
(2009) 01 OHC CK 0035
In the Orissa High Court

Lokanath Mohanty

APPELLANT

Vs

High Court of Orissa and Another

RESPONDENT

Date of Decision : 22-01-2009

Acts Referred:

Citation : (2009) 107 CLT 665 : (2009) 1 OLR 959

Hon'ble Judges : B.S. Chauhan, C.J;B.N. Mahapatra, J

Bench : Division Bench

Judgement

B.S. Chauhan, C.J.—This Writ Petition has been filed challenging the Order Dated 13.4.1989 and 17.4.1989 (Annexures 8 & 9) passed by the Disciplinary Authority dismissing the Petitioner from service and the Order Dated 14.3.1995 passed by the Appeal Committee by which the appeal filed by the Petitioner has been dismissed on 14.3.1995 in Appeal No. 11 of 1989 (Annex.-12), which was communicated to him by memo. No. 4383(3)/95 dated 3.6.1995 (Annex.-11).

2. The facts and circumstances giving rise to this case are that the Petitioner while working as a Process Server in the Court of Additional Munsif-cum-Judicial Magistrate, First Class, Umerkote was placed under suspension vide Order Dated 11.2.1983 pending Departmental Proceeding No. 9 of 1983. A charge sheet dated 2.0.1.1983 (Annex. -1) was served upon the Petitioner on the allegation that the Petitioner instead of proceeding to a particular village as per the approved tour programme, accompanied by the Sheristadar and Senior Clerk of the Court went to another village on 3.11.1982 and served fabricated summons on 64 persons and asked them to give illegal gratification in order to dispose of their cases. He had extracted Rs. 1 from each of them on 4.11.1982. The Petitioner submitted a reply to the charge sheet. However, the inquiry was conducted in which he was found guilty and was dismissed from service vide Order Dated 10.1.1986. Being aggrieved the Petitioner preferred an appeal before the Appeal Committee of this Court which had been allowed vide Order Dated 11.2.1987 (Annex.-2), the order of punishment was set aside and the matter was remanded to the Learned District Judge to decide it afresh, after

giving opportunity of hearing to the Petitioner and full opportunity of defence through a lawyer. Again in pursuance of the said order inquiry was conducted in which the Petitioner was represented through a lawyer and the inquiry report dated 7.12.1988 (Annex.-7) was submitted exonerating the Petitioner from the charges. But the disciplinary authority, i.e., the Learned District Judge disagreeing with the Inquiry Officer passed the Order Dated 13.4.1989 (Annex. - 8) dismissing the Petitioner from service without issuing second show cause to him. The Petitioner filed an appeal before the Learned Appeal Committee of this Court which was dismissed by Order Dated 14.3.1995. Hence this Writ Petition.

3. Learned Counsel for the parties have advanced positive arguments in support of their respective cases. But two things remain undisputed, i.e., (i) the Disciplinary Authority while not accepting the inquiry report did not record reasons separately for his disagreement; thus, the disciplinary authority could not serve copy of the said reasons of disagreement to the delinquent; and (ii) no second show cause had been served upon the Petitioner as the disciplinary authority stated in the impugned order that there was no such necessity.

4. In Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, , the Apex Court considered this issue observing as under:

The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

The aforesaid conclusion which we have arrived at is also in consonance with the underlying principle enunciated by this Court in the case of Institute of Chartered Accountants of India Vs. L.K. Ratna and Others, . While agreeing with the decision in Ram Kishan Vs. Union of India and others, , we are of the opinion that the contrary view expressed in State Bank of India v. S. S. Koshal ; and State of Rajasthan Vs. M.C. Saxena, , do not lay down the correct law.

5. The Judgment in Kunj Bihari Mishra (supra) was considered and approved by the Apex Court in Yoginath D. Bagde Vs. State of Maharashtra and Another, ; The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another, ; J.A. Naiksatam Vs. Prothonotary and Senior Master, High Court of Bombay and Others, ; State Bank of India and Ors. v. Arvind K. Shukla (2004)

13 SCC 797.

6. In view of the above, the order of dismissal from service passed against the Petitioner stood vitiated and therefore, it becomes liable to be quashed. The question does arise as on today the Petitioner is 61 years of age. In such situation the only direction which may be given is that the District Judge should re-consider as to whether he has reasons to disagree with the report of the inquiry officer and if so, he may record reasons and serve a copy of the same upon the Petitioner and after giving the opportunity of hearing to him, he may pass a fresh order of punishment.

7. It is made clear that in such fact situation the order passed by the Learned District Judge will relate back to the date of earlier punishment.

8. There is no dispute to the settled legal proposition that the result of the enquiry held by the Labour Court relates back to the date of termination. In *Desh Raj Gupta Vs. Industrial Tribunal IV, U.P., Lucknow and another*, , and the Apex Court held that in a case where Industrial Tribunal comes to conclusion that the domestic inquiry was unfair and holds the inquiry itself and even then it comes to conclusion that the termination was valid or termination order was passed on substantial evidence; the termination would be effective from the date the labour Court passed the order. However, in *R. Thiruvirkolam Vs. Presiding Officer and another*, , the Supreme Court took a contrary view and held that in such an eventuality, the order of the labour Court will relate back to the date of order of termination was passed by the employer and in such a case, the workman cannot be held entitled for any relief for the interregnum period from the date of termination order passed by the employer and final award made by the Tribunal.

9. All these cases were reconsidered by Supreme Court in *Punjab Dairy Development Corporation Limited and another, etc. Vs. Kala Singh, etc.*, , and the Apex Court held that the Judgment in *Desraj Gupta's case (supra)* was not a correct law. The Supreme Court had subsequently, in *Director, State Transport, Punjab and Another Vs. Gurdev Singh and Another*, , has reiterated the law laid down by Supreme Court in *R. Thiruvirkolam's case (supra)*. More so, in *Graphite India Ltd. and Another Vs. Durgapur Projects Ltd. and Others*, , the similar principle has been reiterated and it has been held that when an action is approved, it would relate back to the date of act-ion.

10. In *Mani Ram Vs. The State of Haryana and Others*, , the Apex Court considered a case where an employee had been compulsorily retired vide Order Dated 9.6.1989. The matter went into litigation. The Court set aside the Order Dated 9.6.1989 and asked the competent authority to reconsider the case. Again the order was passed on 6.11.1995 observing that earlier order of compulsory retirement dated 9.6.1989 had correctly been passed and the employee did not deserve to be retained in service. The Apex Court held that the Order Dated 6.11.1995 would relate back to the earlier Order Dated 9.6.1989, and the employee was not entitled for any relief for the reason that if at the age of 61

years the Court treated the order of compulsory retirement on 6.11.1995, it would amount to an order of extension of service beyond the normal age of superannuation. Thus, in such factsituation, the subsequent order of compulsory retirement held to be operative from the earlier date of order.

11. In such a fact situation, this Court has no option but to remit the case to the disciplinary authority to take up the inquiry from the point it stood vitiated and conclude it afresh. Such an order is necessary as it would be in conformity of laid down by the Apex Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., ; Hiran Mayee Bhattacharyya case, (2002) 10 SCC 293; U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and Another, and Union of India (UOI) Vs. Y.S. Sadhu, Ex-Inspector, .

12. Learned Counsel for the Petitioner has fairly conceded that as the Petitioner has already reached the age of superannuation, he is not entitled for any financial gain at this stage and he shall abide by the decision of the Learned District Judge to be passed in accordance with law.

13. In view of the above, the order of punishment dated 17.4.1989 (Annex. -9) and the order passed by the Appeal Committee dated 14.3.1995 (Annex.-12) are hereby quashed and the mater is remitted back to the Learned District Judge, Koraput to proceed afresh from the stage of receiving the inquiry report submitted by the Inquiry Officer. As the matter is very old, we request the Learned District Judge to conclude the proceeding from the point it stood vitiated within a period of three months from the date of receipt of certified copy of this order.

14. With the aforesaid observation, the Writ Petition is disposed of. No costs.

B.N. Mahapatra, J.

I agree.