

(1969) 08 OHC CK 0036

In the Orissa High Court

Case No : Original Jurisdiction Case No. 445 of 1966

Ramnath Sahu

APPELLANT

Vs

Pratap Chandra Singh

RESPONDENT

Date of Decision : 07-08-1969

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Orissa Grama Panchayat Rules, 1949 — Rule 93, 95

Citation : (1969) 35 CLT 1119

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

Bench : Division Bench

Advocate : S.C. Mohapatra, for the Appellant;

Final Decision : Allowed

Judgement

G.K. Misra, C.J.—The Petitioner is the Secretary of the Pudamari Grama Panchayat and the opposite party is its Sarpanch. The Sarpanch dismissed the Secretary on 1-5-1961. Against this order the Secretary filed an appeal to the Grama. Panchayat under Rule 95 of the Orissa Grama Panchayat Rules, 1949 within 15 days of the service of the order as prescribed in that rule. There is an averment in the petition that no enquiry was made before the order of dismissal was passed. Though notice was served on the Sarpanch he has not appeared and no counter affidavit has been filed. We accordingly accept the facts mentioned in the petition as correct. Those facts are that the Secretary was dismissed from service without an enquiry being held and though an appeal was filed before the Grama Panchayat it has not been disposed of yet.

2. The question for consideration is whether the dismissal of the Secretary without an enquiry being held, is valid in law. Rule 93 of the Orissa Grama Panchayat Rules, 1949, runs thus:

No order of dismissal, of removal, of reduction, of suspension, not being one pending enquiry, or withholding increments or promotion including stoppage at

an efficiency bar, shall be passed on an employee of the Grama Panchayat unless he has been informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced to the form of definite charge or charges which shall be communicated to the person charged, together with "a statement of allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required within a reasonable time to put in a written statement of his defence and to state whether he desires to be heard in person. If he so desires or if the authority concerned so directs, an oral enquiry shall be held:

Provided that this rule shall not apply whether the person concerned has absconded or where it is, for other reasons impracticable to communicate with him.

This rule embodies the entire principle of natural justice which is to be followed in Case an employee of the Grama Panchayat is to be dismissed. Charges are to be framed, copy thereof is to be furnished to the delinquent, evidence is to be taken, opportunity for cross-examination should be given, and after the delinquent is heard, final order will be passed. Indisputably, Rule 93 was not followed and the order of dismissal passed on 1-5-1961 was therefore without jurisdiction and is liable to be quashed.

2. It would, however, appear from the statement of facts made in the petition that an appeal before the Grama Panchayat is pending. The question for consideration is whether this Court should interfere, in exercise of its jurisdiction under Articles 226 and 227 of the Constitution, with an order which is pending in appeal before the proper forum. In matters like this no hard and fast rule can be laid down. Question of interference is one of discretion, depending on the facts and circumstances of each case. It is, however, apparent, so far as this, case is concerned, that though an appeal was filed before the proper forum, it has not been disposed of till today though a period of about 8 years has passed; and even if the regular remedies are pursued by the delinquent, on the admitted position that Rule 93 was not complied with, ultimately the impugned order would be quashed. In Each a case, it would be meet and proper that the High Court should interfere with such an order which ex-facie is untenable and cannot be supported in law. This objection cannot, therefore, stand in the way of our interfering pith the impugned order.

3. In the result, the writ application is allowed and the impugned order dated 1.5.1961 is quashed. We accordingly issue writ of mandamus directing that the Petitioner should be deemed to continue in service with effect from 1-5-1961. In the circumstances, there will be no order as to costs.

R.N. Misra, J.

4. I agree.