

(2005) 12 OHC CK 0022
In the Orissa High Court
Case No : O.J.C. No. 11501 of 2000

Shri Prakash Chandra Lenka

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 07-12-2005

Acts Referred:

Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 — Rule 13
Orissa Local Fund Service Rules, 1975 — Rule 12(1), 7
Orissa Municipal Act, 1950 — Section 76, 81

Citation : (2006) 1 OLR 286

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

Bench : Division Bench

Advocate : J.K. Rath, U.K. Das, S.N. Rath, P.K. Rout, B.N. Sarangi, for the Appellant; A.G.A. for O. Ps. 1 and 2, S.K. Sanganeria, P.C. Patnaik and A.K. Sahu for O.P. 3, S.K. Nayak, A.K. Baral, S. Nayak, D. Nayak, B.K. Sahu, M.S. Sahoo for O.P. 4, for the Respondent

Judgement

I.M. Quddusi, J.—In this writ petition, the petitioner has challenged the order of his suspension dated 12.1.2000 and the order of his dismissal from service dated 24.6.2002 passed by the Administrator, Cuttack Municipal Corporation, Cuttack. The petitioner has also challenged the inquiry proceedings.

2. The brief facts of the case are that the petitioner was initially appointed as Junior Clerk on ad hoc basis for a period of 89 days in the scale of pay of Rs. 780-/1160/- as revised from time to time vide office order dated 7.7.1989 passed by the Executive Officer, Cuttack Municipal Corporation, Cuttack. His ad hoc appointment was continued from time to time. He was also deputed to work as Assistant. Manager at Kathajodi Filling Station. As he was dealing with accounts matter in the office of the Cuttack Municipal Corporation at that time, he was directed to look after the accounts of the petrol pump in addition to his duties. In the meantime, a selection was held for appointment in Local Fund Services. The petitioner appeared in the test conducted by the Selection Board constituted under Rule 7 of the Orissa Local Fund Rules, 1975 and was declared

selected. Accordingly, he was appointed as Junior Assistant and was posted in the Kendrapara Municipality vide order dated 17.5.1999 passed by the Director, Municipal Administration and Ex-Officio Additional Secretary to Government of Orissa, Housing and Urban Development Department on regular basis. But that order was modified by the State Government vide order dated 3.7.1999 and his posting was diverted to Cuttack Municipal Corporation again as Junior Assistant against the vacant post of Senior Assistant and he was allowed to continue there till March, 2000. The order reads as under :

"GOVERNMENT OF ORISSA HOUSING & URBAN DEVELOPMENT DEPARTMENT
ORDER

Bhubaneswar, Dated the 3,7.99 No. LFS (Estt) 13/99.23352/ HUD.. Sri Prakash Chandra Lenka, N.M.R. Junior Assistant, Cuttack Municipal Corporation whose services have been regularized vide this Department Order No. 16998/HUD., dt. 17.5.99 and posted as Junior Assistant to Kendrapara Municipality is, hereby, modified and he is re-posted to Cuttack Municipal Corporation as Junior Assistant in the vacant post of Senior Assistant and is allowed to continue temporarily till March, 2000.

By order of Director Municipal Admn. B.P. Sirangi Under Secretary to Government.

Memo No. 23533/HUD., Dated 3.7.99

Copy forwarded to the Chairperson/Executive Officer, Kendrapara Municipality/ Cuttack Municipal Corporation, District Magistrate, Kendrapara/Cuttack/ Person concerned/ Guard file (5 spare copies) for information and necessary action.

Sd/- Under Secretary to Government.

The rest of the facts being disputed, there is no necessity to mention those facts.

3. The Executive Officer, Cuttack Municipal Corporation, Cuttack vide order dated 3.12.1999 transferred the petitioner from Cuttack Municipal Corporation Accounts Section to Madhusudan Girls' High School, Khapuria, Cuttack. But the petitioner who had already taken leave for two days, i.e., 30.11.1999 and 1.12.1999 on the ground of illness, vide his application dated 29.11.1999 extended his leave from 2.12.1999 to 5.12.1999 and finally he submitted his joining on 22.3.2000. In the meantime, he was already placed under suspension vide order dated 12.1.2000 by order of the Executive Officer, Cuttack Municipal Corporation. Thereafter a charge-sheet was submitted under the signature of the Executive Officer, Cuttack Municipal Corporation vide order dated 25.3.2000. The petitioner was required to submit his explanation within seven days from the date of issue of the charge-sheet. The petitioner submitted his reply to the charge-sheet denying the allegations. Thereafter, one Krushna Chandra Pati, OAS, Additional Executive Officer, was appointed as the Enquiring Officer to conduct inquiry against the petitioner by order dated 12.4.2000 of the Chief Executive. Cuttack Municipal Corporation. In the meantime, the elected council of

the Cuttack Municipal Corporation was dissolved by the State Government vide order dated 20.11.2001 and the Collector, Cuttack was appointed as Administrator of the Cuttack Municipal Corporation. The Enquiring Officer enquired into the matter and submitted his report. As per this report, he found the petitioner guilty and recommended for major punishment as per Rule 13 of the Orissa Civil Service (CCA) Rules. Thereafter the impugned order of dismissal from service with immediate effect was passed against the petitioner vide order dated 24.6.2002 of the Administrator, Cuttack Municipal Corporation as the disciplinary authority. In the said order it was also observed that the dismissal from service shall ordinarily be a disqualification for future employment.

4. The opposite parties have filed their counter, in which it has been averred that after regularization of the petitioner, he was posted under Kendrapara Municipality, but by order dated 3.7.1999 the posting order was modified at the request of the petitioner and he was reposted at Cuttack Municipal Corporation, Cuttack for a temporary period against the post of Senior Assistant. He was allowed to continue temporarily till March, 2000 by the State Government. On his posting to Cuttack Municipal Corporation he was transferred as Junior Assistant to Madhusudan Girls' High School, Khannagar under Cuttack Municipal Corporation, but he avoided to accept the said order. The Peons of the Municipal Corporation who were sent to serve the copy of the order had given their endorsement that the petitioner did not accept the order. Thereafter it was served through "Latkazari" On 7.1.2000, the petitioner submitted an application before the then Chairman alleging therein that the Municipal Corporation staff are creating disturbances. However, the authority found misconduct on the part of the petitioner for which he was placed under suspension vide impugned order dated 12.1.2000. Thereafter charges were framed against him and the charge-sheet was served on him. He denied the allegations and the disciplinary authority appointed the Enquiry Officer who conducted the enquiry in presence of the petitioner. During enquiry, the petitioner refused to cross examine the witnesses which fact was recorded by the Enquiry Officer in his order dated 18.7.2001. According to enquiry report, the petitioner was found guilty of all the charges. He was supplied with a copy of the inquiry report. He submitted his written defence, but the disciplinary authority agreed with the findings of the Enquiring Officer and imposed punishment of dismissal from service. Thereafter, the Government in the Housing & Urban Development Department had called for records relating to the disciplinary proceeding vide order dated 29.8.2002 which was submitted to the Government. The petitioner without availing the remedy of statutory appeal, has directly filed the instant writ petition before this Court.

5. From perusal of the averments made above, the facts are that after the services of the petitioner were regularized in the Local Fund Service, he was given appointment as Junior Assistant against the post of Senior Assistant, which was lying vacant, temporarily. The impugned orders of suspension, initiating disciplinary proceedings and dismissal from service were passed either by the Administrator or the Chairman, Cuttack Municipal Corporation. As such the

question to be decided by this Court is whether the Administrator was competent to pass order of dismissal or initiate disciplinary proceedings against a member of the Local Fund Service or jurisdiction lies with the State Government to initiate disciplinary proceedings against him.

6. In Section 81 of the Orissa Municipal Act it has been provided that the State Government may, by notification, constitute any class of officers or servant of Municipal areas into a Local Fund Service for the State of Orissa. In exercise of the powers conferred by Section 81 of the Orissa Municipal Act, the State Government implemented the Rules, namely, Orissa Local Fund Service Rules, which came into force on the date of publication thereof, i.e., 18th August, 1975. The post of Junior Assistant was included in the Local Fund Service.

7. It is undisputed that the petitioner's services were regularized on the basis of selection test conducted by the Selection Board constituted under Rule 7 of the Orissa Local Fund Service Rules by order dated 17.5.1999 issued by the Commissioner-cum-Secretary to Government of Orissa, Housing & Urban Development Department. Consequent to his regularization, he was posted as Junior Assistant, Kendrapara Municipality, but that order was modified by the Government of Orissa vide order dated 3.7.1999 to the effect that he would be re-posted at Cuttack Municipal Corporation as Junior Assistant against the vacant post of Senior Assistant and continued temporarily till March, 2000.

8. During his posting at Cuttack Municipal Corporation, disciplinary proceedings were initiated against him and he was placed under suspension vide order dated 12.1.2000 passed by the Executive Officer, Cuttack Municipal Corporation. A charge-sheet was issued against him by the Executive Officer, Cuttack Municipal Corporation vide order dated 25.3.2000 in which five charges in all were levelled against him.

9. In Rule 12(1) of the Local Fund Service Rules, it has been provided that in the matter of taking disciplinary action against an employee of the Local Fund Service the procedure laid down in the Orissa Civil Service (CCA) Rules, 1962 shall be followed as far as possible. In Rule 12(1) it has been further provided that the Chairman shall have the power to punish the employees of the service during the period of their services in the concerned Municipality and an appeal against the order of punishment passed by him shall lie as laid down u/s 76 of the Orissa Municipal Act.

10. Since the impugned punishment order has been passed by the Administrator/ District Magistrate in absence of the elected body/ Chairman it cannot be said that the impugned order was without jurisdiction.

11. Now, it is to be seen whether the inquiry has been conducted in accordance with the CCA Rules or not and whether the petitioner has been provided reasonable opportunity to defend himself.

12. The procedure for imposing penalties has been laid down in Rule 15 of the

CCA Rules in which it has been provided that the disciplinary authority shall frame definite charges on the basis of the allegations on which the inquiry is to be held. Such charges together with a statement of the allegations on which they are based shall be communicated in writing to the Government servant and he shall be required to submit, within such time as may be specified by the disciplinary authority, not ordinarily exceeding one month, a written statement of his defence and also to state whether he desires to be heard in person. Further, he shall, for the purpose of preparing his defence, be supplied with all the records on which the allegations are based. He shall also be permitted to inspect and take extracts from such other official records as he may specify, provided that such permission may be refused, for reasons to be recorded in writing where in the opinion of the disciplinary authority such records are not relevant for the purpose or it is against the public interest to allow him to have access thereto. It has been provided that the disciplinary authority may appoint any person as Enquiring Authority, who shall, in the course of the inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material in regard to the charges. The Government servant shall be entitled to cross examine witnesses examined in support of the charges and to give evidence in defence.

13. In the instant case, we have perused the charge-sheet issued against the petitioner which has been signed by the Executive Officer, Cuttack Municipal Corporation. But under the CCA Rules, the charge-sheet can only be signed by the disciplinary authority. It is also to be noticed that till the date of issuance of charge-sheet, i.e., 25.3.2000 no one was appointed as Inquiring Officer. Further, in the charge-sheet the charges have been levelled but no evidence either oral or documentary, has been shown in support of the charges. When no evidence was shown in support of the charges, there was no question to record any evidence during the course of inquiry and if evidence has been recorded, it cannot be said that the petitioner was granted reasonable opportunity to defend as he did not know as to what was the documentary or oral evidence against him which was to be produced. He did not get a chance to make preparation to cross examine the witnesses or produce his defence in rebuttal thereof.

14. In the case of State of U.P. Vs. Shatrughan Lal and Another, , the Apex Court has held that if the copies of documents proposed to be utilized against the respondent which indicated in the charge-sheet, and copies of the statement of witnesses recorded during the preliminary inquiry were not supplied in spite of request in that behalf, the Tribunal was justified in coming to the conclusion that the principles of natural justice were violated and the respondent was not afforded an effective opportunity of hearing. In the case of Committee of Management, Kisan Degree College Vs. Shambhu Saran Pandey and Others, , the Hon'ble Supreme Court has laid down that if the department or the management seeks to rely on any documents in proof of the charge, the principles of natural justice require that such copies of those documents need be supplied to the delinquent. If the documents are voluminous and cannot be supplied to the

delinquent an opportunity has to be given to him for inspection of the same. It would also be open to the delinquent to obtain appropriate extracts at his own expense. Not giving such opportunity would violate the principles of natural justice.

15. In view of the above mentioned facts and circumstances the impugned order of dismissal as well as inquiry are not sustainable in the eye of law. Therefore, the same are liable to be quashed.

16. The writ petition is allowed in part. The impugned order of inquiry proceedings as well as the order of dismissal from service dated 24.6.2002 is quashed. Consequently, the petitioner shall go back to the position which was existing prior to issuance of the charge memo. However, the opposite parties will be at liberty to initiate fresh inquiry in accordance with law if they are so advised. But in case the fresh enquiry proceeding is not started within a period of three months from the date of communication of this order the petitioner shall be entitled to get all consequential benefits of salary or other allowances etc. as per rules. However, there shall be no order as to costs.

N. Prusty, J.

17. I agree.