

(1972) 04 OHC CK 0022

In the Orissa High Court

Case No : Original Jurisdiction Case No. 23 of 1970

Mahabeer Prasad Dodaka

APPELLANT

Vs

The State of Orissa and Others

RESPONDENT

Date of Decision : 24-04-1972

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1972) 38 CLT 773

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

Bench : Division Bench

Advocate : D.P. Mohanty, for the Appellant; Additional Government Advocate, for the Respondent

Judgement

R.N. Misra, J.—The Petitioner was serving as a Family Planning Extension Educator (Male) having been appointed to such post by the Chairman of the Notified Area Council, Titilagarh by order dated 13th of January, 1966 in the scale of pay of Rs. 185 Rs. 300/- with usual dearness allowance. On 6-10-1967, he was suspended from service and on 11-11-1967, a set of charges were framed against him and he was called to offer his explanation. On 20th of November, 1967, he showed cause denying the allegations. On 30th of November, 1967, his service was terminated. Thereupon he preferred an appeal to the State Government as provided under the Orissa Municipal Act. Government allowed the appeal, set aside the punishment and directed that enquiring officer should be appointed to go into the charges, adequate opportunity to the delinquent should be provided to be heard and after findings are obtained suitable orders may be passed by the appointing authority. The Petitioner was again served with the same set of charges and was asked to explain. On 9-12-1968, the explanation was submitted by the Petitioner. After the explanation was given, the following order was passed:

As per order dated 26.2.1969 of Chairman, Notified Area Council, Titilagarh, Sri Mahabeer Prasad Dodaka, Family Planning Extension Educator (Male), Family

Welfare Planning Centre, Titilagarh who is under suspension Is found guilty of the Charges framed against him and Is discharged from his duty with effect from 26-2-1968.

The Petitioner preferred an appeal to Government against this punishment. On 29.9.1969, the appeal was dismissed by Government. The Petitioner by this application under Articles 226 and 227 of the Constitution has asked us to quash the imposition of punishment as upheld in appeal.

2. Admittedly the Petitioner is an employee of the Notified Area Council. There is no material on record to show as to whether the Orissa Service Code has been extended to the servants of the Notified Area Council. Learned Additional Government Advocate appearing for the opposite parties contended that the application under Articles 226 and 227 of the Constitution must be thrown out as not maintainable because in regard to the Petitioner who is a servant of a statutory corporation like that of a municipality, relief under Articles 226 of the Constitution cannot be given.

3. We cannot accede to the contention of learned Additional Government Advocate. The Petitioner's service is statutory to the extent that the Orissa Municipal Act provisions for such service and also provides for disciplinary jurisdiction. Even the appeal to the state Government is statutory. On the first occasion when Government allowed the appeal of the Petitioner on 12-10-1968, they passed the following direction:

The order of discharge is set aside. The proceedings after the date 20.11.1967 are quashed as materially irregular and should proceed from the stage afresh an enquiring officer should be appointed to go in to the charges. He should follow the principles of natural justice and give adequate opportunity to the delinquent to be heard. On his finding on the charges suitable order will be passed by the appointing authority. Till then, the suspension will continue. The proceeding should be disposed of within three months from the date of receipt of the file by the Notified Area Council office.

This is of course subject to the right of the Notified Area Council to terminate the services of the delinquent at any time even without assigning any reason 808 the same is purely temporary, but the Council must pass suitable orders on the charges drawn up.

When notice was given to the Petitioner subsequent to the aforesaid order, the Petitioner was required to indicate whether he likes to be personally heard. It is not disputed that the Petitioner white showing cause wanted a personal hearing. In this background we are indeed surprised that the Notified Area Council decided to terminate the services of the Petitioner by an order which certainly attached stigma without giving him adequate opportunities to defend himself including an opportunity of being heard. Even his prayer for relevant documents was arbitrarily rejected. Annexure-D dated 2-3-1969 clearly shows that the Petitioner was found guilty, of the charges framed against him and was, therefore,

discharged. Though the order was communicated on 2nd of March, 1969, It is purported to be effective from 26-2-1968.

4. The directions of the Appellate authority have been given a complete go-by and though the Municipal council was required to follow rules of natural justice, the Petitioner has not been given a hearing. We are satisfied that the Impugned order of discharge from service cannot be sustained. Government while dealing with the appeal have not applied their mind to the facts of the case because these aspects do not appear to have been dealt with by them in their Appellate decision. We would accordingly issue a writ of certiorari quashing the Impugned order dated 26-2-1969 which was communicated on 2-3-1969 (Annexure-D) as also the Appellate decision dated 29-9-1969 (Annexure-F) by which Government dismissed the appeal and upheld the discharge order. The Petitioner shall be deemed to be in service of the Municipal council to deal with the disciplinary proceedings in accordance with law. The Petitioner Is entitled to costs which we assess at rupees one hundred. The same shall be recoverable from opposite party No. 4 only.

B.K. Ray, J.

5. I agree.