

(2001) 05 OHC CK 0003

In the Orissa High Court

Case No : Misc. Case No's. 870, 1726 and 5126 of 2001 in O.J.C. No. 926 of 2001

Nimain Charan Patra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 08-05-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Constitution of India, 1950 — Article 226

Citation : (2002) 93 CLT 49

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : S.L. Patnaik, M.D. Arif and S. Nayak, for the Appellant; B.K. Sahoo, Additional Government Advocate, K.C. Sahoo and R.K. Sahoo, for the Respondent

Judgement

P. K. Mishra, J.—Mr. Mishra has instruction to appear on behalf of the petitioner. Counter affidavit in Misc. Case No. 1726 / 2001 filed by opposite party no.2 for vacation of stay has been filed by Mr. Mishra in Court. Copy has been served.

2. In the writ application, prayer has been made for quashing Annexure-3 and for a direction to opposite party no.2 to regularise the services of the petitioner. Under Annexure-3 it appears that due to plan and paucity of funds, it has been decided to terminate the services of the petitioner as his services are no longer required. It is, of course, true that an ex party interim order was passed in Misc. Case No. 870 / 2001 which was continuing from time to time. Subsequently, a petition for modification of order has been filed which has been registered as Misc. Case No. 5126 / 2001. It appears that on 2.3.2001, the matter was directed to be listed on 8.3.2001 and the interim order was to continue till then. It further appears that in 8.3.2001 the matter had not been listed and was taken up on being mentioned and the interim order was directed to continue till 16.3.2001, but no intimation had been given to the learned counsel for the opposite parties, and since nothing was communicated regarding continuance of stay order, the name of the petitioner has been struck- off with effect from

12.3.2001. However, the matter was again listed on 20.3.2001 and it was directed that "status quo as on today relating to service shall be maintained ". In the aforesaid background, opposite party no.2 states that before 20.3.2001, the name of the petitioner had already been struck-off and continuance of the interim order of status quo may create legal complication and as such the same is required to be modified.

3. The petitioner has prayed for regularisation of services. If ultimately the writ application succeeds, necessary direction regarding reinstatement with full back wages can be issued at the time of final disposal. If, on the other hand, the writ application fails at the time of final disposal, the petitioner would be allowed to continue by virtue of interim orders passed by this court. Therefore, it cannot be said that the balance of convenience is in favour of the petitioner. Moreover, since the petitioner can be reinstated with full back wages, it cannot be said that irreparable loss would be caused to the petitioner, if stay order is not continued. This position is clear in view of the decision of this Court reported in Orissa State Commercial Transport Corporation Ltd. Vs. Sri Satyanarayan Singh and Another,). In such view of the matter, I vacate all interim orders relating to stay or status quo.

4. Notwithstanding the order of vacation, it is made clear that if there is necessity, the present order vacating the earlier interim orders will not stand in the way of opposite party no.2 in engaging the petitioner in any appropriate post if there is necessity for the same. It goes without saying that the petitioner shall be paid salary for the period during which he has already worked,

5. The Misc. Cases are accordingly disposed of. The writ application may be listed for admission and disposal before the appropriate Bench in the first week of July, 2001.

6. Misc Cases disposed of.