

IN THE HIGH COURT OF ORISSA AT CUTTACK

RVWPET (RPC) No.1223 of 2015

Akshaya Kumar Das

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

COROM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

16.08.2022

Order No

6.

1. This matter is taken up through Hybrid Mode.

2. Heard Mr. Ullash Chandra Mohanty, learned counsel appearing for the petitioner and Mr. M. Balabantaray, learned Standing Counsel for the State-Opp. Parties.

3. This Review petition has been filed seeking review of the order dated 28.9.2015.

4. It is submitted that OA No.2941(C) of 1998 was filed before the learned Tribunal with the following prayer.

- (i) *The order under Annexures-6 and 9 be quashed.*
- (ii) *The Respondents be directed to reinstate the applicant in his post with all financial benefits.*

5. Mr. Mohanty, learned counsel appearing for the petitioner submitted that the petitioner while continuing in OSAP, 6th Bn., Cuttack, a criminal proceeding as well as a disciplinary proceeding was

initiated against the petitioner for the self-same charges. It is submitted that in the proceeding initiated on 7.8.1995, the following charges were framed against the petitioner.

C H A R G E

“S/394 Akhaya Kumar Das of ‘C’ Coy, OCAP, 6th Bn. Cuttack is charged with gross misconduct for plural marriage, violating Section 24(2) of Orissa Govt. Servants Conduct Rules in that :-

He married Smt. Binapani Mohanty, D/o late Jogendranath Mohanty of Village-Nahikipada in “CHANDI MANDIR” ON 28.12.94 and remained with her in the rented house of Sri Bijaya Kumar Mishra of Aparnanagar till 15.2.95 as husband and wife.

He again married Smt. Madhusmita, D/O-Late Rabindranarayan Parina of Tentuliapada Kulasahi, Dist-Jagatsinghpur on 24.2.95 violating Govt. Servants Conduct Rules 24(2), where his first wife was living and he had not divorced her.

He is directed to show cause by 5.9.95 as to why suitable departmental action shall not be taken against him in the event of the charges being held to be proved against him.

Any representation that he wishes to make in this regard will be duly considered by the authority competent to pass final orders before passing such order”.

6. It is submitted that though the petitioner submitted his reply to the said charges, but the Disciplinary authority when passed the order of punishment under Annexure-6 and the same was confirmed by the appellate authority vide order under Annexure-9, Petitioner challenging both the orders filed the Original Application. It is further submitted that during pendency of the Original Application, the petitioner was acquitted in the Criminal Proceeding and the factum of his acquittal in the criminal proceeding in

G.R. Case No.701 of 1995 was brought to the notice of the learned Tribunal while dealing with the matter. But the learned Tribunal without proper appreciation of the same passed the impugned order dated 28.9.2015 by holding the petitioner guilty of the charges and refusing to interfere with the impugned order passed under Annexures-6 & 9. Mr. Mohanty, learned counsel for the petitioner submitted that since the disciplinary proceeding as well as the criminal proceeding stand on the self-same charges, in view of the acquittal of the petitioner in the criminal proceeding, no order of punishment could have been passed in the Departmental Proceeding and learned Tribunal should have interfered with the same.

7. Mr. M. Balabantaray, learned Standing Counsel on the other hand submitted that even though the charges in both the proceedings are similar but the disciplinary authority is free to take his own view and learned Tribunal has rightly passed the order under review.

8. Heard learned counsel for the parties. Perused the materials available on record.

9. This Court after going through the same finds that the charges against the petitioner under Annexure-1 was framed because of his alleged marriage for the second time and thereby the conduct of the petitioner violates Rule 24 (2) of the Orissa Government Servant Conduct Rules. This Court after going through the judgment dated 19.5.2012 passed in G.R. Case No.701 of 1995 finds that the charge against the petitioner regarding the alleged

marriage for the second time has not been proved and the petitioner was not found guilty for the offence under Section 498-A/494/34 of the I.P.C and Section 4 of the D.P. Act. In view of his acquittal in the Criminal Proceeding, the order of punishment passed by the disciplinary authority for self-same charges as per the considered view of this Court should have been interfered with by the learned Tribunal. Learned Tribunal though discussed the question of acquittal, but dismissed the Original Application vide order dt.28.9.2015, this Court deems it fit and proper to set aside the order dated 28.9.2015 passed by the learned Tribunal and allows the Review Petition.

10. With the aforesaid observation, the RVWPET(RPC) is disposed of.

11. Since this Court allows the Review Petition, Office is directed to register the O.A. No.2941(C) of 1998 as Writ Petition and place the same before the assigned Bench.

(Biraja Prasanna Satapathy)
Judge

Sangita