

(2025) 04 OHC CK 1344
In the Orissa High Court
Case No : Writ Petition (C) No. 26103 Of 2017

Alok Kumar Nayak

APPELLANT

Vs

State Of Odisha And Others Vs

RESPONDENT

Date of Decision : 24-04-2025

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2025) 04 OHC CK 1344

Hon'ble Judges : M.S.Sahoo, J

Bench : Single Bench

Advocate : P.C. Mohapatra, D. Mohanty

Final Decision : Allowed

Judgement

M.S.Sahoo, J

1. The petitioner entered into an agreement to work as a Computer Programmer with his employer District Rural Development Agency, Kandhamal represented by O.P. No.3 along with opposite parties 4 and 5. The agreement contained the following clause:

“The post of Computer Programmer may be terminated every year on 28th February AN and renewed from 2nd March in such a manner that there is one day break on March every year subject to their satisfactory performance.”

2. The issue boils down to petitioner's challenge to his disengagement by letter dated 13.01.2017 issued by the Collector and Chief Executive Officer (CEO), District Rural Development Agency, (DRDA), Kandhamal (O.P. No.3) under the Government of Panchayatraj Department.

3. Learned counsel for the petitioner submits that the petitioner was terminated every year on 28th February, 2013, 2014, 2015 and 2016. Re-engaged on 1st March, 2013, 2014, 2015 and 2016. He was disengaged on 13th January, 2017 and not re-engaged thereafter. It is submitted that the disengagement of the

petitioner was purportedly for the reason that he did not report to duty on 5th December, 2016. The apparent reason has been disclosed in the letter dated 13.01.2017 which refers to the letter of Block Development Officer (BDO), Tumudibandha (O.P.No.5) dated 16.12.2016 which indicated that after postponement of mass strike by the computer programmers, the petitioner did not report for duty by 05.12.2016.

4. The learned Additional Government Advocate appearing for the opposite parties supports the disengagement order, inter alia, on the grounds that the petitioner's engagement is contractual as per the agreement entered into between the employer and the petitioner, i.e., Annexure-1. The learned AGA refers to the counter affidavit, particularly in response to the application of the petitioner dated 05.12.2016 annexed to the writ petition marked as Annexure-3. It encloses the outdoor ticket of MKCG Medical College & Hospital, Berhampur. The outdoor ticket indicates the following : 03-Orthopedic OPD Card No. 21176685, Registration No.030133, dated 5th December, 2016, countersigned by the doctor consulted at the OPD, giving the details of the provisional diagnosis, advice regarding further medical examination to be undertaken, medicines to be taken and also the advice "Rest to (L) upper limb for one month". The said annexure encloses the leave application of the petitioner dated 05.12.2016. The leave application encloses copy of the printout of electronic-mail (e-mail) sent from petitioner's e-mail id : alok1plb@gmail.com to e-mail oritumudibandh@nic.in. and Ashok Gouda agouda9@gmail.com. The e-mail also shows the two attachments i.e., images in jpg format of the leave application dated 05.12.2016 and the outdoor ticket of MKCG Medical College and Hospital as described in detail above.

5. The learned AGA refers to paragraphs-8, 9, 10 and 15 of the counter affidavit. Perusal of paragraph-8 of the counter affidavit would indicate that the averments made in paragraph-4 of the writ petition regarding forwarding of the leave application enclosing the OPD ticket as well as e-mail are denied by stating : "... no such leave application has ever been received in the office of the opposite party no.5..."

The learned AGA then submits that the Collector had disengaged the petitioner and he was not disengaged by the Block Development Officer.

6. Paragraph-9 of the counter affidavit indicates that the disengagement was pursuant to the letter dated 03.12.2016 passed by the Director opposite party no.2 (Annexure-2). Further paragraph-10 of the counter affidavit goes to show that the disengagement order was issued on 13.01.2017 referring to the order of the Director, Panchayatraj dated 03.12.2016 regarding postponement of the mass strike by the Computer Programmers and resumption of duty on 05.12.2016.

7. On perusal of the averments made in the counter of the O.Ps. it is seen that whether the e-mail was received by the addressee, whether the e-mail id is

correct have not been answered/mentioned or disputed in the counter. The denial is regarding receipt of the leave application and in fact without any statement denying receipt of the e-mail with attachments. In considered opinion of this Court nothing turns on the averments of the opposite party no.5 that the leave application was never received in absence of any denial or dispute regarding the e-mail sent by the petitioner. It has to be also noticed the petitioner was himself working as computer programmer of the organization handling e-mail of the organization, he is aware of e-mail id etc.

8. Further, the disengagement of the petitioner was attributed to he not joining duty on 05.12.2016 which is also the stand of the opposite party no.5 in paragraph-9 of the counter and also the reasoning given in the order dated 13.01.2017 of the Collector and CEO.

9. The order dated 13.01.2017 issued by the Collector and CEO, DRDA refers to the report of the Block Development Officer that the petitioner did not join duty on 05.12.2016 after resumption of work as the mass strike by the computer programmers was called off. Further, it refers to the Government in Panchayatraj Department letter dated 03.12.2016 (Annexure-2) which had provided

"In view of the above, if the Computer Programmers do not report to their duty on or before 5th December 2016, you are hereby directed to terminate their services with immediate effect."

The said letter of the Government dated 03.12.2016 was addressed to all the Collectors with copies to all the Block Development Officers for information and necessary action. The BDO following that letter had issued the report to the Collector on 06.12.2016 enclosed to the counter marked as Annexure-B/5 which indicates the following :

" In inviting a reference to the letter on the subject cited above, I am to say that Sri Alok Kumar Nayak, C.P. of this office who is on mass strike has not reported to duty till 5th December, 2016. Due to his prolonged absence, the day to day work of the Block has received a serious setback during this peak working season."

10. Since absence from duty on 05.12.2016 till he joined in January, 2017 is also the case of the petitioner, now it remains to be seen whether he had valid reasons to remain absent, whether the reasons are justifiable and lastly whether the authorities while passing the order have dealt with the said aspect.

11. The leave application was sent by e-mail along with the outdoor ticket of the MKCG Medical College which contains details of the treatment, the provisional diagnosis, further advice. The e-mail dated 05th December, 2016 was sent at 14.03 hours by g-mail, with subject 'unable to resume duty' addressed to the e-mail ids ori-tumudibandh@nic.in. and agouda9@gmail.com along with the two attachments, i.e. the OPD/outdoor ticket, outpatient's department ticket, OPD ticket and the leave application.

The Civil Procedure Code O.5 Rule-9:Sub Rule-3, after 1999 amendment recognizes service of summons by electronic mail service. Taking a cue it has to be held that the electronic mail (e-mail) containing leave application and hospital outdoor ticket as attachments, was duly sent as the opposite parties have not disputed or denied such e-mail.

12. In considered opinion of this Court, the petitioner had just and sufficient reasons not to be able to join on 05.12.2016 and remain on leave having suffered fracture of lateral end of clavicle (left collar bone) and was further advised rest to left upper limb for one month. The reasons are sufficient, on medical grounds to remain on leave with effect from 5.12.2016. The authorities failed to take into consideration this relevant aspect when they took a decision to disengage the petitioner from service. As the events have unfolded thereafter, the disengagement order was issued on 13.01.2017 which has been served by the process server on 20.1.2017 as contended by the opposite party referring to document annexed to the counter affidavit marked as Annexure-C/5 which contains endorsement in Oriya made by the server who served on the petitioner.

13. In view of the finding that the petitioner had sufficient reasons on medical ground not to resume duties on 05.12.2016, which was not taken into consideration by the authorities the disengagement order dated 13.01.2017 is set aside and quashed. The order dated 17.06.2017 (Annexure-6) being a consequence of order dated 13.01.2017, issued rejecting the representation of the petitioner to reengage him is also set aside and quashed.

14. As a consequence of setting aside of the order dated 13.01.2017 as well as the consequential order dated 17.06.2017, the petitioner, if makes any application for re-engagement, same shall be considered without being any way influenced with the earlier orders which have been set aside by this judgment.

15. The writ petition is allowed and disposed of with the aforesaid observations. In the facts and circumstances of the case there shall be no orders towards costs. Ordered accordingly.

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