

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C)(OAC) No.14 of 2014

Ajit Kumar Jena

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

03.02.2023

Order No

- 04.** 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard Mr. Gopal Sinha, learned counsel for the Petitioner and Mr. M.K. Balabantaray, learned Addl. Govt. Advocate appearing for the Opp. Parties.
3. The present writ petition has been filed challenging the order of removal passed against the Petitioner on 09.11.2012 by the Govt. in the Department of Health & Family Welfare under Annexure-14.
4. Learned counsel for the Petitioner contended that in the proceeding initiated under Rule 15 of the OCS (CCA) Rules on 24.01.2001 under Annexure-1 & 2 the Petitioner was never supplied with the documents enabling him to file his reply. Without supplying him the documents and without disclosing the names of the witnesses to be examined, the Disciplinary Authority appointed the Enquiry Officer and Marshalling Officer vide order dtd.11.09.300 under Annexure-5. After completion of the enquiry the enquiry report was submitted on 15.01.2002 under Annexure-6

and the Petitioner submitted his explanation to the said report after being asked to vide Annexure-7 on 06.05.2003 under Annexure-8. It is also contended that on 29.12.2003 the Petitioner filed a representation seeking to take voluntary retirement from his service under Annexure-9. It is also brought to the notice of this Court that vide letter dtd.02.07.2004 and 01.12.2004 under Annexure-10 & 11 though the Principal, VSS Medical College, Burla was asked by the Govt. to appear on 22.12.2004 for de novo enquiry, but the Principal never appeared and accordingly no further enquiry could be conducted.

5. While the matter stood thus only on dt.20.07.2012, from a paper publication vide Annexure-12, the Petitioner could know that the Govt. is proposing to remove him from service under Rule 15 of the OCS (CCA) Rules, 1962. Though the Petitioner submitted a reply to the same on 07.08.2012 under Annexure-13, but the Disciplinary Authority passed the order of removal vide the impugned order on 09.11.2012 under Annexure-14. It is accordingly contended that since the provisions contained under Rule 15 was never followed, the order of punishment so passed against the Petitioner is not sustainable in the eye of law.

6. Mr. Balabantaray, learned AGA on instruction contended that the Petitioner remained on leave w.e.f.21.12.1997 by applying leave application on medical ground and remained on unauthorized absent from 26.01.2000. Because of that he was initially placed under suspension vide Govt. order dtd.27.07.2000. Subsequently, though the Petitioner was reinstated in his service vide Govt. order No. 8292/H dtd.28.02.2001 pending finalization of the Disciplinary Proceeding, but the Petitioner never joined in his duty even after his

reinstatement. Since the Petitioner remained on unauthorized leave w.e.f.26.01.2000 and never availed the benefit of rejoining in terms of the order of reinstatement passed on 28.02.2001, no illegality or irregularity has been committed by the Disciplinary Authority-O.P. No. 1 in passing the order of removal. Accordingly, it is contended that no interference is called for.

7. To the aforesaid submission made by Mr. Balabantaray, learned AGA, learned counsel for the Petitioner contended that subsequent to his reinstatement vide order dtd.28.02.2001, the Petitioner when submitted his joining, the same was never accepted and accordingly he could not join in his post. It is also contended that pursuant to the letter issued under Annexure-10 & 11 the Petitioner though appeared before the Govt for de novo enquiry, but the Principal, VSS Medical College & Hospital never appeared. Without causing de novo enquiry, the order of punishment has been passed basing on the enquiry report and other materials.

8. Having heard learned counsel for the Parties and after going through the materials available on record, this Court finds that there are serious disputes with regard to joining of the Petitioner on his reinstatement vide order dtd.28.02.2001. Not only that there is also dispute with regard to appearance of the Petitioner before the authority in terms of letter issued under Annexure-10 & 11. In view of such disputed question, this Court is not inclined to entertain the prayer. However, this Court taking into account the provision contained under Rule 31 of the OCS (CCA) Rules, 1962, grants liberty to the Petitioner to file a review application before the Hon'ble Governor against the order of punishment. It is observed that if any such review application is filed within a period of two

(2) weeks from today, the same shall be entertained and decided on merit by the Hon'ble Governor.

9. The writ petition is disposed of with the aforesaid observation and direction.

(Biraja Prasanna Satapathy)
Judge

Sneha

