
(1975) 09 OHC CK 0008
In the Orissa High Court
Case No : O.J.C. No. 701 of 1974

Nanda Kishore Mohanty

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 15-09-1975

Acts Referred:

Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 — Rule 12(4), 12(5)

Citation : (1976) 42 CLT 57

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

Bench : Division Bench

Advocate : G.A.R. Dora, for the Appellant; Addl. Government, for the Respondent

Judgement

R.N. Misra, J.—Petitioner is an employee under the State Government. He was put under suspension pending initiation of a disciplinary proceeding by order dated 21-5-1970. In due course as a measure of punishment his services were dispensed with by order dated 5-4.1971. He challenged the removal from service in a writ application before this Court in O.J.C. 399 of 1973. During pendency of the writ application, the disciplinary authority withdrew the order of removal and directed the proceeding to continue afresh from the stage where in its view illegality had crept in. The Petitioner now challenges the continuance of the disciplinary proceeding on two grounds:

(i) That as the position must be deemed to be covered by Rule 12(5) of the Orissa Civil Service (Classification, Control and Appeal) Rules, 1962 in the absence of a provision for continuing the proceeding as contained in Sub-rules (3) and (4) the proceeding cannot continue;

and (ii) That the subsistence allowance during the period of suspension having not been paid, the proceeding cannot be continued.

It is further claimed that the Petitioner is entitled to full salary from 21-5-1970

till 16-11-1973 when a decision was taken that the proceeding would continue afresh and the Petitioner's suspension would be deemed to be in force.

2. These claims of the Petitioner have been challenged in the counter-affidavit excepting the payability of subsistence allowance. Learned Additional Government Advocate has stated to us that subsistence allowance has been paid up to 20th May, 1975 on 26-8-1975 and assures us that subsistence allowance from time to time shall be paid in accordance with the rules.

3. The two questions that survive for examination are as to whether the order of suspension made 21-5-1970 shall be deemed to be continuing in force or the suspension must be deemed to be continuing in force or the suspension must be deemed to be in force from 16-11-1973 only and, therefore, be entitled to salary for the period between 5-4-1971 and 16-11-1973 and the other as to whether the proceeding itself can continue.

4. The order of suspension made on 21-5-1970 must be taken to have merged in the order of removal from service dated 5-4-1971. Learned Additional Government Advocate does not dispute that position in view of the two decisions of the Supreme Court in *Om Prakash Gupta Vs. The State of Uttar Pradesh*, and *H.L. Mehra Vs. Union of India (UOI) and Others*, . But according to the learned Additional Government Advocate in this case the matter is directly covered by rule-12(4) of the 1962 Rules and, therefore, as there is a provision for continuance of the order of the suspension, the principles indicated in the Supreme Court decisions will not apply. It is convenient to extract Sub-rule (4) of Rule 12 of the 1962 Rules which runs thus:

12(4). Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared void in consequence of or by a decision of a Court of law and disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the appointing authority from the date of the original orders of dismissal, removal or compulsory retirement and shall continue to remain Under suspension until further orders.

According to the learned Additional Government Advocate the order of removal was withdrawn in this case as a consequence of the decision of the Court regarding the requirement to observe rules of natural justice in a disciplinary proceeding. Though it is conceded that the order of removal was not set aside or declared void by a decision of the Court it is contended that the order was rendered void in consequence of the judicial decisions. We find it difficult to accept the contention of the learned Additional Government Advocate regarding interpretation of this sub-rule. In fact, this sub-rule must be read side by side with Sub-rule (3) which refers to setting aside the order of dismissal, removal or compulsory retirement by the appellate authority in accordance with the Service

Rules. Sub-rule (4) is intended to cover vacation of the penalty as a result of judicial proceedings, while Sub-rule (3) covers case of interference by the appellate authority under the Service Rules. If we accept the contention advanced by the learned Additional Government Advocate it would mean that if the disciplinary authority without interference of the Court suo motu decides to vacate the penalty, Sub-rule (4) would apply. That does not seem to be the intention of the Sub-rule. The phrase "in consequence of" must have a direct nexus with the decision and we are not prepared to accept that if by the decision of the Supreme Court or this Court the law is declared and the disciplinary authority following the law chooses to vacate the penalty, the application of Sub-rule (4) would be attracted. "In consequence of" is a phrase which indicates direct nexus with the decision of the Court and, therefore, unless the vacation of the penalty is as a consequence of the decision of the Court in a connected proceeding, Sub-rule (4) would not be attracted. Admittedly in the instant case the order of removal had not been vacated either by the Court, nor had it been rendered void by the decision of the Court or in consequence of the decision of the Court. Accordingly Sub-rule (4) would not cover the matter. Therefore, the suspension which had merged in the order of removal cannot be restored and the law as indicated by the Supreme Court in the decisions referred to above will have full application.

5. The net result of this position would, therefore, is that the order of suspension against the Petitioner must be deemed to have been vacated on 5-4-1971 and until an order for treating him to be under suspension is made on 16-11-1973, he must be deemed to be in service.

We do not agree with Mr. Dora that the Petitioner would be entitled to relief from 21-5-1970 as there was a valid order of suspension from the date and had rightly remained in force till 5-4-1971, In what way this period would be treated is a matter within the jurisdiction of the disciplinary authority in terms of the provisions of the Orissa Service Code. Therefore, we cannot now accept Mr. Dora's contention that the Petitioner must be deemed to have been restored to service from 21-5-1970. The Petitioner shall, therefore, be entitled to full salary between 5.4.1971 and 16-11-1973. This would necessarily mean that the subsistence allowance paid to the Petitioner for this period must be adjusted against- the salary payable to the Petitioner.

6. The next question is as to whether the disciplinary proceeding can continue as directed by the disciplinary authority. Mr. Dora relies upon Sub-rule (5) of Rule 12 of the 1962 Rules in support of his contention that the proceeding cannot be continued. Sub-rule (5) of Rule 12 provides:

12(5). An order of suspension made or deemed to have been made under this rule may at any time be revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

Non-mention of the fact that the disciplinary authority may direct the enquiry to

continue does not take away the power inherent in the disciplinary authority to continue a disciplinary proceeding. Sub-rule (5) is enabling to the extent that even when a suspension has been made, it may be revoked. The order of suspension has nothing to do with the punishment to be finally imposed. In the instant case the final order of punishment has been vacated and the" proceeding has been restored to be continued in accordance with law by complying with the requirements of natural justice. We do not find anything in Sub-rule (5) which would make the continuance of the proceeding untenable in law. Accordingly there is no force in Mr. Dora"s contention that the continuance of the proceeding is contrary to law.

7. We recall our interim order and direct the disciplinary proceeding to be continued as provided in law and to be closed at an early date as it has been continuing since more than five years. In case there will be delay in disposal of the proceedings steps would be taken to pay the subsistence allowance to the Petitioner at periodic gaps with reasonable haste. The writ application succeeds to the extent indicated above. There will be no order as to costs.

Ordered accordingly.

N.K. Das, J.

8. I agree.