

(2010) 11 OHC CK 0031
In the Orissa High Court
Case No : O.J.C. No. 737 of 1993

Jagannath Das

APPELLANT

Vs

Commissioner of Endowments and Another

RESPONDENT

Date of Decision : 01-11-2010

Acts Referred:

Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 — Rule 13, 15, 9
Orissa Hindu Religious Endowments Act, 1951 — Section 31, 32

Citation : (2010) 2 ILR (Ori) 1112

Hon'ble Judges : S.K. Mishra, J; Pradip Mohanty, J

Bench : Division Bench

Judgement

S.K. Mishra, J.—Originally this writ application has been filed challenging the legality of the order of suspension on the ground of jurisdiction. However, during pendency of the writ application the departmental proceeding initiated against the Petitioner was completed and he was removed from service. Thereafter, with the leave of the Court the writ application was amended with a prayer to quash the order of removal with all consequential service and monetary benefits.

2. The basic questions which arise for determination in this writ application are whether the disciplinary authority has the power to remand the departmental proceeding to the enquiry officer for a fresh enquiry; and whether the report of the enquiry officer, when the enquiry is not conducted by the disciplinary authority is required to be furnished to the employee to enable him to make proper representation to the disciplinary authority. All other questions raised during the course of hearing of the writ application have become in fructuous in view of the final disposal of the departmental proceeding.

3. The Petitioner was initially appointed as Debottar Supervisor, Nayagarh. The Commissioner of Endowments as per order No. 21 dated 6.1.1979 appointed the Petitioner as whole time Debottar Manager on a monthly pay of Rs. 90-150/-. The Petitioner claimed that the Debottar Manager is not an office holder or servant attached to any particular religious institution and he does not receive

any remuneration from the funds of any religious institution, rather it is paid from the general establishment funds of Nayagarh Debottar. The Petitioner claims that he has been directly appointed by the Commissioner of Endowments and his appointment can not be governed u/s 31 of the Orissa Hindu Religious Endowments Act, 1951(hereinafter referred to as the "Act" for brevity) and as such the procedure provided u/s 32 of the Act is not applicable to him. The Petitioner claims that opposite party No. 2 is not his appointing authority and therefore he is not competent to pass the order of suspension. Initially the Petitioner was allowed to draw subsistence allowance, but subsequently opposite party No. 2 intimated that he is not entitled to get any subsistence allowance. This matter was before this Court in Misc. Case No. 2566 of 1995 wherein this Court ordered that the subsistence allowance to be paid to the Petitioner.

4. On 20.12.1991 a departmental proceeding was initiated and charges were framed against the Petitioner for alleged negligence in duty, violating the Hindu Customs and acting beyond law and jurisdiction. The Petitioner submitted his explanation denying all the charges on 11.4.1992. The said proceeding was conducted by Mr. K.B. Swain, Deputy Commissioner of Endowments, Orissa, Bhubaneswar in D.P. No. 2/1995. After completion of enquiry he submitted his report on 04.9.1995 inter alia holding the charges framed against the Petitioner to be baseless and not proved. However, opposite party No. 1, the Commissioner of Endowments, without appreciating the findings in enquiry report dated 04.9.1995 in its proper perspective, rejected the same and remitted back the matter to the Deputy Commissioner of Endowments for de novo enquiry. After remand

5. On consideration of such enquiry report dated 29.7.1996, opposite party No. 1 agreed with the finding of the enquiry officer and issued the second show cause notice vide its order dated 9.8.1996 requiring the Petitioner to show cause by 10.9.1996 as to why he shall not be removed from his services and the period of suspension be not treated as leave without pay. It is further contended that while issuing the second show cause notice, opposite party No. 1 has deliberately, intentionally and willfully not furnished a copy of the enquiry report dated 29.7.1996 of the second enquiry officer to the Petitioner. In the second show cause notice the date of personal hearing was fixed to 10.9.1996. Upon receipt of the second show cause notice, the Petitioner has submitted an application for deferring the personal hearing and for allowing some time to file second show cause on the ground of pendency of the present writ application. However, the Petitioner was allowed time to submit second show cause reply on 21.9.1996. The Petitioner filed a Misc. Case for an order restraining opposite party No. 1 not to proceed with the departmental proceeding and also filed a representation before opposite party No. 1 for deferring the final decision, opposite party No. 1 with an ulterior motive rejected the representation. Thus under such compelling circumstances and without having a copy of the enquiry report, the Petitioner hurriedly prepared the second show cause reply and filed the same on 21.8.1996. It is, however, admitted by the Petitioner that he was given a certified

copy of the enquiry report on his application on 5.9.1996. The Petitioner also challenged that the order of punishment is harsh and disproportionate to the misconduct alleged. Therefore, the Petitioner prayed that the said order of termination be quashed and he be reinstated in service.

6. Opposite party No. 2 has filed his counter affidavit, inter alia, pleading that the Petitioner has committed several acts of malfeasance and misfeasance and grievous charges have been framed against him, hence his continuance in the establishment of Nayagarh Debottar would be detrimental to the interest of the Institution and he was rightly put under suspension. Opposite party No. 2 however pleaded that after merger of the estate of Nayagarh, the religious institution situated at Daspalla are being managed under the direct control of the Commissioner of Endowments in consonance with the provisions of the Act. The Commissioner has appointed the Sub-Collector of the District as the Executive Officer of the Debottar to manage the affairs of the Institution. The Executive Officer is deemed to be the Trustee. Section 31 of the Act specifically stipulates that the post of the office holders and servants of the religious institution shall be filled up by the Trustee. Section 32 of the aforesaid Act stipulates that all office-holders and servants attached to the religious institution shall, whether the office or service is hereditary or not be controlled by the trustee and the trustee may find, suspend, remove or dismiss any of them for breach of trust, incapacity, disobedience of order, negligence in duty, misconduct or other sufficient cause. Opposite party No. 2 however pleaded that Debottar employees are not treated as State Government employees and are also not governed under the Orissa Service Code. Thus, the provisions of Article 311 are not directly attracted. Section 32 of the Act specifically stipulates that the trustee is empowered to suspend, remove or dismiss any of the servants of the Debottar. In view of the fact that there is a statutory provision naming the disciplinary authority the general proposition that the appointing authority shall be the disciplinary authority would not strictly be applied. There was number of allegations against the Petitioner and in spite of repeated warnings he did not amend himself and his performance continued to be detrimental to the interest of the Institution. It is pleaded that as long back as in the year 1985, twenty one charges were framed against the Petitioner including the charges involving financial irregularities. In spite of the fact that the disciplinary proceeding was pending against the Petitioner he again committed several malfeasance and misfeasance as a result of which the Executive Officer, who is otherwise competent and empowered to take disciplinary action, thought it just and proper to suspend the Petitioner with immediate effect in view of the fact that opposite party No. 2 felt that continuance of the Petitioner in service would highly prejudice and affect the day to day management of the institution. The order of suspension was sent to the Commissioner of Endowments and was placed to accord post facto approval to it. On the basis of such pleadings, opposite party No. 2 prayed to dismissed the writ application.

7. It is seen from the aforesaid counter affidavit that there has been no denial of

the pleadings of the Petitioner regarding the important questions that have been enumerated in the second paragraph of the judgment. In order to appreciate the same, it is necessary to take note of the various provisions of the Act with regard to the appointment of office-holders and servants in religious institutions. Section 31 of the Act provides for appointment of office-holders and servants in religious institutions. Sub-section (1) of Section 31 of the Act provides that vacancies, whether permanent or temporary, amongst the office-holders or servants or a religious institution shall be filled up by the trustee in cases where the office or service is not hereditary. Sub-section (2) of the said section provides that in cases where the office or service is hereditary the next in the line of succession shall be entitled to succeed. Sub-section (3) of that provision provides that where however there is a dispute respecting the right of succession, or where such vacancy cannot be filled up immediately etc., the trustee may appoint a fit person to discharge the functions of the office to perform the service, until the disability of the office-holder or servant ceases or another person succeeds to the office or service, as the case may be. Sub-section (4) of the Act provides that any person affected by an order of the trustee under Sub-section (3) may appeal against the order to the Assistant Commissioner. Section 32 of the Act provides for punishment of office-holders and servants in religious institutions. Sub-section (1) of the said section provides that all office-holders and servants attached to a religious institution or in receipt of any emolument or perquisite from the institution shall, whether the office or service is hereditary or not, be controlled by the trustee; and the trustee may fine, suspend, remove or dismiss any of them for breach of trust, incapacity, disobedience or orders, neglect of duty, misconduct or other sufficient cause. Sub-section (2) of the said Act provides that any office-holder or servant punished by a trustee under Sub-section (1) may, within one month from the date of the communication of the order to him, appeal to the Assistant Commissioner, whose order shall be final. Sub-section (3) provides for imposition of penalty in case of disobedience of the order passed and Sub-section (4) provides for the procedure of recovery of the penalty.

8. In this case appointment has not been made u/s 31 of the Act as it is clear from Annexure-1. The order of appointment has been passed by the Commissioner of Endowments vide Annexure-1. Thus, Sections 31 and 32 of the Act are not applicable to this Case. Any order of suspension has to be issued by the Commissioner of Endowments. It is seen that though Section 32 provides for punishment by the trustee, in this case punishment has not been imposed by the trustee, but by the Commissioner of Endowments. Thus keeping in view the fact, this Court comes to the conclusion that the provisions of the Orissa Civil Services (Classification, Control and Appeal) Rules, 1962(hereinafter referred to as "OCS (CCA) Rules", for brevity) shall apply.

9. Rule 15 of the "OCS (CCA) Rules" provides for procedure of imposing penalties.

Sub-section (1) provides that without prejudice to the provisions of the Public Servant (Inquiry) Act, 1950, no order imposing on a Government servant any of the penalties specified in Clauses (vi) to (ix) of Rule 13 shall be passed except after an inquiry held as far as may be in the manner thereafter provided.

Clause (2) of the said Rule provides for framing of charges, communication in writing to the Government servants of the charges to the statement of allegations on which they are based and it also provides for written statement of defence.

Clause (3) of the said Rule provides that the Government servant is entitled to inspect and take extract from such other official records as he may specify to certain exceptions.

Clause (4) of the said Rules provides that on receipt of the written statement of defence or if no such statement is received within the time specified, the disciplinary authority may itself enquire into such of the charges as are not admitted or, if it considers it necessary so to do, appoint a board of inquiry or an enquiring officer for the purpose.

Clause (7) of the said Rule provides that at the conclusion of the enquiry, the inquiring authority shall prepare a report of the inquiry, recording its findings on each of the charges together with reasons thereof. If, in the opinion of such authority the proceedings of the inquiry establish charges different from those originally framed, it may record its findings on such charges, provided that the findings on such charges shall not be recorded, unless the Government servant has admitted the facts constituting them or has had an opportunity of defending himself against them.

Clause (9) of the said Rule provides that the disciplinary authority shall, if it is not the inquiring authority, consider the record of the inquiry and record its findings on each charge.

Clause (10) of the said Rule provides for issue of show cause notice.

10. This provision was considered by the constitutional Bench of the Supreme Court in the case of K.R. Deb Vs. The Collector of Central Excise, Shillong, , wherein it was held that Rule 15 of the "OCS (CCA) Rules" on the face of it really provides for one inquiry, but it may be possible if in a particular case there has been no proper inquiry because some serious defects have crept into the inquiry and some important witnesses were not available at the time of the inquiry and were not examined, the disciplinary authority may ask the inquiry officer to record further evidence. But there is no provision in Rule 15 of the "OCS (CCA) Rules" for completely setting aside the previous inquiries on the ground that the report of the inquiry officer or officers does not appeal to the disciplinary authority. The disciplinary authority has enough power to reconsider the evidence itself and come to its own conclusion under Rule 9 of the said Rule. It is noted earlier that the opposite parties have not pleaded the reasons for remand of the

disciplinary proceeding. So it cannot be determined whether it comes within any exceptional situation as envisaged in the reported decision. In view of Clause (9) of the "OCS (CCA) Rules", the disciplinary authority should have considered the inquiry report and given his findings on each charge. He has not done so, but remanded the case for a fresh inquiry. Annexure-9 is the order passed by the disciplinary authority. He passed orders for a fresh inquiry. It is not tenable in the scheme provided under the relevant Rules. Therefore, the action of the Commissioner of Endowments in setting aside the report of the inquiring officer and remanding the case for fresh disposal is contrary to the Rules and hence unsustainable.

11. With respect to the second point which arose for consideration in this case, learned Counsel for the Petitioner relies in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., , wherein the Hon"ble Court has ruled that the delinquent employee has right to receive copy of the inquiry officer"s report before the disciplinary authority arrives at its conclusion with regard to guilt or innocence of the employee with regard to the charges leveled against him. Denial of inquiry officer"s report before the disciplinary authority takes its" decision on the charges is denial of reasonable opportunity to the employee to prove his innocence and is breach of the principles of natural justice. Clause (10) (i) (a) of Rule 15 of the "OCS (CCA) Rules" provides that if the inquiring officer is not the disciplinary authority, the disciplinary authority shall furnish the delinquent Government servant a copy of the report of the inquiring officer and give him notice by registered post or otherwise calling upon him to submit within a period of fifteen days, such representation as he may wish to make against findings of the inquiring authority. Sub-clause (b) of the said Rules provides that on receipt of the representation referred to in Sub-clause (a) the disciplinary authority having regard to the findings on the charges, is of the opinion that any of the penalties specified in Clauses (vi) to (ix) of Rule 13 should be imposed he shall furnish to the delinquent Government servant a statement of its findings along with brief reasons for disagreement, if any, with the findings of the inquiring officer and give him a notice by registered post or otherwise stating the penalty proposed to be imposed on him and calling upon him to submit within a specified time such representation as he may wish to make against the proposed penalty. Clauses (c) and (d) of the provision has been made for passing appropriate orders in the case either obtaining the advice of the Orissa Public Service Commission or without as the case may be. Thus, the scheme provides that immediately after receipt of the inquiry report the disciplinary authority, in a case where he has not conducted the inquiry himself, shall forthwith supply a copy of the report to the delinquent Government servant calling upon him to submit a representation against the findings of the inquiring authority. This is to enable the delinquent to raise any objection regarding the findings recorded by the inquiring officer. Only after receipt of such representation, if any, and after perusing the report submitted by the inquiring officer, the disciplinary authority has to take a decision whether the charges have been established or not. In this

case, admittedly no enquiry report was provided to the Petitioner as envisaged under Clause (10) of Rule 15 of the "OCS (CCA) Rules". Though admittedly the Petitioner has obtained a certified copy thereof, the time limit which was granted to him for filing of the show cause reply is so less that he has filed a written show cause reply in a hurried manner, which amounts to not giving an adequate and proper opportunity to file his objections/representations. Thus, there has been gross violation of the principles of natural justice in this case and therefore the order passed by opposite party No. 1 cannot be sustained.

12. In view of the above we set aside the order of dismissal passed against the Petitioner as per Annexure-14 and direct that he be reinstated in his post within two months after giving all service benefits he is entitled to. It is further made clear that since the Petitioner has not worked for the entire period he shall be only entitled to 50% of the arrear wages. The writ application is disposed of with the aforesaid directions. The Petitioner is directed to file requisites within two weeks for communication of this judgment. The records of the Departmental Proceeding be handed over to the learned Counsel appearing for the Commissioner of Endowments forthwith. Writ petition disposed of.