

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No. 1457 of 2014

An application under Articles 226 & 227 of Constitution of India.

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Rajib Lochan Biswal

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Petitioner

-Versus-

State of Odisha & others

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Opp. Parties

Advocate(s) appeared in this case:-

For Petitioner : M/s.G.R. Sethi, J.K. Digal,
Ms. B.K. Pattnaik,
P.S. Nayak, Advocates

For Opp. Parties : Mr. N.K. Praharaj,
Govt. Advocate.

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

08th August, 2022

SASHIKANTA MISHRA, J.

The petitioner was engaged as a Junior Engineer on 16.05.2011 for a period of one year which came to be renewed from time to time. The last such agreement of renewal was made on 1st May 2014. While working as such, an FIR was lodged against him alleging

possession of disproportionate assets vide Koraput Vigilance P.S. Case No. 39/2013 under section 13(2) read with section 13 (1)(e) of the P.C. Act 1988 and Section 34 of the IPC. The petitioner was called upon to submit show cause vide letter dated 21.9.2013 to which, he submitted his reply on 30.10.2013 denying the allegations. Originally the petitioner was engaged under the Water Resources Department but his services were placed under the ST/SC Department vide order dated 16.5.2011. By order dated 04.11.2013, the petitioner was reverted to the office of the EIC, Water Resources Department, Odisha. By order dated 13.11.2013, the petitioner was posted under the control of Chief Engineer, Lower Indra and Lower Suktel Irrigation Project, Nuapada in which he joined on 04.11.2013. Subsequently, the said order was modified and the petitioner was reposted under the control of Chief Engineer, Lower Indra Circle, Khariar in which he joined on 15.11.2013. While the matter should thus, the Government vide order dated 23.4.2014 directed the EIC, Water Resources Department, Odisha to terminate the services of the petitioner in terms of the conditions of

contractual service as indicated in the agreement at Clause-9. The said order is enclosed to the writ petition as Annexure-7. Pursuant to such order, the opposite party No.2 issued an order on 1.5.2014 terminating the services of the petitioner which is enclosed as Annexure-8. Being aggrieved, the petitioner approached the erstwhile Odisha Administrative Tribunal in O.A. No. 1457(C) of 2014, which has since been transferred to this Court and registered as the instant writ application. The petitioner claims the following relief:

“In view of the facts stated above in Para-6, the applicant prays for the following relief(s);

i) To quash the order dated 23.04.2014 under Annexure-7.

ii) To quash the order dated 01.05.2014 under Annexure-8

iii) To direct the respondents to allow the applicant to continue in his present place of posting.

iv) And pass such order/orders as may be deemed fit and proper.”

2. Counter affidavit has been filed by the opposite parties refuting the averments of the writ application. It is basically contended that the petitioner failed to maintain absolute integrity which is evident from his involvement in the criminal case. Further, the petitioner being engaged as a contractual Junior Engineer, the services are governed

under the clauses of the agreement executed by him and the Government. Since he was arrested by the Vigilance Department for possession of disproportionate assets to his known sources of income, the Government in Department of Water Resources decided to terminate his services as he had violated Para 9 of the agreement.

3. The petitioner filed rejoinder to the counter affidavit stating that Clause-9 of the agreement cannot be invoked in his case because mere involvement in the criminal case cannot amount to misconduct more so as charge sheet had not been filed in the said case.

4. Heard Miss Babita Kumari Pattnaik, learned counsel for the petitioner and Mr. N.K. Praharaj, learned Government Advocate appearing for the state.

5. It is argued by Miss Pattnaik that the action of the opposite party authorities in terminating the services of the petitioner merely because of his involvement in the criminal case cannot be sustained in the eye of law. Moreover, charge sheet had not been submitted at the time of passing of the impugned order. It is further argued that Clause 9 of the agreement refers to misconduct and

has also been defined therein. Involvement in a criminal case cannot be treated as misconduct within the meaning of Clause-9 of the agreement.

6. Per contra, Mr. N.K. Praharaj argues that the petitioner was a contractual employee and therefore cannot claim the status of a regular employee of the State Government. He was bound by the terms and conditions of the agreement which he had willfully executed with the Government at the time of his engagement. As such, he was bound to honour the said terms and conditions. The said agreement confers power on the employer to terminate his services in case of misconduct on his part. Therefore the action of the authorities cannot be questioned.

7. The facts of the case are not disputed. The petitioner does not dispute that he was involved in a Vigilance Case for possessing assets disproportionate to his known sources of income. It is also not disputed that till the issuance of the impugned order of termination, charge sheet had not been filed in the Vigilance case. The authorities have relied upon Clause 9 of the agreement

executed by the petitioner with the government on 01.05.2014, which reads as follows:

“9. In the event of any misconduct, of the second party, he/she shall be liable for the immediate disengagement by the First Party. The expression misconduct for the purpose of this agreement would mean improper or unprofessional behavior, bad management, mismanagement, misbehaviors. Whether an act (of the Second Party) is a misconduct or not would be construed by the First Party at his discretion.”

8. On the undisputed facts of the case as narrated above, it is to be considered whether involvement in the Vigilance Case can amount to misconduct within the meaning of Clause-9. It is well known in criminal jurisprudence that an accused is presumed to be innocent till he is proved guilty in a regular trial and that mere involvement in a criminal case cannot be treated as proof of guilt. Be that as it may, Clause-9 itself defines ‘misconduct’ as ‘improper or unprofessional behavior, bad management, mismanagement, misbehaviors’. Obviously, involvement in a criminal case cannot come within the ambit of any of the aforementioned acts. Though it is stated that whether an act is a misconduct or not would be construed by the first party at his discretion, the same cannot imply that the authority is empowered to act

arbitrarily or whimsically or without legally acceptable reason. 'Misconduct' within the meaning of Clause-9 would obviously mean, misconduct that has been proved in accordance with law. If the reasoning put forth by the opposite party authorities is accepted it would imply that a mere allegation would be akin to proof, which is contrary to all legal principles.

9. Of course, show cause notice was issued to the petitioner to which he also replied but then, to finally decide whether the petitioner was guilty of the allegations involved in the Vigilance case, the authorities ought to have waited till conclusion of the criminal trial. It must be noted that except for his involvement in the criminal case, there is no other allegation of misconduct leveled against the petitioner. The action of the authorities in terminating the services of the petitioner would have been justified had there been a finding of guilt in the Vigilance case against the petitioner.

10. This court had the occasion of dealing with a similar case wherein invoking a similar clause in the agreement, an employee had been terminated from

service. Reference may be had to the case of **Abhimanyu Mallick vs. State of Odisha & Others** (W.P.(C) No.17307 of 2020, decided on 25.07.2022), wherein this Court held that a mere allegation cannot be treated as proof of misconduct.

11. For the foregoing reasons therefore, this Court holds that the impugned orders under Annexures- 7 and 8 cannot be sustained in the eye of law and are therefore, quashed.

12. The writ petition is allowed. No order as to costs.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 8th August, 2022/ A.K. Rana