

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 13137 of 2015

State of Orissa and another

.....

Petitioners

Mr. A.K. Mishra, AGA

Vs.

Artabandhu Samal and others

.....

Opposite Parties

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE S.K. MISHRA

ORDER

22.06.2022

Order No.

05.

This matter is taken up through hybrid mode.

2. Heard Mr. A.K. Mishra, learned Addl. Government Advocate for the State.

3. The petitioners have filed this writ petition to quash the judgment dated 20.02.2015 passed in O.A No.1269 of 2009, by which the State Administrative Tribunal, Bhubaneswar quashed the order dated 19.09.2009 passed by petitioner no.1 rejecting the representation of opposite party No.1 in compliance of the order passed by the Tribunal in O.A. No.2013 of 1995 and directed the petitioners to refund the recovered amount to opposite party no.1 with 6% interest, as directed in the earlier O.A., within a period of four months from the date of receipt of the order.

4. Mr. A.K. Mishra, learned Addl. Government Advocate contended that by quashing Annexure-3 dated 19.09.2009 to the O.A., by which the representation of opposite party no.1 was rejected, the Tribunal has committed an error. Therefore, interference of this Court is warranted.

5. Having heard learned Addl. Government Advocate and after going through the records, it appears that earlier opposite party No.1 had approached the Tribunal by filing O.A. No.2013 of

1995 challenging the order dated 23.05.1995 passed by the Government in Forest and Environment Department calling upon him to show cause as to why the proposed punishment of reduction of Rs.100/- per month for ten years should not be imposed upon him and the order dated 10.06.1996 of the Government of Orissa in Forest & Environment Department imposing penalty of reduction of Rs.100/- from the pension of opposite party No.1 under Rule 7 (2) of the OCS (Pension) Rules, 1992 for 10 years in a departmental proceeding initiated against him alleging that undue favour was shown to the forest contractor, who happened to be his relative, in violation of Rule-18 of Orissa Government Servants Conduct Rule, 1959. The said Original Application was disposed of on 13.04.2009 by a Division Bench of the Tribunal setting aside the order in Annexures- 6 and 12 to the O.A. and granting liberty to opposite party No.1 to file a fresh representation within one month ventilating his grievances as to how he was prejudiced because of non supply of inquiry report at the appropriate time including the disciplinary authority came to a conclusion regarding guilt and punishment. It was further directed that on receipt of representation, the authority shall apply his mind afresh on the facts and circumstances of the case on the basis of record of disciplinary proceeding, the new representation and arrive at a conclusion within a month thereafter through a speaking order regarding his findings about the guilt or otherwise of opposite party No.1. On the basis of such findings, the authority may decide question of punishment, if any, to be awarded to opposite party No.1 and it was also directed that in case of any decision favorable to opposite party no.1, the recovered/balance

amount as already effected may be refunded to him forthwith with 6% interest.

6. In compliance of the said order, opposite party No.1 filed a representation on 10.05.2009 stating that he was prejudiced because no counter affidavit was filed in the O.A. and also contended that no financial loss was caused to the Government as per the findings of the enquiry and the auction was conducted in a perfect manner as per report of the Inquiry Officer. The authority, without application of mind, rejected the representation of opposite party No.1 vide order dated 19.09.2009. It is further contended that the impugned order dated 19.09.2009 passed by the Commissioner-cum-Secretary to Government, Forest & Environment Department, Odisha rejecting representation of opposite party no.1 is without jurisdiction and the order of Governor i.e. concerned Minister in-charge has not been obtained in the case. Therefore, opposite party No.1 prayed to the Tribunal for quashing the order dated 19.09.2009 in Annexure-3 to the O.A. and the petitioners were also directed to refund the entire amount deducted from his retiral dues along with interest @ 6%.

7. Petitioner No.1 filed counter affidavit before the Tribunal and after going through the same, the Tribunal found that opposite party No.1 retired from Government service as a Divisional Forest Officer on 31.10.1993 and in a departmental proceeding, which was initiated against opposite party No.1 on the ground of showing undue favour to the forest contractor, who happened to be his relative in violation of Rule-18 of Orissa Government Servants Conduct Rules, 1959, he was punished with reduction of Rs.100/- from pension under Rule 7(2) of the OCS (Pension)

Rules for 10 years.

8. For redressal of his grievances, opposite party No.1 filed O.A. No.2013 of 1995 before the Tribunal challenging the proposed penalty. The Tribunal came to a conclusion that petitioner No.1 simply rejected the representation of opposite party No.1 without deciding the question of punishment, if any, to be awarded to opposite party No.1. After rejection of the representation of opposite party No.1, petitioner no.1 should have taken follow up action by issuing notice on the proposed punishment to be awarded in favour of opposite party no.1. But, no such punishment order was passed by the authority after disposal of the representation of opposite party No.1. It is also held that after rejection of the representation of opposite party No.1 neither any show cause notice was issued to opposite party No.1 nor fresh order of punishment was passed. It is further held that since the punishment order dated 10.06.1996 has already been set aside by the Tribunal in O.A. No.2013 of 1995, no order of punishment remains for implementation. As such, there is no merit in the order passed by the authority, as it does not contain the question of punishment to be awarded to opposite party No.1 violating the order of the Tribunal passed in O.A. No.2013 of 1995 on 13.04.2009. As a consequence thereof, the Tribunal quashed the order dated 19.09.2009 rejecting the representation of opposite party no.1 by petitioner no.1 directing the petitioners to refund the recovered amount to opposite party No.1 with 6% interest as directed in earlier O.A. and comply with the order within a period of four months.

9. As it appears, the writ petition was filed on 17.07.2015 with

defect and direction was issued to learned counsel for the petitioner to remove the defect within one week. The same was removed and matter was listed on 20.04.2022. On that date, adjournment was sought by the State Counsel. Accordingly, the matter was adjourned for a period of two weeks. Thereafter, when the matter was listed on 10.05.2022, the State Counsel sought for time to bring the records of the Original application filed before the Tribunal.

10. Today, when the matter was taken up, learned State Counsel prayed for time. Since the matter is of the year 2015 and till date no notice has been issued and as such, more than 7 years have passed in the meantime and opposite party no.1, against whom the order of punishment was passed, that has been quashed by virtue of order passed by the Tribunal and direction has been issued for refund the recovered amount to opposite party no.1 within a period of four months, this Court is not inclined to interfere with the order impugned.

11. Accordingly, the writ petition merits no consideration and the same is dismissed. However, this Court directs the petitioners to comply with the order dated 20.02.2015 passed by the Tribunal in O.A. No.1269/2009 within a period of three months from the date of production/communication of this judgment.

(DR. B.R. SARANGI)
JUDGE

(S.K. MISHRA)
JUDGE

