
(2014) 08 OHC CK 0024
In the Orissa High Court
Case No : WP(C) NO. 11301 of 2004

Manoj Ku. Mishra

APPELLANT

Vs

District Judge

RESPONDENT

Date of Decision : 13-08-2014

Acts Referred:

Citation : (2014) 08 OHC CK 0024

Hon'ble Judges : Amitava Roy, C.J;B.R. Sarangi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard Mr. B. Pujari, learned counsel for the petitioner and Mr. J.P. Pattnaik, learned Additional Government Advocate.
2. The petitioner seeks intervention of this Court to set at naught the order dated 29.09.2004 terminating his services as Class-IV employee in the establishment of District Judge, Khandhmal-Boudh at Phulbani.
3. Briefly stated, the relevant facts are that the petitioner being a physically handicapped candidate had participated in the process of selection of Peon in the establishment of District Judge, Khandhmal-Boudh at Phulbani in the year 2004. Having been declared successful in the process, he was appointed in the cadre of Class-IV in the time scale of pay Rs. 2550-55-2660-60-3200/-with other emoluments and was posted as Peon in the court of S.D.J.M., Balliguda and was deputed to the District Court, Phulbani. While he was rendering his services as such, a show-cause notice dated 21.08.2004 was issued to the effect that his name found place in the merit list of Candidate Peon under Sl. No. 15 prepared by the District Judge, Phulbani on 24.07.2000 wrongly and that he had not been enrolled as a Process Server under District Court Memo No. 2(x) dated 26.08.2002. In fact vide order dated 26.08.2002 the petitioner was appointed in the cadre of Class-IV and posted as Peon as referred to hereinabove.
4. The petitioner was required to submit his explanation as to why his services

shall not be terminated as it was alleged on behalf of the opposite party-authority that his appointment as a Process Server was illegal as he had not been empanelled prior thereto as a Candidate Peon. The petitioner submitted his explanation insisting that the action proposed was illegal as he had never been appointed as Process Server and in fact he was appointed as a Peon. Be that as it may, by the impugned order dated 29.09.2004 his services were terminated with effect from 30.09.2004.

5. The opposite party in their counter while admitting that the merit list including the name of the petitioner had been prepared on 24.07.2000, pleaded that normally Peon after being duly selected by the authority concerned is enrolled as candidate peon as a prerequisite for appointment as Peon/Process Server on temporary basis. As the relevant rules/norms to this effect had not been complied vis-a-vis the petitioner, his appointment as a Process Server was thus invalid and the impugned order was passed. It was also averred that his performance during the period of his incumbency as Process Server was not satisfactory and he being a physically handicapped candidate was unable to discharge his duties as a Process Server.

6. Mr. B. Pujari, learned counsel for the petitioner argued with reference to the order dated 26.08.2002 (Annexure-2 to the writ petition), that thereby the petitioner had been appointed in the cadre of Class-IV and posted as Peon and not as Process Server and therefore the impugned action taken on the face of the record is illegal, arbitrary and unsustainable in law. According to him, the petitioner having been appointed as Peon, as is evident from the order dated 26.08.2002, the termination of his services on the presupposition that he had been appointed as Process Server is apparently unfounded. He has argued as well that the petitioner had never been put to notice that his services rendered by him were unsatisfactory for some reason or other. Therefore, this aspect could not have been taken note of in law for terminating his services.

7. Learned counsel for the opposite party, on a query being made by us, has not been able to point out that the petitioner vide order dated 26.08.2002 had been appointed as Process Server and not as a Peon. Even otherwise, a plain reading of order does not bear out the correctness of this pleaded stand of the opposite party. It is apparent from the show-cause notice dated 21.08.2004 that the petitioner was not informed that his services had been assessed to be unsatisfactory as Process Server for his physical condition.

8. In the above view of the matter, we are constrained to hold that the order of termination of the services of the petitioner in the facts and circumstances of the case cannot be sustained. Not only, according to us, the basic premise on which the decision has been taken i.e. the petitioner had been appointed as Process Server, is not borne out from records, the factor that his services had been found unsatisfactory being of a punitive content, prior notice to him in compliance to the principles of natural justice was unavoidable and called for.

9. The impugned order thus stands vitiated in law and cannot be sustained. The same is thus interfered with. As a result, the petitioner is ordered to be reinstated in service without back wages. His other benefits including continuity in service and benefits incidental thereto would, however, be provided to him.

10. Writ petition is allowed.