
(2013) 03 OHC CK 0013
In the Orissa High Court
Case No : Writ Petition (C) No. 6141 of 2010

Dr. Mrs. Mayarani Devi

APPELLANT

Vs

Chairman-cum-Disciplinary Authority, Paradeep Port Trust,
Paradeep and four Others

RESPONDENT

Date of Decision : 20-03-2013

Acts Referred:

Citation : (2013) 116 CLT 5 : (2013) 1 OLR 864

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Judgement

M.M. Das, J.—Heard learned counsel for the parties. This writ petition has been filed challenging the order dated 04.03.2008 (Annexure-12), passed by the Disciplinary Authority imposing the penalty of compulsory retirement from the Port Trust Service and also the order of the Appellate Authority dated 07.01.2010 (Annexure-18), confirming the said penalty.

2. Learned counsel for the petitioner submits that as the inquiry has been conducted ex parte, without affording an opportunity of hearing to the petitioner, in gross violation of the principles of natural justice, the same cannot be sustained in law. It is submitted that as the petitioner was sick and was under treatment in the Capital Hospital, Bhubaneswar, as would be evident from the medical certificates under Annexure-3 series, the Inquiring Authority was not justified in rejecting the petitioner's application for time and proceeding with the inquiry ex parte. It is further submitted that the Disciplinary Authority erred in relying upon the said ex parte inquiry report and imposing the punishment of compulsory retirement from the Port Trust service. It is also submitted that the order of the Appellate Authority confirming the said order of punishment is also improper and illegal.

3. Learned counsel for the petitioner further submits that mere unauthorized absence from the duty will not constitute an act of misconduct or failure of devotion to duty or conduct unbecoming of an employee, unless such absence is

willful. In this regard, he has relied upon a decision of the apex Court in the case of Krushnakant B. Parmar Vs. Union of India (UOI) and Another, , wherein the Hon"ble Court has observed as under:

If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be willful. Absence from duty without any application or prior permission may amount to unauthorized absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization, etc., but in such case, the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant.

4. Accordingly, it is submitted by the learned counsel for the petitioner that the very initiation of the disciplinary proceeding against the petitioner is not proper and justified.

5. Learned counsel for the Paradeep Port Trust submits that as the petitioner did not appear in the inquiry inspite of repeated notices and opportunities, the Inquiring Authority had no other alternative but to proceed with the inquiry ex parte and conclude the same on the basis of the materials on record. It is submitted that as the petitioner remained on leave without prior approval and continued to remain absent from her duty indefinitely for a long period inspite of direction of the competent authority, her acts amount to misconduct and unbecoming of an employee of the Paradeep Port Trust and therefore the punishment of compulsory retirement, imposed by the Disciplinary Authority is fully justified.

6. On perusal of the inquiry report (Annexure-9), it is seen that the Inquiry Authority, considering the argument of the Presenting Officer and the uncertainty and absence of the petitioner to attend the inquiry, inspite of adequate opportunities, has proceeded with the inquiry ex parte. On the basis of the documents available on record and the deposition of the Presenting Officer, the Inquiring Authority has come to hold that the acts of the petitioner amounted to misconduct and unbecoming of an employee of the Paradeep Port Trust, as per the provisions contained in the said Paradeep Port Trust Employees" (Conduct) Regulations, 1967. Accepting the findings of the Inquiring Authority as given in the inquiry report, the Disciplinary Authority has imposed the penalty of compulsory retirement from the Port Trust service, which has been confirmed by the Appellate Authority.

7. Considering the facts detailed in the inquiry report regarding nonappearance of the petitioner during inquiry, we are of the view that as the petitioner had sent applications praying for adjournment on the ground of her illness, supported by medical certificates, the veracity of which was not doubted, the Inquiring Authority should have provided her further opportunity to enable her to participate in the inquiry. The Inquiring Authority was not justified in accepting

the contention of the Presenting Officer and proceeding with the inquiry ex parte.

8. In view of the above, the inquiry report dated 11.01.2008 (Annexure-9), office order of the Disciplinary Authority dated 04.03.2010 (Annexure-12) and the subsequent order of the Appellate Authority dated 07.01.2012 under Annexure-18 are hereby quashed and the matter is remitted back to the Inquiring Authority to conduct a fresh inquiry into the articles of charges framed against the petitioner, after giving her opportunity of hearing and conclude the inquiry within three months hence.

9. It is made clear that we have not expressed any opinion with regard to the merits of the case. The writ petition is accordingly disposed of.