

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 2561 of 2016

Government of Odisha and Others

.....

Petitioners

Mr. A.K. Mishra, AGA

Vs.

Arun Kumar Upadhyay and Others

.....

Opposite Parties

Mr. P.K. Parhi, ASGI

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE S.K. MISHRA

ORDER

04.08.2022

Order No.

05

This matter is taken up through hybrid mode.

2. Heard Mr. A.K. Mishra, learned Additional Government Advocate for the Petitioner.

3. The sole question emerges to be considered by this Court, whether the Tribunal is justified in directing the Disciplinary Authority to complete the proceeding within a particular time, failing which the charges would be deemed to have been quashed ?

4. Mr. A.K. Mishra, learned Additional Government Advocate for the Petitioner contended that the direction of the Tribunal is not legally tenable and in support of his contention, has relied upon the judgment of a Division Bench of this Court in *State of Orissa v. Sri Balabhadra Jal*, 2015(I) OLR 537, wherein this Court has formulated the question in paragraph-10 of the said Judgment and also answered the same in paragraph-11 relying upon the judgment of the apex Court in *Secretary, Min. of Defence and others v. Prabash Chandra Mirdha*, (2012) 11 SCC 565 and has come to a conclusion in paragraph-12 to the following effect.

“12. On the anvil of the decision cited supra, we have examined the present case. The opposite party has not challenged the charge-sheet on the ground that the authority issuing the same is not competent to initiate the disciplinary

proceeding. A disciplinary proceeding is not liable to be quashed on the ground that the proceeding had been initiated as a belated stage or could not be concluded in a reasonable period, unless the delay creates prejudice to the delinquent employee. While passing the order, the learned Tribunal has not kept the aforesaid principles in view. In view of the same, we are of the opinion that the order dated 22.03.2001 passed by the learned Tribunal in O.A.No.320 of 2001 is not in consonance with law. The learned Tribunal travelled beyond its jurisdiction in passing the order.”

5. Since this Court has already decided the question, nothing remains to be adjudicated in the present case. While endorsing the finding of this Court in ***Balabhadra Jal*** (supra), this Court also takes similar view in this writ petition. Accordingly, the order dated 22.01.2014 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.320 of 2010 cannot sustain in the eye of law and the same is liable to be quashed and is hereby quashed. Therefore, this Court directs the Petitioner to take necessary steps in accordance with law.

6. With the above observation & direction, the Writ Petition stands disposed of.

7. Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

(S.K. MISHRA)
JUDGE