
(2017) 12 OHC CK 0048

In the Orissa High Court

Case No : 22904 of 2017

Kelu Charan Behera

APPELLANT

Vs

Odisha Co-operative Housing Corporation Ltd.

RESPONDENT

Date of Decision : 04-12-2017

Acts Referred:

Constitution of India, Article 226, Article 227 - Power of High Courts to Issue certain writs - Power of superintendence over all courts by the High Court

Citation : (2017) 12 OHC CK 0048

Hon'ble Judges : Sujit Narayan Prasad

Bench : SINGLE BENCH

Advocate : Asim Amitabh Dash, B.K. Parida, A.N. Pattanayak, S.A. Pattnaik, M. Panda, J. Biswal, Baijayanti Mohanty, N.K. Mohanty, D. Mohanty, B. Panda.

Judgement

1. This writ petition under Article 226 and 227 of the Constitution of India has been filed wherein the order dated 23.10.2017 passed by the Managing Director, Odisha Cooperative Housing Corporation Limited, Bhubaneswar under Annexure-4 is under challenge whereby and whereunder the petitioner has been reverted from the post of Inspector/Assistant Accountant to that of the Supervisor/Senior Clerk on the ground of pendency of vigilance case making it operative till disposal of the vigilance case.

2. The grievance of the petitioner is that he, while working as Supervisor/Senior Clerk, was temporarily promoted to the post of Inspector/Assistant Accountant vide order dated 31.07.2013 in pursuant to the decision taken by the Appointment Sub-Committee which was held on 26.6.2013 and as such, the order of reversion passed in this regard on the basis of the pendency of the criminal case without following the principle of natural justice is not sustainable in the eye of law.

3. Learned counsel appearing for the petitioner has submitted that since the order of reversion is there, which is punishment under the Discipline and Appeal

Rule, hence the principle of natural justice ought to have been followed and since it has not been followed and as such, on this ground alone the order dated 23.10.2017 needs to be quashed. He has further submitted that the Inquiry Officer has found the charges not proved against the petitioner.

4. Learned counsel appearing for the opposite party has submitted that charge sheet although has been submitted in the departmental proceeding, the charge has not found to be proved by the Inquiry Officer, but yet the final decision has not been taken by the Disciplinary Authority and as such, granting promotion to the petitioner instead of keeping the same in the sealed cover awaiting for the final outcome either of the criminal proceeding or the departmental proceeding is a wrong decision and the authority in order to rectify the mistake committed by them, has rectify the same and as such there is no illegality in the decision taken by them. Hence, the impugned order cannot be interfered with.

5. Heard the learned counsel for the parties and on appreciation of their rival submission, the fact which is not in dispute in this case is that a vigilance case was instituted against the petitioner being Balasore Vigilance Case No.38 of 2013.

6. It is admitted that the charge sheet has been submitted against the petitioner in connection with Balasore Vigilance P.S. Case No.38 of 2013 before the date of meeting which has been fixed to consider the case of the petitioner for promotion to the higher post. It is also admitted position that the departmental proceeding has also been initiated in which Inquiry Report has been submitted although the Inquiry Officer has found the charges not proved with a warning to the petitioner for his gross negligence. There is no dispute in the settled position that the Inquiry Officer cannot impose punishment, rather whatever the finding of the Inquiry Officer will arrived at, the same will be communicated to the Disciplinary Authority for its onward action to be taken by the Disciplinary Authority, who can either accept the finding or differ with the finding by assigning the reasons, but that stage has not come and as such, the disciplinary proceeding will be said to be pending.

7. In view of such a situation, granting promotion to the higher post will be said to be contrary to the proposition laid down by Hon''ble the Supreme Court in the case of Union of India Etc. Etc. v. K.V. Jankiraman Etc. Etc., reported in 1991 AIR 2010 . Hon''ble the Supreme Court in the said case has been pleased to laid down the proposition that in case of pendency of the criminal or departmental proceeding, the cases of such employees will be considered, but their cases will be kept in sealed cover to be opened after the conclusion of the departmental proceeding in exoneration or acquittal in the criminal case by the competent court of the criminal jurisdiction. It has also been stipulated therein that the material date for initiation of criminal proceeding would be the date of submission of charge-sheet while in the matter of departmental proceeding, the service of memorandum of charge upon the delinquent employee will be said to be the date of initiation of departmental proceeding. In view thereof, the order granting promotion to the petitioner will be held to be contrary to the proposition

laid down therein and as such, the decision taken by the authority cannot be said to be improper.

8. The petitioner has taken the ground that the principle of natural justice has not been followed and as such, on the ground alone the order of reversion is fit to be quashed, but this argument is not acceptable. The question is that even if the order will be quashed by this Court on the ground of non-observation of principle of natural justice, what material change will come, since the fact is not in dispute that on the due date of consideration or the date of granting promotion, the charge-sheet has been submitted against the petitioner in the said criminal case. Hence, there is no chance of change of any factual aspect. In this respect, the proposition laid down by Hon'ble the Supreme Court in the case of *Dharampal Satyapal Ltd. v. Deputy Commissioner of Central Excise, Gauhati and others*, reported in (2015)8 SCC 519 wherein their Lordships have held at paragraph-39 which is being quoted herein below: "39. We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasizing that the principles of natural justice cannot be applied in straitjacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of procedural fairness, accuracy of outcome leading to general social goals, etc. Nevertheless, there may be situations wherein for some reason- perhaps because the evidence against the individual is thought to be utterly compelling- it is felt that a fair hearing "would make no difference"- meaning that a hearing would not change the ultimate conclusion reached by the decision-maker."

In the case of *Escorts Farms Ltd. v. Commissioner, Kumaon Division, Nainital, U.P. & others*, reported in (2004) 4 SCC 281 wherein Hon'ble the Apex Court has held at paragraph-64 which is being quoted herein below:

"64. Right of hearing to a necessary party is a valuable right. Denial of such right is serious breach of statutory procedure prescribed and violation of rules of natural justice. In these appeals preferred by the holder of lands and some other transferees, we have found that the terms of government grant did not permit transfers of land without permission of the State as grantor. Remand of cases of a group of transferees who were not heard, would, therefore, be of no legal consequence, more so, when on this legal question all affected parties have got full opportunity of hearing before the High Court and in this appeal before this Court. Rules of natural justice are to be followed for doing substantial justice and not for completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. In view of the legal position explained by us above, we, therefore, refrain from remanding these cases in exercise of our discretionary powers under Article 136 of the Constitution of India."

9. As such, herein also since the order of promotion has been passed in favour of the petitioner without following the principle laid down by Hon'ble the Apex Court in the case of *K.V. Jankiraman (supra)* when admittedly charge sheet in

criminal case against the petitioner has been filed, hence even if the order impugned will be quashed on this ground, there is no chance of change in the actionable decision. Hence, keeping in view the propositions laid down above and adopting the principle of empty formality and futile exercise, it would not be appropriate to quash the order, so far reversion part is concerned, accordingly, declined to interfere with. But simultaneously, the part of the order by which the authorities have observed therein that the reversion will be having its effect till disposal of the vigilance case, this part of the order is contrary to the ratio laid down by the Hon''ble Supreme Court in the said case for the reason that if the petitioner would be acquitted in the criminal case, he would be granted promotion subject to suitability and eligibility from the date when the order of promotion would be issued and in that way, the petitioner will be made to suffer and that is the reason of adopting the principle of sealed cover so that if the petitioner would be acquitted in criminal case or exonerated in the departmental proceeding, the sealed cover would be opened and he would be entitled to be given benefit of promotion from the said date i.e. from the date other juniors have been granted the promotion. Hence, the part of the order dated 23.10.2017 whereby and whereunder it has been observed that the reversion order will be operative till disposal of the vigilance case needs to be quashed. Accordingly, the part of the order whereby and whereunder it has been said in the order to revert him till disposal of the vigilance case is quashed. In the result, the matter is remitted before the authority to pass fresh order in this regard to the effect by keeping his case for promotion under sealed cover. At this juncture, learned counsel for the petitioner has submitted that at least petitioner''s case ought to have been considered on the basis of Office Memorandum dated 4th July, 1995 which speaks regarding the ad hoc promotion, but in the entire pleading this point has not been taken. However, without making any comment on this, it is left upon the petitioner to approach the authority to consider the case in the light of the said Office Memorandum dated 4th July, 1995 and the authority will liberty to take decision in accordance with law. Accordingly, the writ petition is disposed of.