
(2006) 05 OHC CK 0066
In the Orissa High Court
Case No : Writ Petition (C) No. 6999 of 2006

Proful Kumar Das

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 16-05-2006

Acts Referred:

Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 — Rule 12, 12(1), 15, 31, 32

Citation : (2006) 1 OLR 771 Supp

Hon'ble Judges : N. Prusty, J; I.M. Quddusi, J

Bench : Division Bench

Advocate : M.K. Mohanty, M.R. Pradhan and K.C. Tripathy, for the Appellant; A.G.A., for the Respondent

Judgement

I.M. Quddusi, J.—The instant writ petition has been filed against the impugned order dated 8.5.2006 passed by the Orissa Administrative Tribunal, Cuttack Bench, in O.A. No. 1024 (C) of 2006 on the interim matter, denying to grant stay on the Government order dated 7.4.2006 deciding to review the punishment order passed against the Petitioner and the impugned order of suspension dated 22.4.2006 in pursuance of the said Government order on the ground that he same has been given effect to from the date of its communication.

2. The brief facts of the case are that consequent upon the disciplinary proceedings, a charge sheet was submitted against the Petitioner on 27.11.2004. After submission of the show cause by him, he was reinstated vide order dated 1.12.2004 pending finalisation of the departmental proceedings by order of the Disciplinary Authority/District Registrar, Gajapati which is reproduced as under:

Office of the District Registrar, Gajapati, Paralakhemundi No. .../Regn.,dated / XII/2004

OFFICE ORDER

Pending finalisation of the Departmental Proceeding initiated under Rule 15 of

O.C.S. (C.C. and A) rules, 1962 against Shri Proful Kumar Das, Head Clerk (under suspension) vide this office order 674 dated 5-XI-2004 is hereby re-instated in service with immediate effect.

....

Sd/-

District Registrar Gajapati

Memo No.726(2)/ Regn., dated 1-XII-2004.

Copy to District Sub-Registrar, Gajapati, Paralakhemundi for information and necessary action.

Copy to person concerned.

.....

District Registrar Gajapati.

Memo No..../-Regn., dated - XII-2004

Copy submitted to the Inspector General of Registration, Orissa, Cuttack for favour of kind information.

....

Sd/-

District Registrar Gajapati.

3. Thereafter the disciplinary proceedings were concluded and punishment of "Censure" as well as "regularization of suspension period as leave due" was passed by the Punishing authority, i.e., District Registrar, Gajapati vide order dated 28.12.2004.

4. In the year 2006, all of a sudden the Deputy Secretary to Government in Revenue Department sent a letter to the Addl. District Magistrate-cum-D.R., Gajapati in which it was mentioned that the reviewing authority under Rule 31 of the O.C.S. (CCA) Rules, 1962 have desired to review the proceeding drawn up against the Petitioner with the request to furnish the entire proceedings/records/documents to the Government for the purpose. Further in that letter it was also directed that the Petitioner be placed under suspension fixing his head quarter at a far off place in the district so that he may not tamper with the document or can gain over the witnesses.

5. In compliance of the aforesaid order of the Government, the A.D.M.-cum-District Registrar, Gajapati who is the appointing authority of the Petitioner has passed the order placing the Petitioner under suspension on 22.04.2006 fixing his head quarter R. Udayagiri at the office of the Sub-Registrar.

6. Being aggrieved, the Petitioner has filed the above mentioned O.A. before the

Tribunal along with a prayer for interim order. In the O.A. the Petitioner has challenged the decision of the reviewing authority to review the disciplinary proceedings as well as the impugned order of suspension.

7. The Tribunal after recording observation that a prima facie case has been found in favour of the Petitioner, admitted the O.A. and issued notice but it has denied to grant the interim relief on the ground that the impugned order has already been given effect to from the date of communication and as such it was not desirable to stay the order of suspension.

8. Learned Counsel for the Petitioner Mr. Mohanty has submitted that in the charge sheet there were only two charges, in nut shell the first one was that being the Head Clerk in the office of the District Sub-Registrar, Paralakhemundi, he received a document of power of attorney without proper verification of the genuineness of the executants, which was ultimately put the District Sub-Registrar in embarrassing position for registration. The second charge was that by the said power of attorney the party being the so called vendor tried to sell the land with a consideration value of Rs. 12,00,000/- and handed over cash Rs. 1,20,000/- for purchase of stamp from franking machine and he received the money and delivered the franked stamp without the knowledge of District Sub-Registrar received a documents for registration presented by the party on the face of market value being Rs. 50/- per square feet involving loss of revenue to the Government. But according to the learned Counsel for the Petitioner since the document was not registered, there was no question of loss of revenue to the Government.

9. He has further submitted that under Rule 31 of the OCS (CCA) Rules, 1962 only the power to review has been conferred on the Governor, however, Rule 32 empowers the appellate authority to review orders but the proviso to Rule 32 imposes restriction to initiate such proceedings more than six months after the date of punishment order. Further he has submitted that under the OCS (CCA) Rules, 1962 there is no provision by which the Petitioner could be placed under suspension on the decision to review the proceeding.

10. However, at this stage, we are not inclined to interfere in the impugned order deciding to review the punishment order. Therefore, we are concerned only with the validity of the suspension order vis-a-vis the jurisdiction to suspend and on that basis we have to see whether a prima facie case is made out in favour of the Petitioner or not.

11. Before proceeding further it is necessary to consider the difference between the cases of "suspension from service", "dismissal from service" and "removal from service". In a case where a Government servant is placed under suspension he for all purposes remains in service but he is suspended from his duties but in the cases of dismissal and removal from service a Government servant no more remains a Government servant as soon as the order of dismissal or removal is passed against him. Therefore, even if the order of suspension has been given

effect to, the Court can stay further suspension of the Government servant by way of interim order, on being found a prima facie case in his favour and as such we are of the opinion that the ground on the basis of which the Tribunal has denied to consider the case for grant of interim relief, i.e., order of suspension has been given effect to from the date of communication, is not sustainable.

12. We have noticed that it has been specifically mentioned in the impugned order of suspension by the A.D.M.-cum-District Registrar/appointing authority that the Petitioner has been placed under suspension in pursuance of the Government in Revenue Department order communicated vide letter dated 7.4.2006. Therefore, it is clear that the appointing authority has not applied his mind or exercised his discretion independently in making the order of suspension but he has passed the impugned order on the direction contained in the said letter issued by the Deputy Secretary to the State Government. Further there is no provision in the OCS (CCA) Rules 1962 by which a Government servant can be placed under suspension except as provided in Rule 12 of the Rules, 1962. In which it has been specified as to which authority and under which condition can place a Government servant under suspension. Rule 12 of the OCS (CCA) Rules 1962 is therefore reproduced below for ready reference.

12. Suspension - (1) The appointing authority or any authority to which it is subordinate or any authority empowered by the Governor or the appointing authority in that behalf may place a Government servant under suspension-

- (a) where a disciplinary proceeding against him is contemplated or is pending, or
- (b) where a case against him in respect of any criminal offence is under investigation or trial.

Perusal of the above provision shows that the power to suspend a Government servant is vested in

- (i) The appointing authority, or
- (ii) An authority to which the appointing authority is subordinate, or
- (iii) Any authority empowered by the Governor, or
- (iv) The appointing authority on behalf of the authority empowered by the Governor, only.

13. For the purpose of placing a Government servant under suspension, the Government may delegate the power to any authority but if no such power has been delegated then the power to suspend a Government servant shall be vested in the appointing authority or any authority to which the appointing authority is subordinate only.

14. In the instant case, the appointing authority of the Petitioner is Addl. District Magistrate-cum-District Registrar who is subordinate to the Collector of the concerned district and according to the Registration Act, the District Registrar is

subordinate to the Inspector General of Registration. In no case, it can be said that the State Government is the appointing authority or is the authority to which the appointing authority is subordinate. No doubt all the executive powers of the State are vested in the State Government but once any power has been delegated to any authority under a Government order or statutory rule, the same cannot be exercised by the Government simultaneously. Further, the authority empowered to suspend a Government servant can delegate his power if the rule permits so, to his subordinate authority but in no case an officer or authority can delegate his power to his superior authority/officer. Therefore, by placing the Petitioner under suspension it was necessary for the appointing authority to take his independent view and to apply his mind without influence before passing the order but as it appears from the perusal of the impugned order, the appointing authority has not applied his mind and placed the Petitioner under suspension under the direction of the State Government. Further, according to Rule 12(1) of the OCS (CCA) Rules 1962 as quoted above a Government servant can be placed under suspension in two conditions. The first condition is that where a disciplinary proceedings against him is contemplated or is pending and the second condition is that where a case against him in respect of any criminal offence is under investigation or trial. In the instant matter, the disciplinary proceeding which was pending against him has already been concluded resulting in award of punishment of "censure" and "the period of suspension as leave due". (meaning thereby as on full salary). Therefore when the reviewing authority has decided to review the punishment order imposed against the Petitioner in a situation when even the records pertaining to inquiry are not available with the Government it cannot be said that any disciplinary proceeding is pending against the Petitioner, the provision of Rule 12(1) of the OCS (CCA) Rules, 1962 would not be applicable.

15. In view of the above mentioned facts and circumstances, a prima facie case for granting interim order was been made out in favour of the Petitioner and as such we are of the opinion that the Tribunal has committed manifest error of law in refusing the interim relief.

16. Therefore, it is directed that further operation of the impugned order of suspension passed by the District Registrar, Gajapati on 22.4.2006 in pursuance of the Government in Revenue Department order dated 7.4.2006 annexed as Annexure-12 to the writ petition shall remain suspended during pendency of the O.A. before the Tribunal or till the decision is taken by the reviewing authority whichever is earlier. However this order will not debar the opposite parties to transfer the Petitioner from the present place of posting or deal with him in accordance with law otherwise but this order will be subject to the decision made in the O.A.

17. Since we feel that it is unnecessary to keep this writ petition pending any more as the O.A. of the Petitioner is pending before the Tribunal to decide the validity of the decision to review the order of punishment and the impugned

order of suspension passed against him, we dispose of this writ petition, inter alia, quashing the part order of the Tribunal by which it has denied to grant interim relief to the Petitioner.

N. Prusty, J.

18. I agree.