
(2009) 11 OHC CK 0060
In the Orissa High Court
Case No : Writ Petition (C) No. 8709 of 2009

Ajit Mishra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 17-11-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 25
Orissa Law Officers Rules, 1971 — Rule 12(2)

Citation : (2010) CLT 206 (Suppl CrI)

Hon'ble Judges : I.M. Quddusi, Acting C.J.; Bilal Nazki, C.J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard Learned Counsel for the Petitioner & Mr. R.K. Mohapatra, the Learned Government Advocate for the Opposite Parties.
2. Since this matter involves directly the administration of justice & is with regard to the powers of Public Prosecutor, we are deciding the Writ Petition at the admission stage, particularly when the impugned order has been passed by the Public Prosecutor, who has not filed any counter affidavit. Other Opposite Parties have chosen not to file any counter affidavit.
3. By the impugned Order Dated 02.06.2009 under Annexure-2 to the Writ Petition, the Public Prosecutor has withdrawn Mr. Ajit Mishra, who is the Petitioner in the case & was working as APP in the Court of JMFC, Puri, from appearing the said Court. The Petitioner was appointed as an APP by the Government of Orissa in terms of the powers conferred on it u/s 25, Code of Criminal Procedure. Such appointment is to be made in accordance with The Orissa Law Officer's Rules, 1971.
4. The effect of the impugned order is that the Petitioner has become a workless APP, though he is drawing his retainership fee. The impugned order passed by the Public Prosecutor leaves no room for doubt in our mind that the "said order

was passed by way of punishment. We do not express any opinion whether the Petitioner was involved in any misconduct or not, but had he been involved in any misconduct same should have been put to him & inquiry should have been conducted. But giving punishment without even giving the show cause is not acceptable to this Court, particularly when it is a case involving an advocate. We are also aware that in terms of the Rules the Public Prosecutor has no power to pass any order while distributing the work in not entrusting any work to any particular APP, as has been done in the instant case, though in effect he has not been removed from the post of APP. Both ways the impugned order cannot be justified. If the Petitioner is not conducting any case in the manner which he is supposed to conduct then he should not be an APP even only for the purpose of retainership fee. If the Petitioner has not committed any misconduct, he should not suffer.

5. Learned Government Advocate has referred to Rule 12(2) of the Orissa Law Officers Rules, 1971. This Rule also does not by any stretch of imagination give any power to the Public Prosecutor to pass an order in the nature of the impugned order. The said order is absolutely arbitrary one. Therefore, the writ petition is allowed & the impugned order under Annexure-2 is quashed. The Public Prosecutor - Opposite Party No. 3 is imposed with costs of Rs. 1000 (Rupees one thousand) which shall be paid by him personally & not by the Government of Orissa. The costs shall go to the Orissa State Legal Services Authority.

6. Urgent certified copy of the order may be granted on proper application.

Appeal allowed.