

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.2276 of 2005

In the matter of an application under Section 19 of the
Administrative Tribunal Act, 1985.

.....

Jaya Chandra Sahu

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s.J.K.Mishra-2.

For Opp. Parties : Standing Counsel
Mr. M.K.Balabantaray.

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

संस्थानिक न्यायो

Date of Hearing: 05.05.2022 and Date of Order:12.05.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. J.K.Mishra-2, learned counsel for the Petitioner and Mr. M.K. Balabantaray, learned counsel for the State-Opposite Parties.
3. The Petitioner is aggrieved by the stipulation contained in the order of reinstatement passed on 10.08.2005 under Annexure-3, wherein it was indicated

that the period of suspension will be decided after finalization of the vigilance case.

4. The Petitioner while challenging such contention has also prayed for payment of full salary and other service benefits for the period, he remained under suspension i.e. 01.08.2003 to 19.08.2005 and to regularize his service for the said period.

5. It is submitted by Mishra, learned counsel for the Petitioner that vide order dated 31.07.2003 under Annexure-1, the Petitioner was placed under suspension because of his implication in Cuttack Vigilance P.S. Case No.17 of 2003. He further submitted that after being placed under suspension vide order under Annexure-1, when no action was taken to release the subsistence allowance @ 75% of the Basic Pay from 09.08.2004 and consider his case for reinstatement, the Petitioner approached learned Tribunal in O.A No.2586 (C) of 2004. Learned Tribunal vide order dated 06.04.2005 under Annexure-2 directed the Opposite Parties to consider the said grievance of the Petitioner.

6. It is submitted that pursuant to the said order passed under Annexure-2, the Petitioner though was reinstated vide order dated 10.08.2005 under Annexure-3, but in the said order it was indicated that the period of suspension will be decided after finalization of the above vigilance case in Cuttack Vigilance P.S. Case No.17 of 2003.

7. It is also submitted that subsequent to his reinstatement as per the order dated 10.08.2005, the Petitioner vide office order dated 19.08.2005 was relieved

from the establishment of Special Land Acquisition, Rehabilitation and Resettlement Officer, Rengali Irrigation Project, Baghuaboli, Talcher and the Petitioner was placed at the disposal of the Revenue Department. The Petitioner accordingly submitted his joining before the Department on 22.08.2005 under Annexure-6. But it is submitted that since the Petitioner was kept under suspension for the period from 01.08.2003 to 19.08.2005, the stipulation contained in the order under Annexure-3 that the period of suspension will be decided after finalization of the vigilance case is illegal.

8. Mr. Mishra accordingly while praying for a direction on the Opposite Parties to pay the full salary for the aforesaid period from 01.08.2003 to 19.08.2005, also brought to the notice of this Court the communication made by the Office of Director-cum-Addl. D.G. and I.G. of Police, Vigilance dated 23.11.2012, wherein it was indicated that no sanction was accorded by the Government to prosecute the Petitioner in Cuttack Vigilance P.S. Case No.17 of 2003.

9. Mr. Mishra, also brought to the notice of this Court, the order dated 24.04.2013 passed by the learned Special Judge, Vigilance, Cuttack in T.R. No.18/2009 arising out of Cuttack Vigilance P.S. Case No.17/2003, wherein the learned Vigilance Judge, framed charges against four no's of accused persons, which does not include the present Petitioner.

10. It is accordingly submitted that since the Government did not accord sanction to prosecute the Petitioner in the

aforesaid Cuttack Vigilance P.S. Case No.17 of 2003, the period for which the Petitioner was kept under suspension is to be treated as duty and the Petitioner be paid full salary for the said period.

11. Mr. Mishra in support of his aforesaid stand relied on the decision of this Court passed on 02.04.2009 in W.P.(C) No.2331 of 2002. This Court in the said case while dealing with a similar issue, directs for payment of the differential salary for the period, the Petitioner therein was kept under suspension.

12. Mr. Mishra also brought to the notice of this Court another decision of this Court reported in Vol-47, 1979 CLT-24. This Court relying on the provision contained under Rule-91 of the Orissa Service Code held that if an employee is not put under suspension in a disciplinary proceeding and no order has been passed continuing the suspension after his acquittal in the criminal case on account of the pendency of the Disciplinary Proceeding, the direction to treat the period of suspension as such cannot be accepted.

13. Mr. Mishra also relied on another decision of the learned Orissa Administrative Tribunal, Bhubaneswar reported in 1998 (1) ATT (OAT)-193. In the said decision, learned Tribunal relying on a circular issued by the Chief Secretary on 13.03.1991 held that the period of suspension should not ordinarily exceed six months from the date of framing of charges.

14. Mr. Mishra, accordingly submitted that the Petitioner

is entitled for full salary for the period he remained under suspension i.e. from 01.08.2003 to 19.08.2005.

15. Mr. Balabantaray, learned Standing Counsel appearing for the Opposite Parties made his submission relying on the stand taken in the counter affidavit. Learned Standing Counsel submitted that because of his involvement in Cuttack Vigilance P.S. Case No.17 of 2003, the Petitioner was placed under suspension and the Petitioner was reinstated vide order dated 10.08.2005.

16. It is also submitted that after his reinstatement, the Petitioner filed O.A. No.2022(C) of 2006 before learned Tribunal praying for payment of full salary and other service benefits for the entire suspension period.

17. It is submitted that basing on the order passed by the learned Tribunal in the said O.A., the matter was consulted with the Law Department and ultimately it was decided vide order dated 16.03.2007 under Annexure-A to the counter that when the vigilance case is pending before competent Court for trial, the period of suspension will be decided by the competent authority after conclusion of the trial.

18. It is accordingly submitted that in view of such order passed on 16.03.2007, the Petitioner is not entitled to get full salary for the period he remained under suspension.

19. Heard learned counsel for the Parties at length.

20. Perused the materials available on record. It is not disputed by either of the Parties that the Petitioner was placed under suspension due to his implication in Cuttack Vigilance P.S. Case No.17 of 2003.

21. It is also not disputed that while reinstating the Petitioner vide order dated 10.08.2005 under Annexure-3, it was decided to treat the suspension period after finalization of the vigilance case. But in view of the fact that no sanction was accorded by the Government to prosecute the Petitioner in the aforesaid Cuttack Vigilance P.S. Case No.17 of 2003, the Petitioner was never charged to face the trial. The said fact is also reflected in the order dated 24.04.2013 passed by the learned Special Judge, Cuttack in T.R. Case No.18/2009 arising out of Cuttack Vigilance P.S. Case No.17 of 2003. Not only that in the order dated 16.03.2007 under Annexure-A to the counter, it was also indicated that the period of suspension will be considered after conclusion of the trial of the vigilance case. Since the Government on its own did not accord sanction to prosecute the Petitioner in the aforesaid Cuttack Vigilance P.S. Case No.17 of 2003, the action of the Opposite Parties in not releasing the full salary for the period the Petitioner remained under suspension, as per the considered view of this Court is illegal. The claim of the Petitioner is also covered by the decision relied on by the Petitioner and as cited (supra).

22. Accordingly, while allowing the Writ Petition, this Court directs the Opposite Parties to sanction and disburse the differential salary as due and admissible for the period, the Petitioner remained under suspension i.e. 01.08.2003 to 19.08.2005. It is directed that the said benefit shall be disbursed in favour of the Petitioner within a period of three months from the date of receipt of this order.

23. With the aforesaid observations and directions, the WPC(OAC) stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 12th of May, 2022/Subrat

