

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.C. (OAC) No. 666 of 2017

An application under Sections 226 and 227 of the Constitution of India)

Dr. Keertidhara Das

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Petitioner

-Versus-

State of Odisha and others

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Opp. Parties

Advocate(s) appeared in this case :-

For Petitioner : M/s. R. Roy, S.K. Singh,
S. Sourav & A. Pradhan
Advocates

For Opp. Parties : Mr. H.K. Panigrahi,
Addl. Standing Counsel

CORAM:

JUSTICE SASHIKANTA MISHRA

J U D G M E N T
30th August, 2022

SASHIKANTA MISHRA, J.

The petitioner is the wife of one Durga Prasad Pattnaik, who was working as a Reader in Commerce in BJB Autonomous College, Bhubaneswar. While in service, the said Durga Prasad Pattnaik along with two other

Lecturers of the College were proceeded with departmentally for certain misconducts in employment. A common inquiry was held and the Inquiry Officer submitted his report on 01.12.2007 holding the delinquents guilty of the charges and recommended imposition of the following penalties on said Durga Prasad Pattnaik:-

- i. censure
- ii. withholding of three annual increments without cumulative effect and
- iii. to treat the period of suspension as such.

The disciplinary authority (opposite party No.1) by office order dated 01.11.2008, however, imposed the following penalties after obtaining necessary concurrence of the OPSC:-

- i. censure
- ii. withholding of three annual increments with cumulative effect.
- iii. to treat the period of suspension as such.

2. The officer challenged the imposition of such punishments in O.A.No.1569 of 2008 before the erstwhile

Odisha Administrative Tribunal, Bhubaneswar. By order dated 20.12.2010, learned Tribunal disposed of the O.A. by quashing the order dated 01.11.2008 of imposing penalty on the ground that the proposal and recommendation of the OPSC is not in accordance with Sub-rule-10 of Rule-15 of OCS (CC&A) Rules, 1962. The matter was thus remitted to the opposite party no.1 to consider imposition of penalty in accordance with rules and with direction to complete the proceeding by 15.01.2011 as the officer was due to retire by the end of February, 2011. Pursuant to such direction, the opposite party no.1 recommended to OPSC for imposition of the same punishment that had been recommended earlier. However, the OPSC refused to concur with the proposal on the ground that the officer had retired from service before finalization of the proceeding and advised to proceed in terms of Rule-7 of OCS (Pension) Rules, 1992. While the matter stood thus, the officer died on 18.05.2015. The petitioner came to know that 229 days of unutilized earned leave had been sanctioned in favour of her husband on 31.01.2011. She therefore, submitted

representation to opposite party Nos.1 and 3 on 14.03.2016 to release all the dues including salary for the period of suspension, leave salary, gratuity, provident fund etc. along with regular pension. By order dated 03.06.2016, the opposite party No.1 dropped the proceedings against the delinquent officer in terms of the G.A. Department Circular No.18907 dated 04.11.1986 with direction to treat the period of suspension from 21.11.2005 to 28.06.2007 as leave due admissible in order to regularize the period of service. The said order is enclosed as Annexure-10 to the writ petition. Being thus aggrieved, the petitioner approached the erstwhile Odisha Administrative Tribunal in O.A. No.666(C) of 2017 seeking the following relief:-

“Under this circumstances, it is humbly prayed that this Original Application may be allowed; and

- a) To regularize the service of the husband of the Applicant namely Late Dr. Durga Prasad Pattnaik by treating the period of suspension as on duty and forthwith release all service & retirement benefits with interest @24% per annum from the date of entitlement & also extend the death*

benefits to the family of Late Dr. Durga Prasad Pattnaik.

b) Pass any other order/orders, direction/directions as would be demand fit and proper in the interest of justice.

c) And for this act of kindness, the Applicant shall as in duty bound ever pray.”

3. The said OA has since been transferred to this Court and registered as the present writ petition.

4. Despite repeated opportunities, no counter was filed by the opposite parties. Learned State Counsel however was permitted to make oral submissions.

5. Heard Mr. R. Roy, learned counsel for the petitioner and Mr. H.K. Panigrahi, learned Additional Standing Counsel for the State.

6. It is argued by Mr. Roy that once the delinquent officer dies before conclusion of the disciplinary proceeding, the same is to be dropped in view of the Circular of the Government in G.A. Department dated 04.11.1986. Though the Government dropped the proceeding yet treated the period of suspension as leave

due admissible which itself is a penalty and therefore, could not have been imposed once the proceeding was dropped.

7. Mr. H.K. Panigrahi, on the other hand, has argued that as per Rule-12 (6) OCS (CC&A) Rules, 1962 the Disciplinary Authority is empowered to issue directions as to how the period of suspension shall be treated, if the same is passed not as a measure of substantive punishment, but as suspension pending enquiry. Since the delinquent officer had expired before finalization of the proceeding, the period of suspension was required to be regularized and since he had not rendered work to the Government during that period, the authority has rightly passed order for treating the period as leave due admissible.

8. The facts of the case are not disputed to the extent that the petitioner was departmentally proceeded with and the original order of punishment imposed on him was quashed by the learned Tribunal vide order dated 20.12.2010. Originally, the punishments included the period of suspension being treated as such. The same was

reiterated by the Disciplinary Authority in its proposal submitted to OPSC. However, because of retirement of the petitioner in the meantime, the OPSC rightly held that Rule -7(2)(a) of the OCS (Pension) Rules, 1992 is attracted and that the same shall be continued and concluded as per the provisions laid down therein. It is also not disputed that the petitioner died on 18.05.2015 and till such time the proceeding had not been concluded. The proceeding was concluded ultimately on 03.06.2016. The Government in G.A. Department in its Circular No.18907 dated 04.11.1986 and Circular No.19806 dated 21.08.2012 have laid down that the departmental proceeding drawn up against the Government servant should be immediately closed on the death of the charged officer. There is of course a provision for realization of defalcated money from the legal heirs of the deceased Government servant, but the same is not relevant to the present case. The purport of the Circulars dated 04.11.1986 and 21.08.2012 otherwise is, if the proceeding is not concluded during the life time of the Government servant, it has to be dropped. Dropping of the proceeding

obviously implies that there is no more any proceeding against him in accordance with law. Therefore, the status of the Government servant as existing prior to initiation of the departmental proceeding has to be restored. What the disciplinary authority has done in the present case is, though the proceedings have been dropped yet the period of suspension has been treated as leave due admissible. This is entirely unconscionable in law, for the reason that in the absence of any proceeding as per the legal fiction envisaged in the Circulars dated 04.11.1986 and 21.08.2012, there is no longer any proceeding against the delinquent officer. Such being the case, the period of suspension can only be treated as being on duty.

The provision under Rule 12(6) is a general provision which confers power on the Disciplinary Authority to pass orders regarding the period of suspension at the end of the disciplinary proceedings. The same does not contemplate the situation where the delinquent has expired and the proceeding has been dropped by application of the Circulars dated 04.11.1986 and

21.08.2012. The contentions raised by Mr. Panigrahi in this regard are therefore, not acceptable.

9. For the foregoing reasons therefore, this Court has no hesitation in holding that the impugned order being entirely contrary to the letter and spirit of the Circulars dated 04.11.1986 and 21.08.2012 as also being punitive in nature without existence of a disciplinary proceeding in the eye of law, cannot be sustained. Resultantly, the impugned order dated 03.06.2016 is hereby quashed. The opposite parties-authorities are directed to release all consequential and retirement benefits to the petitioner as admissible in law by treating the period of suspension of the deceased Government servant for the period from 21.11.2005 to 28.06.2007 as on duty. The entire exercise shall be completed within a period of two months from the date of communication of this order or on production of certified copy thereof by the petitioner.

10. The writ application is disposed of accordingly.

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Sashikanta Mishra,
Judge