

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) NO.546 of 2015

Abhiram Das

.... **Petitioner**
Mr. D. Mohapatra, Adv.

-versus-

State of Orissa & Others

.... **Opposite Parties**
State Counsel

CORAM:
JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER
30.08.2023

Order No

- 11.** 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard Mr. D. Mohapatra, learned counsel appearing for the Petitioner and Mr. M.K. Balabantaray, learned Additional Government Advocate.
3. The Petitioner has filed the present Writ Petition challenging the order dt.02.04.2014 so passed by Opp. Party No.4 under Annexure-16.
4. It is contended that in the proceeding so initiated against the Petitioner vide Proceeding No.1 of 2004, with order of punishment of dismissal was passed and it was upheld in the appeal. The Petitioner challenging both the orders approached the Tribunal in OA No.2681(C) of 2006. The Tribunal vide its order dt.22.01.2013 while quashing both the orders remitted the matter to the Disciplinary Authority i.e. Opp. Part No.4 with the following observation.

“The matter is remitted back to the disciplinary authority i.e. Respondent No.3, who shall be at liberty to impose any punishment on the applicant other than dismissal, removal or compulsory retirement. The applicant be reinstated in service.

It is however, made clear that he shall not be entitled to arrears of salary for the period from the date of his dismissal till the date of his reinstatement.

Respondent NO.3 is directed to take the final decision, within a period of two months from the date of receipt of a copy of this order.”

4.1. Learned counsel for the Petitioner contended that in the order passed by the Tribunal, since it was observed that Petitioner will not be entitled to the arrear salary for the period from the date of dismissal till his reinstatement, the same was challenged before this Court in W.P.(C) No.16277 of 2013. This Court vide order dt.05.08.2013 while disposing the matter issued the following clarification.

“We are of the view that when the learned Tribunal remitted the matter back to the disciplinary authority granting liberty to the respondent No.3 to impose any punishment on the applicant other than dismissal, removal or compulsory retirement, it should not have directed for non-payment of salary for the period for which the petitioner was out of service on account of the punishment of dismissal.

We, therefore, delete the said portion from the impugned order with a further direction that the entitlement of the Petitioner to the salary for the period from the date of his dismissal till the date of reinstatement, shall be subject to the result of the disciplinary proceeding.”

4.2. It is contended that in terms of the order passed by the Tribunal so modified by this Court, the Proceeding in question was reopened vide order dt.08.07.2013 under Annexure-C/5 to the counter. As further revealed from Annexure-C/9, in the said proceeding after issuance of the 1st show-cause, punishment of one “Black Mark” was proposed vide the 2nd show-cause issued on dt.22.12.2014.

Ultimately, the proceeding was disposed of vide order under Annexure-C/10 by imposing one "Black Mark" against the Petitioner. In the said order, while disposing the proceeding, nothing was indicated as to how the period from the date of dismissal till reinstatement will be considered. The order at Annexure-C/10 as reflected from the counter was passed on 15.04.2015.

4.3. But the impugned order which is assailed by the Petitioner in the present Writ Petition was passed on 02.04.2014 i.e. prior to disposal of the proceeding on 15.04.2015. It is accordingly contended that since pursuant to the order passed by the Tribunal, the matter was remitted and the Disciplinary Authority-Opp. Party No.4 passed the order of punishment on 15.04.2015 vide Annexure-C/10 to the counter, the period i.e. date of dismissal till reinstatement should not have been treated as No-pay vide order dt.02.04.2014 under Annexure-16 i.e. prior to disposal of the proceeding. The said action of the Opp. Party No.4 is not legal and justified as this Court in its order dt.05.08.2013 had clearly directed that the period from the date of dismissal till the date of re-instatement shall be subject to the result of the disciplinary proceeding. It is accordingly contended that the impugned order dt.02.04.2014 is not sustainable in the eye of law.

5. Mr. M.K. Balabantaray, learned Addl. Government Advocate made his submission basing on the stand taken in the counter affidavit. Learned counsel for the State though supported the impugned order, but fairly contended that the order at Annexure-16 has been passed by the Opp. party No.4 prior to the disposal of the proceeding on being remanded by the Tribunal vide order dt.22.01.2013.

6. Having heard learned counsel for the parties and considering the submissions made, this Court finds that the matter on being remanded by the Tribunal vide its order dt.22.01.2013, so modified by this Court vide order dt. 05.08.2013 in W.P.(C) No.16277 of 2013, the proceeding was reopened on 08.07.2013. Therefore, prior to disposal of the proceeding with passing of an order on 15.04.2015 under Annexure-C/10, the period i.e. from the date of dismissal till re-instatement should not have been decided, as has been decided vide the impugned order dt.02.04.2014 under Annexure-16.

In view of such material irregularity so found in the impugned order, this Court is inclined to quash the same. While quashing the same, this Court remits the matter to Opp. party No.4 to take a fresh decision with regard to treating the period from the date of dismissal till reinstatement of the Petitioner. Such a fresh decision shall be taken, as provided under law, within a period of three (3) months from the date of receipt of this order.

The Writ Petition is accordingly disposed of.

(Biraja Prasanna Satapathy)
Judge

sangita

Signature Not Verified

Digitally Signed
Signed by: SANGITA PATRA
Reason: authentication of order
Location: high court of orissa, cuttack
Date: 01-Sep-2023 17:55:58

