

(2010) 05 OHC CK 0025
In the Orissa High Court
Case No : O.J.C. No. 1348 of 2000

Sridhar Pradhan

APPELLANT

Vs

Secretary, Co-operation, Government of Orissa and Others

RESPONDENT

Date of Decision : 19-05-2010

Acts Referred:

Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 — Rule 29
Penal Code, 1860 (IPC) — Section 409, 477A

Citation : (2010) 110 CLT 514

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

Bench : Division Bench

Final Decision : Allowed

Judgement

I. Mahanty, J.—The Petitioner-Sridhar Pradhan has sought to challenge an Order Dated 25.6.1999 (Annexure-9) passed by the Orissa Administrative Tribunal, Bhubaneswar, rejecting the Petitioner's original application No. 998 of 1993, wherein the Petitioner had sought to challenge an order of reversion passed by the Secretary, Co-operation, Government of Orissa (O.P.1) purportedly being contrary to Rule 29 of the OCS (C.C.A.) Rules, 1962.

2. From the pleadings of the case it appears that the Petitioner entered into Government service under the Government of Orissa & was appointed by the Deputy Registrar, Co-operative Societies, Berhampur (O.P.3) as a Lower Division Clerk with effect from 25.10.1968. Thereafter the Petitioner was promoted to the post of Upper Division Clerk on 1.10.1970 & while continuing as such, was deputed as Accountant to Soura L.A.M.P.C.S. at Chandragiri. It appears that for the period 1978-79 & 1979-80 accounts of the said society was audited & based on the audit report, a departmental proceeding was initiated against the Petitioner on 22.5.1982 on various charges, namely, disobedience of orders, negligence in duty, non-maintenance of Books of Account with malafide intention, misappropriation of Society funds, mis-utilization of Society funds unauthorized & misconduct.

3. The A.R.C.S., Aska was appointed as Enquiry Officer & pursuant to notices issued, the Petitioner submitted his show cause on 13.8.1982. The Enquiry Officer concluded the inquiry on 3.1.1983 & held the Petitioner guilty of the charges.

4. Learned Counsel for the Petitioner submitted that, pending completion of the disciplinary proceeding, two separate Criminal proceedings were drawn against the Petitioner on the self-same charges, i.e., for criminal breach of trust & falsification of accounts, in respect of property & documents of Soura L.A.M.P.S. Ltd., Chandragiri. The criminal proceedings against the Petitioner were registered as G.R. Case Nos. 107 of 1982 & 123 of 1983 in the Courts of Judicial Magistrate First Class, Digapahandi & R. Udayagiri respectively. It is asserted by the Learned Counsel for the Petitioner that, while the criminal proceedings were pending against him, without conducting any due inquiry & giving any adequate opportunity to the Petitioner to defend himself, the disciplinary proceeding was concluded, only on the basis of the show cause reply submitted by the Petitioner.

5. Learned Counsel for the Petitioner further submitted that, the Petitioner on receipt of notice dated 20.1.1984, made a representation for supply of copies of statement of the witnesses, in order to enable him to file show cause against purported disciplinary action. It is alleged that the Enquiry Officer had concluded inquiry without even summoning the Petitioner & thereby arrived at an ex-parte decision holding the Petitioner guilty of charges, merely by referring to the show cause reply of the Petitioner to the charge sheet. No opportunity whatsoever was given to the Petitioner to explain each of the charges & therefore, it is contended that the finding on the charges arrived by the Enquiry Officer is perverse.

6. It is further submitted that on receipt of the notice from Opp. Party No. 3 (the Deputy Registrar), the Petitioner came to know about the proposed action of dismissal & also learnt that the same was based upon the charges which were allegedly found to be proved by the Enquiry Officer, with regard to "misappropriation of Society funds" as would be evident from the notice dated 20.1.1984 under Annexure-4. Learned Counsel for the Petitioner further submitted that even though the Petitioner filed his show case dated 7.2.1984 & non-supply of the same to him, amounts to complete violation of principles of natural justice. On 26.5.1984, Opp. Party No. 3 passed the impugned order of dismissal under Annexure-5 without providing the Petitioner with copies of documents requested for.

7. The Petitioner filed an appeal before the Registrar, Cooperative Societies (O.P.2) against the order of dismissal, which came to be dismissed & thereafter the Petitioner sent a memorial to the Government on 2.7.1986. It is most important to note herein that while the memorial of the Petitioner was under consideration of the Government, on 8.5.1987 the Petitioner was acquitted by the Trial Court of the offences under Sections 409, 477-A, I.P.C. in G.R. Case No. 123 of 1983, since it was found that the prosecution had failed to prove its case against the Petitioner.

8. It is relevant to note here that two separate Dispute Cases had also been initiated against the Petitioner for realization of the funds allegedly misappropriated by him & the same were finally dropped & the Petitioner was absolved from all the liabilities by the order passed in Dispute Case No. 38/84-85 of the Assistant Registrar of Co-operative Societies, who by Order Dated 29.10.1986 (Annexure-5-A) came to hold that "the above facts, therefore, do not provide any reason or evidence to make the Defendant liable for the amount claimed by the Plaintiff (Society) & hence the Defendant (Petitioner herein) is let free from the claims & the case is disposed of."

Similarly in Dispute Case No. 39/84-85, the Assistant Registrar of Cooperative Societies by Order Dated 28.10.1986 (Annexure-5-B) came to hold that "...The Defendant No. 1 (Petitioner herein) is set free from the claims.

9. It further appears from the records of the proceeding that the State Government (O.P.1), disposed of the Petitioner's memorial dated 2.7.1986 vide its decision dated 6.11.1987 while it "set aside the order of dismissal" passed by the Deputy Registrar (O.R3), but, directed "reversion" of the Petitioner to the rank of Junior Clerk under (Annexure-6). But a further Order Dated 22.12.1988, Opp. Party No. 1 directed that the emoluments of the Petitioner for the period of suspension would be limited to "subsistence allowance" only & the period of absence from the date of his dismissal to the date of his rejoining was to be treated as "without pay". Being aggrieved by Order Dated 6.11.1987 directing his reversion under Annexure-6 as well as Order Dated 22. 12. 1988 under Annexure-7, the Petitioner once again submitted a further representation to the Hon"ble Chief Minister on 2.9.1989, which was ultimately rejected on 7.4.1993 under Annexure-8. Thereafter the Petitioner approached the Orissa State Administrative Tribunal, Bhubaneswar in O.A. No. 998 of 1993, which was also rejected by Order Dated 25.6.1999 under Annexure-9.

10. It is contended by the Learned Counsel for the Petitioner that the Order Dated 6.11.1987 under Annexure-6 was passed partly allowing the memorial submitted by the Petitioner by quashing the order of dismissal but direct his reversion, was not in consonance with Rule 29 of the Orissa Civil Services (C.C.A.) Rules, 1962. While the matter stood thus, the Petitioner, who was also an accused in G.R. Case No. 107 of 1982, was duly discharged there from by Order Dated 7.1.1989 with a conclusion that the case was not maintainable against the Petitioner & therefore, the Petitioner was discharged.

11. In the facts narrated hereinabove, Learned Counsel for the Petitioner further submitted that since the original inquiry report (Annexure-3) was based on no evidence & the Enquiry Officer had summoned no witness & without examining the record had proceeded to record his findings by merely referring to the show cause submitted by the Petitioner, it is submitted that the proceeding per se is based on no evidence. Learned Counsel for the Petitioner further submitted that the original order of dismissal from service was allegedly for "misappropriation of Society funds". It is submitted that the Petitioner was never supplied with the

copies of evidence, both oral as well as documentary & while the disciplinary authority passed order of dismissal for the alleged "misappropriation of Society funds", yet the Learned Tribunal fell into grave error by failing to appreciate that the criminal complaints lodged against the Petitioner, both in G.R. Case Nos. 107 of 1982 & 123 of 1983 had ended in "acquittal/discharge". The tribunal further erred in law by not taking into account the dismissal of the Dispute Cases initiated against the Petitioner claiming refund of money from the Petitioner, which had ultimately been dismissed by "the Assistant Registrar, Cooperative Societies under Annexures- 5-A & 5-B.

Learned Counsel for the Petitioner further submitted that once the criminal Court has acquitted the Petitioner & the Dispute Cases filed by the Co-operative Societies, against the Petitioner stood dismissed by Annexures- 5-A & 5-B, there was no basis whatsoever, either for dismissing the Petitioner from service or for ultimately directing his reversion under Annexure-6 dated 6.11.1987 nor for directing denial of salary to him for the period of suspension as well as the period of dismissal vide Order Dated 22. 12.1988 (Annexure-7).

12. Learned Counsel for Petitioner further submitted that the Tribunal completely misread the inquiry report as well as Judgment passed in the criminal trial & observed that since the applicant-Petitioner had failed to convince the Court that the set of witnesses & the evidence in the criminal trial were identical to the disciplinary proceeding, therefore, the ratio of the Judgment of the Hon'ble Supreme Court in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, was not applicable.

13. Learned Counsel appearing for the State, on the other hand, submitted that the State had taken a lenient view in the matter by allowing the memorial of the Petitioner vide Order Dated 6.11.1987 & therefore, the Petitioner ought to have no grievance either against the order under Annexure-6 or Annexure-7 since, admittedly the Petitioner had not performed his duties during the period of suspension as well as period, post order of dismissal. Learned State Counsel also supports the order passed by the Tribunal, inter alia, on the ground that it was not the case of the Petitioner that in course of disciplinary proceeding the self-same persons who had given evidence in the criminal cases, in which the Petitioner had been acquitted, were also the same witnesses who were examined in course of the disciplinary proceeding. Therefore, there was no error whatsoever in the order of the Tribunal impugned under Annexure-9 to the present application.

14. In the light of the facts noted herein above, the following undisputed facts clearly emanate. Charges were framed against the Petitioner by the order of the Deputy Registrar, Co-operative Societies, Berhampur vide Order Dated 22.5.1982 under Annexure-1. The Petitioner responded to the said charges by submitting his explanation under Annexure-2 dated. 13.8.1982 in which he categorical prayed as follows:

In the light of the explanation furnished on each charge, I feel that great injustice has been rendered in my case by framing such fabricated charges which have no merit. The charges of misappropriation leveled against me without any base is un judicious & this has invoked mental agony & defamation among my colleagues and Ors. as well. I therefore request the authority to enquire into the matter & find out the validity of the charges leveled against me. I further pray that I may be allowed personal hearing & cross examine the persons connected with the proceedings before a final decision is taken on the issues involved in the proceedings.

15. In course of hearing of this case, pursuant to direction of this Court, the Learned Counsel for the State produced the records received from the office of the Deputy Registrar, Co-operative Societies, Berhampur Division, Berhampur, with regard to the departmental proceeding initiated against the Petitioner. On perusal of the said records it is clear therefrom that not a single witness's statement was ever recorded by the Enquiry Officer, either from the side of the department or from the side of the defence & the report of the Enquiry Officer dated 3.1. 1984 is totally based only on the audit objection provided by the auditors & on the purported consideration of the show cause explanation provided delinquent/Petitioner. No whatsoever was recorded by the Enquiry Officer nor has the Marshalling evidence by the Officer produced any witness or documentary evidence whatsoever. On perusal of the file containing the departmental proceeding, it is clear therefrom that, the inquiry itself has been conducted without complying with the mandatory requirements of the Orissa Civil Services (C.C.A.) Rules, 1962 & in particular Rule-29 thereof as well as the principles of natural justice as mandated by law.

16. Apart from the above, it is most important to note here that since the Enquiry Officer did not record any oral evidence or take any document on record as documentary evidence, apart from the audit report & therefore, there is no lawful basis for the tribunal to conclude that, the Petitioner had failed to establish that the evidence produced in course of inquiry were similar to the evidence produced in the course of criminal trial. The Judgment of the Hon"ble Supreme Court in the case of Capt. M. Paul Anthony (supra) has been rendered in the facts of the said case wherein it has been concluded that "it would be unjust, unfair & rather oppressive to allow the findings recorded at the ex-parte departmental proceedings to stand."

17. In the present case at hand, admittedly, the Petitioner was acquitted by the Criminal Court vide Order Dated 8.5.1987 in G.R. Case No. 123 of 1983 for offences under Sections 409, 477-A, I.P.C. for allegedly having falsified the cash book of which he was in-charge willfully & with intent to defraud. Paragraph 12 of the order of acquittal indicates that regard being had to the aforesaid unsatisfactory features of prosecution evidence, it cannot but be said that the charge u/s 409, I.P.C. has not been established against the accused beyond reasonable doubt & with regard to charge u/s 477-A, I.P.C. there is nothing on

record to show that any document had been forged or manufactured by accused willfully with an intent to defraud & therefore, the said charge has no legs to stand. Similarly in G.R. Case No. 107 of 1982, the Petitioner was discharged on a finding that the case was not maintainable against him. In the said case Petitioner had been charged under Sections 409 & 477-A, I.P.C.

18. Apart from the above, Soura LAMPS Limited had also initiated recovery proceeding before the Assistant Co-operative Societies seeking recovery of the money misappropriated allegedly by the Petitioner & both the dispute cases i.e., Dispute Case Nos. 38/84-85 & 39-84-85 came to be dismissed against the Petitioner vide Order Dated 28.10.1986 & 29.10.1986 respectively.

19. Considering the aforesaid facts, we are of the considered view that the report of the Inquiry Officer was not based on any substantive evidence & therefore order was passed on the basis of no evidence having been recorded by him & without complying with the mandatory requirement of the Orissa Civil Services (C.C.A.) Rules, 1962, as well as in violation of principles of natural justice. Apart from the above, the Petitioner having been acquitted by the Criminal Courts, as well as by the Assistant Registrar, Cooperative Societies in Dispute Cases referred to above, no basis whatsoever exists to support the conclusion reached in inquiry report & consequently while directing quashing of Annexure-3 (the inquiry report) we also direct quashing of the order of dismissal (Annexure-5) as well as the orders of reversion dated 6.11.1987 & 22.12.1988 (deduction of emoluments) of Opp. Party No. 1 under Annexures-6 & 7 respectively. We also quash the Order Dated 25.6.1999 passed by the Learned Tribunal in O.A. No. 998 of 1983 under Annexure-9.

20. Accordingly, the Petitioner shall be entitled to get all his service benefits as well as salary on & from date of suspension. Since the order of dismissal has also been held to be illegal, he shall be deemed to be in continuous service from date of his suspension & therefore, is entitled to get all consequential service benefits. The entire exercise of compliance shall be completed within a period of three months from the date communication of this order.

21. With the aforesaid observation & direction the Writ Petition is allowed.

L. Mohapatra, J.

22. I agree.