
(2015) 08 OHC CK 0036

In the Orissa High Court

Case No : Writ Petition (C) Nos. 19278, 19279, 19280, 19281 and 19282 of 2014

Narottam Pradhan and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 06-08-2015

Acts Referred:

Citation : (2015) LabIC 3889 : (2015) 2 OLR 598

Hon'ble Judges : B.R. Sarangi, J

Bench : Single Bench

Advocate : M. Pratap, B.K. Barik and J.R. Rath, for the Appellant

Final Decision : Dismissed

Judgement

Dr. B.R. Sarangi, J—The petitioners, who are the employees of Council for Higher Secondary Education, Odisha, Bhubaneswar have filed this application seeking to quash the order of suspension dated 22.09.2014 vide Annexures-6 and 12 respectively passed by the Chairman, C.H.S.E., Odisha, Bhubaneswar and further seek for a direction to opposite party No. 2 to reinstate them to continue as before with all consequential service benefits as due and admissible in accordance with law.

2. The factual matrix of the case in hand is that some of the petitioners who are elected members of the Employees Association have demanded before the authority with regard to its functioning as well as extension of service benefits as due and admissible, which have been reported in daily "Sambad" on 11.07.2014 under the caption "Kathagadare Council". Basing on such paper publication, they were called upon to submit explanation. On receipt of such explanation, the petitioners were warned by the authority not to repeat such type of conduct/activity in future or else action as deemed proper shall be initiated against them and they were directed to resume duty. It is stated that thereafter demand was raised before the Chairman to implement the 15 points demands along with recommendation of Hon"ble Justice V. Gopalaswamy, Retd. Judge of Orissa High

Court regarding payment of salary, pension etc. like Government servant. Therefore, the petitioners raised a 18 point demand before the Hon''ble Chief Minister of Odisha along with copy to Minister, Higher Education and Secretary, Higher Education, Odisha including the remedial measures suggested by the Suggestion Committee under the Chairmanship of Justice V. Gopalaswamy, Retd. Judge, Orissa High Court in the matter of conduct of examinations and their remedial measures and the guidelines for appointment of Examiners, Chief Examiners and question setters and the procedure for evaluation and other connected relevant matters. Instead of solving the demand, in order to throttle the voice of the petitioners who have raised objection against the corruption as well as non-implementation of the order passed by Hon''ble V. Gopalaswamy, Retd. Judge, Orissa High Court with regard to reforms of the examination, they were placed under suspension vide order dated 22.09.2014 of the Chairman of the Council. Hence this application.

3. Mr. M. Pratap, learned counsel for the petitioners strenuously urged that there is no provision like clause-9(a) of Sub-rule (1) of Rule-12 of O.C.S. (CCA) Rules, 1962 and therefore the order impugned passed in exercise of power under clause-9(a) of Sub-rule (1) of Rule-12 placing the petitioners under suspension was passed without application of mind. Further fixation of their headquarters at a place other than the place where they are working is also contrary to the provisions of law. More so, such change of headquarters during suspension period is nothing but transfer of the petitioners is within the meaning of Rule-48 of Orissa Service Code. Therefore the same could not have been done by the authority. It is stated that the order of suspension has been passed without contemplating a disciplinary proceeding nor any criminal proceeding is pending against the petitioners. It is further stated that the O.C.S. (CCA) Rules, 1962 ipso facto cannot apply to the employees of the council inasmuch as there is no contemplation of initiation of disciplinary proceeding or any criminal proceeding against them, therefore the order of suspension cannot sustain. Hence, he seeks for interference of this Court. In order to substantiate his case, reliance has been placed on the judgment in Ajay Kumar Choudhary Vs. Union of India (UOI) and Others(2015) 3 AD 455 : (2015) 145 FLR 74 : (2015) 2 LLN 304 : (2015) 2 SCALE 432 : (2015) 2 SLJ 160 .

4. Mr. S.B. Jena, learned counsel for the Council strenuously urged that pending contemplation of disciplinary proceeding the order of suspension has been passed. As per the resolution of the Council, the provisions of O.C.S. (CCA) Rules, 1962 are applicable to the petitioners. So far as fixation of headquarters is concerned, it is stated that after the writ petition was entertained by this Court, the authorities have not changed the headquarters and allowed the petitioners to continue in their respective posts placing them under suspension pending initiation of disciplinary proceeding by framing charge and charges have already been served on the petitioners calling upon them to file their explanation. In that view of the matter, the order of suspension passed by the authority is within their jurisdiction. Therefore this Court should not interfere with the same.

5. On the basis of the above facts pleaded, it is to consider as to what is the meaning of suspension and whether the authority who have placed the petitioners under suspension has got jurisdiction to pass such order and more particularly whether the O.C.S. (CCA.) Rules, 1962 is applicable to the employees of the Council or not. To resolve such question, let us consider what is the meaning of "suspension"?

6. In *The Government of India, Ministry of Home Affairs and Others Vs. Tarak Nath Ghosh*, AIR 1971 SC 823 : (1971) LabIC 487 : (1971) 1 LLJ 299 : (1971) 1 SCC 734 : (1971) 3 SCR 715 , the apex Court has dealt at length as regards the meaning of suspension. When serious allegations of misconduct are imputed against a member of a service normally it would not be desirable to allow him to continue in the post where he was functioning.

7. In *P.R. Nayak Vs. Union of India (UOI)*, AIR 1972 SC 554 : (1972) LabIC 313 : (1972) 1 LLJ 535 : (1972) 1 SCC 332 : (1972) 2 SCR 695 , the Government of India v. Tarak Nath Ghosh has been overruled and it has been held the word "suspension" refers to that state, when any employee is temporarily debarred by his employer for the time being, from performing any of his official functions or enjoying certain privilege.

8. In *Roshan Lal Tandon Vs. Union of India (UOI)*, AIR 1967 SC 1889 : (1968) 1 LLJ 576 : (1968) 1 SCR 185 , the apex Court held that once a person is appointed to a certain office or post, under the Government or any other public authority, he acquires a status and his rights and obligations are no longer determined by the consent of both parties. The legal position of a public servant is thus more, one of status than of contract. The duties of status are fixed by the law or rules made under the statute and in the enforcement of these duties society has an interest. Thus, a public servant, through an order of suspension, is only kept away from the exercise of his official functions or enjoyment of certain privileges.

Suspension does not put an end to the relation of master and servant. Relationship is suspended temporarily during suspension and suspension cannot suspend contract of service. In the absence of any rule, contract of service subsists during suspension period. Suspension does not amount to temporary removal from service, nor does it amount to dismissal. The employee does not cease to be a public servant and he cannot seek employment at some other place during suspension. He cannot receive bribe during suspension when his service continues. As a result of suspension, a public servant does not lose his office nor he suffers any degradation. His rank remains the same and his pay and allowances also remains the same, unless penalty is imposed as a result of disciplinary proceedings. He continues to be subject to the same discipline under the same authorities under whom he was working before suspension. The immediate effect of an order of suspension may be that he will not be permitted to work and, further, during the period of suspension, he will not be paid temporarily full pay and allowance, which he had been drawing before

suspension. He continues to remain bound to follow the lawful directions of his superiors during the period of suspension, just in the same manner as he was bound to do before suspension.

9. This being the position of law, adhering to the said meaning to the present context, it is to be adjudged, how by the impugned order of suspension passed by the authority the petitioners are prejudiced. As it appears vide impugned orders dated 22.9.2014 in Annexures-6 and 12 the petitioners have been placed under suspension pending contemplation of disciplinary proceeding on the ground of gross misconduct and willfully defying Govt./Office orders pending framing of detailed charges. As per the provisions contained in Rule-12 of O.C.S. (CCA) Rules, 1962, the objects of placing a government servant under suspension pending enquiry are: (a) to prevent him from interfering with the conduct of the enquiry by tampering with the oral or documentary evidence, (b) to prevent him from committing any further acts of misconduct, and (c) to prevent him from abusing the powers of the post which he holds.

10. In P.L. Shah Vs. Union of India (UOI) and Another, AIR 1989 SC 985 : (1967) CriLJ 1390 : (1989) 58 FLR 334 : (1989) 1 JT 98 : (1989) LabIC 1253 : (1989) 1 LLJ 302 : (1989) 1 SCALE 81 : (1989) 1 SCC 546 : (1989) 1 SCR 224 : (1989) 1 UJ 441 , the apex Court held that an order of suspension is not an order imposing punishment on a person found to be guilty. It is an order made against him before he is found guilty to ensure smooth disposal of the proceedings initiated against him. Such proceedings should be completed expeditiously in the public interest and also in the interest of the government servant concerned.

11. In view of such position, since the Chairman being the head of the institution has passed the order putting the petitioners under suspension vide impugned orders dated 22.9.2014 in Annexures-6 and 12 respectively pending contemplation of disciplinary proceeding, it cannot be said to be an illegal for the reason that the order of suspension was passed by the higher authority, who is also the appellate authority. If the officer issuing the order is competent to issue it, the fact of right of appeal is lost, is immaterial. When rule provides that higher officer can also impose punishment then it would include the government and suspension by it is in order. In that view of the matter, the contention raised that the Chairman has no jurisdiction to pass the suspension order is only a myth and that cannot be sustained. In case of order of suspension, the power of the Court is very limited and normally Courts should not interfere with the same under writ jurisdiction reason being if the suspension is proved later to be illegal, will entitle the suspended employee to some ancillary benefit besides full service benefits for the suspension period. Unless mala fide is alleged against the authorities, the Court should be slow to interfere with the order of suspension passed by the authority. To maintain the discipline, it is well within the domain of the employer to pass the order of suspension to regulate the conduct of the employee in conformity with the provisions of law.

12. Contention is raised that provisions of O.C.S. (CCA) Rules, 1962 is not

applicable to the petitioners, therefore the order of suspension passed by the authority cannot sustain. In paragraph-2 of the writ petition the petitioners have pleaded "it is a fact that to suspend a Govt. Servant, Rule-12(1)(a) of the OCS (CCA) Rules, 1962 is applicable. All Govt. Rules and Circulars are applicable to CHSE, Odisha." The facts pleaded in paragraph-2 of the writ petition has been disowned in the rejoinder filed by the petitioner stating that the Rule-12(1)(a) of the OCS (CCA) Rules, 1962 is not applicable to CHSE, Odisha. Per contra, Mr. S.B. Jena, learned counsel for the Council strenuously urged that by virtue of the resolution passed in 1991, the Council has adopted Govt. Rules and regulation for employees of the CHSE. Therefore, O.C.S. (CCA) Rules, 1962 being applicable to the Government employee, is also applicable to the employees of the CHSE, Odisha. Hence, the action taken by the authority cannot be found fault with as the same is well within the jurisdiction of the authority. So far as fixation of headquarters pursuant to impugned order is concerned, Mr. Pratap, learned counsel for the petitioner states that the petitioners are rendering service at head office at Bhubaneswar and by putting them under suspension, their headquarters are fixed at places other than the place they were working. But while entertaining the writ petition, this Court passed an order on 20.10.2014 in Misc. Case No. 17004 of 2014 filed by the petitioners seeking for grant of stay of suspension order and this Court granted status quo with regard to fixation of headquarters enabling Mr. Jena, learned counsel for the Council to take instruction in the matter and on instruction Mr. Jena stated that the petitioners are allowed to continue in their respective place of posting without changing their headquarters pursuant to order of suspension passed by the authority. In that view of the matter, since the petitioners are allowed to continue in their respective places where they were working when the order of suspension was passed, this Court refrain from passing any order on that score.

13. Mr. M. Pratap, learned counsel for the petitioner referring to Ajay Kumar Choudhury (*supra*) states that charges have been framed beyond the prescribed period, therefore order of suspension should not be extended beyond the said period. But this is not the pleadings made before this Court, save and except, the petitioners have challenged the order of suspension on the ground mentioned above, which have already been answered by this Court accordingly. But so far as framing of charge against the petitioners beyond the limitation prescribed period is concerned, that may be a ground for the petitioners to agitate the same before the appropriate forum in appropriate time, but at this stage the same is premature.

14. In view of the aforesaid facts and circumstances, since the authorities have already allowed the petitioners to continue in their respective place of posting and the order of suspension having been modified to that extent for fixation of headquarters, this Court is not inclined to interfere with the impugned order of suspension in Annexures-6 and 12 dated 22.9.2014.

15. Accordingly, the writ petitions merit no consideration and the same are

dismissed. However, there will be no order as to costs.