

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.15446 of 2022

Premananda Barik

.... Petitioner
Dr. J.K. Lenka, Advocate

-versus-

State of Odisha and others

.... Opposite Parties
Mr. Y.S.P. Babu, A.G.A.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

04.07.2022

Order No.

02.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).

Learned counsel for the petitioner is permitted to make necessary corrections in the cause-title of the writ petition in Court today.

2. Heard learned counsel for the petitioner as well as learned counsel for the State. Perused the record.

3. The present writ petition has been filed by the Petitioner with the following prayer:-

“The petitioner, therefore, most humbly prays that your Lordship would be graciously pleased to issue a Rule NISI calling upon the Opp. Parties to show cause as to why the suspension order No.2265 dt.13.6.2022 at Annexure-4 issued by the Opp. Party No.3 should not be quashed with all consequential and financial benefits;

And as to why the Opp. Party No.3 should not be directed to reinstate the petitioner and to treat the period of suspension till actual re-instatement as duty

with all consequential and financial benefits;

And issue any other order or orders as this Hon'ble court deem fit and proper;"

4. It is submitted by learned counsel for the petitioner that the petitioner is working as a Junior Clerk under Work-charged establishment since 31.03.2009. While working as such, he was taken to work charged establishment pursuant to Government order dated 18.08.2009. The fact stated as follows:-

“While continue as Junior Clerk work-charged establishment under erstwhile Executive Engineer, P.H. Division-II, Cuttack now renamed as Superintending Engineer, P.H. division, Cuttack, the Addl. Chief Engineer, Public Health Circle, Cuttack (O.P. No.3) under letter No.2247 dt. 13.06.2022 vide Annexure-2 transferred/deployed the petitioner to P.H. Division, Angul on administrative ground in the greater interest of Govt. service.”

5. It is further submitted by learned counsel for the petitioner that while the petitioner was working as work-charged establishment, he was transfer to another establishment. Against such action, he had filed a representation before the competent authority. While such representation is pending, the petitioner was placed on suspension without any rhyme vide order No.2265 dated 13.06.2022 under Annexure-4 passed by the Opposite Party No.3. The only ground it appears in the letter dated 13.06.2022 that the petitioner disobeyed the transfer/deployment order which has been placed on record. It is also submitted by learned counsel for the petitioner that the petitioner has been engaged in the work-charged establishment, therefore, he is not a Government employee. Therefore, the authorities have committed an error by following rule 12 of the 1962 Rules to place the petitioner under suspension. In support of the

contention, learned counsel relied upon the judgment of this Court rendered in the case of *Adikanda Jena vrs. State of Orissa and Ors.* Decided on 24.08.1989. Referring of such judgment, learned counsel for the petitioner submits that the authorities could not have placed the petitioner under suspension as the same is not permissible under Rule 11 para-6 of the said judgment, which is quoted herein below:-

“It being thus the conclusion that the suspensions were ordered only in accordance with the provisions of Rule 12(2) of the 1962 rules the Petitioners having been detained in Jail custody for more than forty-eight hours, it is to be seen as to how far such Rules are applicable to the Petitioners. As a matter of fact, the learned Counsel appearing for the opposite parties candidly admitted the Rules to have no application to the staff of the aided educational institutions. There is also otherwise no provision in the conditions of service of the Petitioner making them liable to be placed under suspension if they are detained in jail custody for more than forty-eight hours in connection with any criminal case. The advise/approval of the opposite party No.2 of 5-5-1989 to the suspension of the Petitioners being under the impression that the Rules are applicable to them was thus misconceived and the resolution placing the Petitioners under suspension being exclusively based upon such view of opposite party No.2 is equally vulnerable and cannot be sustained. The Petitioners being employees of, an aided educational institution are not ipso facto Government servants are not otherwise applicable to them.”

6. Learned counsel for the State, on the other hand, submits that it is open for the parties to take disciplinary proceeding against the petitioner. However, he does not dispute the proposition as has been laid down by this court in the above judgment in the case of *Adikanda Jena* (Supra).

6. Having heard learned counsel for the respective parties,

considering the submissions advanced, upon perusal of record, this Court, is of the considered view that the order under Annexure-4 is unsustainable and the same is set aside. Further it is directed that the representation under Annexure-5 pending before the Opposite Party No.3 be considered by taking into account Annexure-7 and dispose of the representation in accordance with law within two months from the date of production of certified copy of this order. Any decision so taken on the said representation shall be communicated to the petitioner within a period of two weeks thereafter.

7. With the aforesaid observation/direction the writ petition stands disposed of.

Urgent certified copy of this order be granted on proper application.

Jagabandhu

