
(1975) 08 OHC CK 0023
In the Orissa High Court
Case No : O.J.C. No. 139 of 1974

Madhusudan Bhuyan

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 08-08-1975

Acts Referred:

Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 — Rule 12(1)

Citation : (1975) 41 CLT 1195

Hon'ble Judges : G.K. Misra, C.J.; P.K. Mohanti, J

Bench : Division Bench

Advocate : L. Rath, B.S. Misra, J.K. Rath and A.K. Misra, for the Appellant; R.K. Patra, for the Respondent

Final Decision : Allowed

Judgement

G.K. Misra, C.J.—The Petitioner was appointed as Lower Division Clerk in the Public Health Engineering Department and was posted to Cuttack Water Supply Subdivision in June, 1964. His duty was to collect water tax and maintain accounts. It appears that he had no knowledge in accounts and he had to depend on his colleagues. Taking advantage of his ignorance some of his colleagues tampered accounts as a result of which Government sustained loss. On 24-12-1964 he was placed under suspension and no disciplinary proceeding has yet been initiated. The Petitioner was paid subsistence allowance till September, 1965 and no subsistence allowance has been paid thereafter. It is not necessary to refer to certain details regarding payments made to the Petitioner as they are not relevant for the purpose of this case. F.I.R. was lodged against him for defalcation on 26-4-1969. The criminal case has also not taken any shape and no charge-sheet has been filed. The Petitioner prays for quashing the suspension order treating him as continuing in service from the date of suspension and for giving him all service benefits. In the alternative he "prays that the opposite parties may be directed to pay the subsistence allowance up to date.

Essential facts averred in the writ application have not been denied in the

counter affidavit.

2. The question that arise for consideration are whether the order of suspension was legal and what reliefs the Petitioner is entitled to.

3. Rule 12(1) of the Orissa Civil Services (Classification, Control and Appeal) Rules, 1962, so far as relevant, runs thus:

12. Suspension: (1) The appointing authority to which it is subordinate or any authority empowered by the Governor or the appointing authority in that behalf may place a Government servant under suspension

(a) where a disciplinary proceeding against him is contemplated or is pending, or

(b) where a case against him in respect of any criminal offence is under investigation or trial.

As has already been stated, the F.I.R. in this case was lodged on 26-4-1969 - long after 24-12-1964, the date of suspension. The suspension is not justified under Rule 12(1)(b).

4. No disciplinary proceeding against the Petitioner is pending. The only question is whether at the time when the suspension order was passed a disciplinary proceeding against him was contemplated. From the date of suspension more than ten years have elapsed and no disciplinary proceeding has been initiated. No materials have been placed before us to show that a disciplinary proceeding was contemplated at the time the suspension order was passed. The suspension order (Annexure-I) does not show that a disciplinary proceeding was contemplated. In any view of the matter the order of suspension passed under the first part of Rule 12(1)(a) is without jurisdiction.

5. To avoid confusion we must make the legal position clear. If a disciplinary proceeding had been contemplated at the time the suspension order was passed, then the same could not have been quashed by us even though the disciplinary proceeding was not initiated for a long time unless the delinquent established that the order of suspension was vitiated by malafides or was not supported by any materials. Such a case is different from the one we are dealing with. -In *Manasranjan Das v. State of Orissa* and Ors. 1973 (2) S.L.R. 553, quashed the suspension order with the following observations:

4.... We see no justification in the order of suspension made in 1964 to have been kept alive until 1972. It was vexatious and inexpedient and had a demoralizing effect on a public officer. The utter callousness shown by the Head of the Office in keeping a public officer suspended almost for eight years without any justification (we say so because the proceeding was kept alive for such a long period without any excuse) justifies the annulling of the order. Accordingly we quash the order of suspension as also the disciplinary proceeding.

We do not construe this decision as justifying the quashing of the suspension order legally passed merely because the disciplinary proceeding was not disposed

of for a long time. The decision can be supported on the ground that the suspension order passed initially was without any Justification.

6. In the result, the writ application is allowed with costs. Hearing fee of Rs. 100/- . A writ of certiorari be issued quashing the suspension order (Annexure-1) - dated 24-12-1964. The Petitioner be reinstated in service. He will be entitled to arrears of salary from 24-12-1964 upto date excluding the amount paid to him towards subsistent allowance. All the arrears be paid to him within three months from today.

P.K. Mohanti, J.

7. I agree.