
(1985) 09 OHC CK 0043
In the Orissa High Court
Case No : O.J.C. No. 1720 of 1918

Sk. Raheman

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 19-09-1985

Acts Referred:

Citation : (1985) 60 CLT 419

Hon'ble Judges : K.P. Mohapatra, J; J.K. Mohanty, J

Bench : Division Bench

Advocate : G.A.R. Dora, for the Appellant; M.R. Mohanty, A.S.C. and B.K. Nayak, for the Respondent

Final Decision : Allowed

Judgement

J.K. Mohanty, J.—Petitioner was working as a Tractor Driver under the Director of Lift Irrigation, Orissa (opposite party No. 2). On 8-11-1974 he was deputed to work under the S.D.O., Lift Irrigation, Cuttack to work in the drought affected area of Athmallik). But on that very day he applied for leave upto 30-11-1974 on health ground which was supported by a medical certificate from the Clinical Tutor, Medicines, S.C.B. Medical College & Hospital, Cuttack (Annexure-3). Again he applied for extension of leave from 1-12-1974 to 31-12-1974 on the very same ground. He reported to duty on 1-1-1975. Thereafter he was placed under suspension from 9-5-1975 till 10-6-1976 when his services were terminated. Charges were framed against him as per Annexure-9. The Inquiring Officer submitted his report as per Annexure-12 finding the Petitioner guilty of all the three charges, namely, wilful absence from Government duty, negligence in Government duty and disobedience of orders of the higher authorities and taking leave frequently. He recommended that three annual increments with cumulative effect from 1-1-1975 might be stopped and the period of leave availed by the Petitioner from 9-11-1974 to on 31-12-1974 at his own will might be treated as loss of pay. The Director of Lift Irrigation, Bhubaneswar, who is the appointing authority of the Petitioner, considered the inquiry report (Annexure-12) and

accepted the same as per Annexure-13. He passed the following order:

...After careful consideration, I am convinced that the charges have been proved beyond reasonable doubt and he is guilty of the charges.

So the services of Sk. Raheman, Tractor Driver, are terminated with immediate effect.

Against the above order, the Petitioner filed appeal before the State Government as per Annexure-15. By Annexure-16 dated 22-3-1978 the Director of Lift Irrigation intimated that he was reinstated in service. His three annual increments were stopped with cumulative effect. The period from the date of termination of service till the date of his reinstatement was treated as extra. ordinary leave. He would report for duty to the Executive Engineer. Lift Irrigation (Mech.) Cuttack. Again, by Annexure-17 dated 26-6-1978 the Under Secretary to Government, Irrigation and Power Department (Lift Irrigation Branch) passed the following order:

...the period of suspension i.e., till the date of services may be treated as suspension and he may be stance allowance for that period.

The period from 8-11-1974 to 31-12-1974 may be treated as loss of pay as recommended by the enquiring officer as a measure of punishment.

The Petitioner after receiving Annexures 16 and 17, filed a representation to the Secretary to Government, Irrigation and Power Department in Annexure-18 with a prayer to give him full pay after deducting the subsistence allowance for the suspension period and full pay for the period from the date of termination till the date of reinstatement and recall the order stopping three increments with cumulative effect. As it appears, the representation (Annexure-18) wits considered by the Government and the same was rejected. The rejection order by the Government was communicated to the Petitioner vide Annexure-19 dated 3-10-1978 wherein it was stated:

This is to inform you that after careful consideration of your appeal petition dated 28-6-1978 the Govt. have been pleased to reject the same.

2. Mr. Dora, learned Counsel appearing for the Petitioner submitted that the charges levelled against the Petitioner are vague and they have not been substantiated. In fact, no inquiry has been conducted by the Enquiring Officer. He merely asked some questions to the Petitioner as per Annexure-11 and closed the inquiry. So there is no basis for coming to the conclusion that the charges have been proved. He also contended that after passing the orders as per Annexure-16 the further order passed in Annexure-17 awarding punishment to the Petitioner and that too without affording any opportunity of hearing to the Petitioner is without jurisdiction. The Government has not considered the representation of the Petitioner in Annexure-18 in proper perspective and while rejecting the same by Annexure-19 no reason whatsoever has been indicated. Annexure-19 is not a speaking order and therefore should be quashed. In

support of his contentions he relied on a decision reported in Jagannath Mohapatra Vs. Utkal University, He also relied on various decisions of the Supreme Court and of this Court and submitted that the orders treating the period from the date of termination of service till the date of reinstatement as extraordinary leave, treating the period of suspension, i.e., till the date of termination from service as such and granting only subsistence allowance for that period and treating the period from 8-11-1974 to 31-12-1974 as loss of pay are not legal and justified.

3. There is some force in the contention raised by the learned Counsel for the Petitioner. After hearing the learned Counsel for both sides, we quash Annexure-19 a non-speaking order and direct opp. party No. 1 to reconsider the case (Annexure-18) in proper perspective and dispose of the same according to law after giving the Petitioner an opportunity of being heard.

4. This writ petition is accordingly allowed. No costs.

K.P. Mohapatra, J.

5. I agree.