-7 at different level of the service of the Petitioner. Annexure-15 at page-30 of the brief also establishes that there has been granting of leave encasement and there has been also preparation of seniority list. No doubt each year seniority list is prepared and involving the Petitioner but however showing him to be a probationer. It appears, Petitioner was pursuing his remedy before the competent authority for being regularized or treating him to be regularized appears to be not the subject matter here. While continuing as such, it appears, Petitioner was finally issued with show cause notice vide Annexure-28 at running page-46 of the brief on 07.11.2008.

4. Reducing such prayer in the Writ Petition, Mr.Mishra, learned counsel for the Petitioner attempted to challenge the order at Annexure-28 and the consequential order at Annexure-30. Taking this Court to the case undertaken through para-6, Mr.Mishra, learned counsel urges once there is already a decision taken involving the issue involved therein, there is no purpose in asking the show cause response from the Petitioner. This Court finds the impugned orders are assailed only on the above aspects.

5. Mr.Nanda, learned Senior Counsel for the Opposite Parties has no scope for contesting the challenge through para-6, as para-6 in Annexure-28 is the official communication clearly contends the intension of employer on the action likely to be taken against the Petitioner. This Court here takes into consideration that for the settled position of law observing no purpose is resolved in asking the employee to show cause in the pre-decisional matters. There is no dispute on the settled position of law at Bar.

6. Keeping in view the settled position of law, this Court observes there should not have been a decision already taken in issuing the show cause notice at Annexure-28. The manner of communication vide Annexure-28 remains contrary to law and thus cannot be sustained in the eye of law and as such consequential action through Annexure-30 shall also go. As a consequence this Court setting aside the order at Annexure-28 remits the matter back to the stage prior to Annexure-28. In the event the employer is still interested to pursue such remedy is required to issue appropriate show cause notice to the Petitioner, further progress on such issue shall be in accordance with law. As a consequence taking out the communication order at Annexure-28, this Court also takes out the order at Annexure-30 being consequential on issuing of Annexure-28.

7. This Court here finds, the Petitioner is in enjoyment of interim order in disposal of Misc. Case No.3119 of 2009 in protecting the pay of the Petitioner at the time of reversion since 17.04.2009. This interim protection will be continued till a fresh decision is taken by the Management in the event any fresh cause of action arises.

8. The Writ Petition stands disposed of with the above observation and direction.

(Biswanath Rath)
Judge

Swarna