
(1972) 09 OHC CK 0017
In the Orissa High Court
Case No : O.J.C. No. 908 of 1969

Lingaraj Jena

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 20-09-1972

Acts Referred:

Orissa Service Code, 1939 — Rule 159, 159(2)

Citation : (1972) 38 CLT 1127

Hon'ble Judges : R.N. Misra, J;K.B. Panda, J

Bench : Division Bench

Advocate : R. Mohanty, R.K. Das and N. Patra, for the Appellant; Government Advocate, for the Respondent

Judgement

R.N. Misra, J.—The Petitioner was appointed as helper in the office of the Joint Director of Agriculture (Fruit Preservation), Orissa, with effect from 12th of February, 1965 on temporary basis and he actually reported to duty from 21st of that month. On 6.12.1968, the opposite party No. 3 passed the following order:

It was reported to me by Sri R.K. Mohapatra, Agricultural Overseer and Sri G. Mohapatra, Quality Control Assistant that you did not do the work assigned to you in connection with shifting of juice bottles from the Laboratory to Unit.1 store you also refused to do any work unless written orders are given. When I searched for you between 2.45 P.M. to 3.00 P.M. to day you were not in Office or in the Laboratory. You are therefore, marked absent and the absence is treated as leave on loss of pay.

The Petitioner challenges the order as being without authority of law. Several other allegations were made in the writ petition, but during hearing Mr. Mohanty for the Petitioner confined the application to the first prayer namely, impugning of the order under Annexure-B, which has been extracted above.

2. In the counter affidavit this question has been answered thus:

That on 6.12.1968, the Petitioner did not attend to work entrusted to him and

when the matter was reported by his superior officers, the Joint Director of Agriculture (Fruit Preservation) opposite party No. 3 who is the appointing authority inspected the Laboratory where he was attached and found the Petitioner to be absent from duty between 2.45 P.M. to 3 P.M. He neither took permission for such absence nor subsequently reported to duty on the same day. In consideration of his unauthorised absence from duty, the opposite party No. 3 treated the Petitioner to be on leave on loss of pay. Such an action by the opposite party No. 3 is competent under Rule 159 (2)(b) of the Orissa Service Code.

3. Mr. Mohanty's contention is that the impugned order amounts to a penalty. The Petitioner was actually present in office during the day though for the 15 minutes referred to in the order he may not have been physically present, having gone out either to attend the call of nature or for tea. It is contended that Rule 159 of the Orissa Service Code does not authorise the making of the order.

4. Rule 159 provides:

(1) Extraordinary leave may be granted in special circumstances:

(i) When no other kind of leave is admissible; or

(ii) When any other kind of leave being admissible, the Government servant concerned applies in writing for the grant of extraordinary leave.

** ** *

There is no indication in the counter affidavit that no other kind of leave was admissible to the Petitioner. Admittedly the Petitioner did not apply for grant of extraordinary leave. Therefore, in the facts of this case, Rule 159(1) of the Orissa Service Code was not at all applicable. This view of ours receives direct support from a Bench decision of the Patna High Court in the case of *Birendra Kumar Sinha v. State of Bihar and Ors.* 1969 Labour and Industrial Case page 742.

5. It is not necessary to consider the other contentions of Mr. Mohanty in view of our finding that the impugned order cannot be justified under Rule 159 of the Orissa Service Code. He would accordingly allow the application and quash the order in Annexure-B treating the Petitioner to be on loss of pay for the 6th of December, 1968. The writ application is accordingly allowed to the extent and in the manner indicated above. There would be no order as to costs.

K.B. Panda, J.

6. I, agree.