

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C)(OAC) No.1536 of 2019

Santosh Kumar Sahu

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

28.02.2023

Order No

- 05.** 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard Ms. B.K. Pattnaik, learned counsel for the Petitioner and Mr. D.K. Mohanty, learned Addl. Standing Counsel appearing for the Opp. Parties.
3. Pursuant to the order passed by this Court on 15.02.2023, an affidavit has been filed by the Petitioner on 16.02.2023 indicating therein that the Petitioner entered into service on 22.12.2006 and save and except the present proceeding initiated against him, no other proceeding was ever initiated and no black mark was also ever awarded against the Petitioner.
4. Ms. Pattnaik, learned counsel for the Petitioner in support of the stand taken in the writ petition contended that the Disciplinary Authority when passed the order of punishment by dismissing the Petitioner from his service vide order dtd.18.05.2016 under Annexure-9, the Petitioner preferred an appeal before the Opp.

Party No. 2 challenging such order of punishment. It is contended that the Appellate Authority taking into account the stand taken in the appeal though was pleased to set aside the order of removal, but modified the order by awarding the punishment of three (3) black marks and treat the period of service from 19.05.2016 till his joining as “no work no pay”.

5. Ms. Pattnaik contended that as provided under PMR 834(a), no more than one black mark shall be awarded for any one offence except when moral turpitude can reasonably be inferred. PMR 834(a) prescribes as follows:-

“834.(a) Imposition of black marks:- Black marks may be awarded alone or in addition to other punishments enumerated in Rule 824 except dismissal or removal, to all officers of and below the rank of Inspector.

★ No more than one black mark shall be awarded or any one offence except when moral turpitude can reasonably be inferred.”

6. It is contended that since the proceeding was initiated against the Petitioner for his unauthorized absence in duty which does not amount to moral turpitude, the Appellate Authority while modifying the order of punishment, could not have imposed three (3) black marks along with the other punishment to treat the entire period as “no work no pay”. It is accordingly contended that the order passed by the Appellate Authority under Annexure-11 is not sustainable in the eye of law and liable for interference of this Court.

7. Mr. D.K. Mohanty, learned Addl. Standing Counsel on the other hand made his submission basing on the stand taken in the counter affidavit filed by O.P. No. 3. It is contended that since the Petitioner remained on unauthorized leave for a pretty long period, the proceeding was initiated against him and the Disciplinary Authority passed the order of punishment by removing the Petitioner from his service vide order dtd.18.05.2016 under Annexure-9. Against the said order when the Petitioner preferred an appeal, the Appellate Authority being satisfied with the grounds taken by the Petitioner was pleased to set aside the order of removal by imposing the punishment of 3 (three) black marks and by treating the period from the date of removal till his joining as “no work no pay”. It is accordingly contended that since the order of removal passed against the Petitioner has been modified by imposing very lesser punishment, no further grievance at the instance of the Petitioner is entertainable.

8. Having heard learned counsel appearing for the Parties and after going through the materials available on record, it is found that the proceeding was initiated against the Petitioner for his alleged unauthorized absence and the Disciplinary Authority passed the order of punishment under Annexure-9 on 18.05.2016 by removing the Petitioner from his service w.e.f.18.05.2016 and by treating the period of absence from 12.02.2015 to 18.05.2016 as no pay.

9. From the aforesaid order of the Disciplinary Authority it is apparent that the proceeding against the Petitioner was initiated due for his unauthorized absence from 12.02.20215 to 18.05.2016. The Appellate Authority on being moved though set aside the order of

removal, but award of three (3) black marks against the Petitioner is not in accordance with the provision contained under PMR 834(a). As provided under the said provision, no more than one black mark shall be awarded for any one offence except when moral turpitude can reasonably be inferred.

10. Since the proceeding in question was initiated on the ground of unauthorized absence, it is the view of this Court that it does not amount to moral turpitude. Therefore, in view of the provision contained under PMR 834(a), Opp. Party No. 2 while modifying the order of removal, could not have imposed three (3) black marks. Therefore, while interfering with that part of the order only, the impugned order at Annexure-11 is modified to the extent that the Petitioner will be awarded with one black mark and the period of removal from service till his joining having been treated as “no word no pay” will remain as it is.

11. With the aforesaid modification of the impugned order at Annexure-11, the writ petition is disposed of.

(Biraja Prasanna Satapathy)
Judge

Sneha