

(2008) 08 OHC CK 0013

In the Orissa High Court

Case No : Writ Petition (Civil) No. 10290 of 2008

Priyaranjan Patra

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 06-08-2008

Acts Referred:

Administrative Tribunals Act, 1985 — Section 15
Constitution of India, 1950 — Article 226, 323A

Citation : (2008) 08 OHC CK 0013

Hon'ble Judges : L. Mohapatra, J;I. Mahanty, J

Bench : Division Bench

Advocate : Devananda Mishra, S.K. Swain and D.S. Mishra, for the Appellant;

Final Decision : Dismissed

Judgement

I. Mahanty, J.—In the present writ application, the Petitioner Priyaranjan Patra, who is presently working as the Deputy Superintendent of Police. Jajpur, has sought for quashing of the inquiry initiated against him" under Rule-IS of the Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 vide memorandum No. 20319/SPS, Bhubaneswar dated 19.04.2008.

2. Shri Devananda Mishra, learned Sr. Advocate for the Petitioner submits that the Petitioner was placed under suspension by the order dated 29.01.1996 of the D.G. & I.G. of Police for nonregistration of a case at Nayagarh Town P.S. basing on the supervision note of the Superintendent of Police, Nayagarh in Nayagarh P.S. Case No. 66 of 1994. It is submitted that against the order of suspension, the present Petitioner had filed O.A. No. 9", of 1996 before the Orissa Administrative Tribunal, Bhubaneswar which directed the Petitioner's immediate reinstatement vide the interim order dated 10.4.1996. It appears that the Tribunal ultimately disposed of the O.A. vide the order dated 20.3.2001 noting that the Petitioner had been reinstated pursuant to the interim order of the Tribunal dated 10.4.1996 and since no information was available with the learned Counsel for the applicant or the learned Standing Counsel as to whether any

proceeding has been initiated thereafter, the Tribunal directed the disciplinary authority to take a decision as to how the period of suspension of the Petitioner should be treated if no disciplinary proceeding has been initiated in accordance with the provisions of the Service Code.

Learned Counsel for the Petitioner submits that the Petitioner is aggrieved by initiation of a departmental inquiry by the Notice dated 19.4.2008 under Annexure-2 at an extremely belated stage i.e. after a period more than 12 years from the date of suspension and after a period of five years after disposal of the original application by the Orissa Administrative Tribunal. He submits that the Petitioner is at the fag end of his service career and has an unblemished career record and the initiation of such a departmental proceeding at such a belated stage, when he has only one year to retire from his service and that too on the basis of an allegation of non-registration of a case, is arbitrary and therefore, prays for quashing the Notice under Annexure-2.

3. To a query from the Court as to why the Petitioner should not be directed to approach the Orissa Administrative Tribunal against the order initiating a departmental inquiry under Annexure-2, Mr. Mishra, learned Counsel for the Petitioner placed reliance upon various decisions of the Supreme Court, in the cases of Tata Engineering and Locomotive Company Ltd. Vs. Assistant Commissioner of Commercial Taxes and Another, ; State of Andhra Pradesh and Ors. v. Chitra Venkata Rao AIR 1975 SC 215; Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others, ; V. Vellaswamy Vs. Inspector General of Police, Tamil Nadu, Madras and Another, .

4. We may state that while being in respectful agreement with the principles evolved by the Hon"ble Supreme Court and the aforesaid cases vis-a-vis the scope and ambit of the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India while being fully conscious of the expansive and extraordinary nature of the power of the High Court under Article 226, yet, such extraordinary powers have to be exercised with restraint and must be judiciously administered. It is well settled that jurisdiction under Article 226 is not appellate and cannot be substituted for the ordinary remedies at law, and the High Court, therefore, should leave a party aggrieved to take recourse to the remedies available under the ordinary law, if they are equally efficacious and should decline to assume jurisdiction to enable such remedies to be by passed. The only exception to this rule being where action is being taken under an invalid law or arbitrarily without sanction of law.

5. In the present case at hand the Petitioner has an equal and efficacious remedy by invoking jurisdiction of the State Administrative Tribunal u/s 15 of the Administrative Tribunals Act, 1985. It would be pertinent to note here that none of the judgments cited by the learned Counsel for the Petitioner, deal with Administrative Tribunals Act, 1985, which is an enactment by the Union Parliament under Article 323A. The Administrative Tribunals Act, 1985 which was the subject of a great amount of judicial debate and came up for consideration

by an Eight Member Constitutional Bench of the Supreme Court in the case of L. Chandra Kumar Vs. Union of India and others, .

In the aforesaid celebrated case the Hon"ble Supreme Court came to hold that the Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging their duty, the Tribunals cannot act as substitutes for the High Courts and the Supreme Court and held that jurisdiction of the Tribunal shall be subject to scrutiny before the Division Bench of the respective High Courts. Consequently, Their Lordships have held that the Tribunals have the power to test the vires of subordinate legislation and rules apart from not being competent to entertain any question relating to vires of their parent statute (i.e. the Administrative Tribunals Act, 1985) following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. More importantly, for our present purpose, the Hon"ble Supreme Court held that in such cases alone (i.e., where the challenge is made to the vires of the Administrative Tribunals Act, 1985) the concerned High Court may be approached directly.

6. The aforesaid dicta of the Hon"ble Supreme Court clearly mandates that except the aforesaid exception, any party aggrieved of any matter covered under the Administrative Tribunals Act, 1985 has to at the first instance approach the respective Tribunal to seek appropriate legal remedy. The nature and authority that a High Court exercises over the orders/judgments of the Tribunal have held to be in the nature of exercise of "supervisory jurisdiction".

7. In view of the above, we are of the considered view that the writ application at the present juncture cannot be entertained and is hence, dismissed. Liberty is given to the Petitioner, if so advised, to approach the Tribunal for appropriate remedy. Nothing stated in this order shall be deemed to be determination of any of the contentions on merits of the present case.