

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.30087 of 2022

Dipak Ranjan Behera

Petitioner
....
Mr. C.S. Panda, Advocate

-versus-

***Chief Secretary to Government of
Odisha and others***

Opp. Parties
....

Mr. P.K. Rout, A.G.A.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

15.11.2022

Order No.

01.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).

2. Heard learned counsel for the petitioner as well as learned counsel for the State. Perused the record.

3. The present writ petition has been filed by the petitioner with a prayer to quash the adverse remark communicated vide DO Letter dated 04.02.2021 under Annexure-2 and order of rejection of representation dated 27.05.2021 under Annexure-4 and the rejection of appeal dated 30.06.2022 under Annexure-6. Further, a prayer has been made to expunge the adverse remark by directing the authorities to grant all consequential service and financial benefits to the petitioner.

4. It is submitted by learned counsel for the petitioner that while recording adverse remark, the authority has not followed the provision under the relevant rules. He further submits that no communication was made to the petitioner with regard to the same by any warning or expressing displeasure. It is further submitted by learned counsel for the petitioner that the impugned orders under Annexures-2, 4 and have been passed by the Under Secretary to Government, GA&PG(SE)

Department, Bhubaneswar vide order dated 04.02.2021 and 27.05.2021 respectively and order dated 30.06.2022 under Annexure-6 has been passed by the Deputy Secretary to Government, GA & PG Department, Bhubaneswar by referring to guidelines vide Memo No.1199/P.R.O. Bhubaneswar, dated 26.04.2006 issued by the Government of Orissa, General Administration(S.E.) Department. It is further submitted that as per clause-16, the competent authority to deal with the representation against the adverse remarks will be Special Secretary, General Administration (S.E.) Department. In case Special Secretary General Administration (S.E.) Department is the author of the adverse remarks then Chief Secretary will be competent to deal with the representation. In case adverse remarks are given by Chief Secretary/Very Senior Officer in-charge of the Department/Minister the competent authority will be the Chief Minister. However, on perusal of the impugned order, it appears that the same has been passed either by Under Secretary or the by Deputy Secretary to the GA&PG (SE) Department. Therefore, it is contended by learned counsel for the petitioner that the said order has been passed by the authority without jurisdiction and authority.

5. Learned counsel for the State, on the other hand, does not dispute the clause-16 in the above noted guidelines. Further, he contends that the matter can be remanded back to the Special Secretary to pass necessary order in accordance with law.

6. Considering the submissions made by the respective parties, the order dated 30.06.2022 under Annexure-6 disposing of the representation of the petitioner by non-speaking order is hereby set aside and the matter is remanded back to the Special Secretary to G.A. & P.G. Department to consider the appeal of the petitioner afresh in accordance with law. Accordingly, the petitioner is directed to approach the Special Secretary within a period of two weeks from today along

with certified copy of this order. In the event the petitioner approaches the Special Secretary to G.A. & P.G. Department within the aforesaid period, the Special Secretary to G.A. & P.G. Department to take up the appeal and provide opportunity of hearing to the petitioner and while considering the case of the petitioner, the same shall be disposed by passing a speaking and reasoned order within a period of six weeks from the date of receipt of the certified copy of this order. Any decision taken on the same shall be communicated to the Petitioner within a period of ten days thereafter.

7. With the aforesaid observation/direction, the writ petition is disposed of.

Urgent certified copy of this order be granted on proper application.

Jagabandhu

