

(2023) 04 OHC CK 0196
In the Orissa High Court
Case No : Writ Appeal No.460 Of 2023

State Of Odisha And Another

APPELLANT

Vs

Subash Chandra Das And Another

RESPONDENT

Date of Decision : 20-04-2023

Acts Referred:

Citation : (2023) 04 OHC CK 0196

Hon'ble Judges : Dr. S. Muralidhar, CJ;G. Satapathy, J

Bench : Division Bench

Advocate : Manoja Kumar Khuntia, Niranjana Biswal

Final Decision : Disposed Of

Judgement

Dr. S. Muralidhar, CJ

1. The present appeal filed by the State is directed against the judgment dated 28th July, 2022 passed by the learned Single Judge allowing W.P.C.(OAC) No.3573 of 2013 filed by Respondent No.1 and thereby quashing the Inquiry Report and Disciplinary Proceedings including the order of punishment dated 7th July, 2017 whereby the punishment imposed was withholding of 10% of pension of the Respondent No.1 for five years from the date of his superannuation.

2. Among the grounds on which the Disciplinary Inquiry was challenged was the non-supply of two sets of documents: (i) copies of Squad Reports relied on during the inquiry and (ii) copies of the depositions which would include transcripts of cross-examination conducted by the Respondent No.1 delinquent employee of the witnesses of the Department.

3. The impugned judgment of the learned Single Judge notes that just for the supply of these documents, Respondent No.1 had to approach first the Odisha Administrative Tribunal (OAT) and then this Court at least on two occasions. Ultimately, in a letter dated 2nd August, 2011 addressed to him by the Deputy Secretary to Government in the Textile & Handlooms Department, Respondent

No.1 was informed that the three 'Squad Leaders', whose reports he was seeking copies of "never conducted inquiry into plantation in the Sarat and Dantiamuhan TRCS and never submitted such report on the aforesaid two plantations." Respondent No.1 was accused of trying to drag on the matter not allowing the proceedings to complete and he was still asking for "supply of squad reports, which does not exist at all."

4. The learned Single Judge has after noticing the above response come to the conclusion that there was a plain violation of the principles of natural justice and since the Enquiry Officer did rely on such reports, his conclusion on charges 1 and 4 were not sustainable in law.

5. On the previous occasion when the present writ appeal was heard, the following order was passed by this Court on 11th April, 2023:

"1. Counsel appearing for Respondent No.1 on advance notice draws attention to Annexure-8 series to the writ petition which includes the document dated 2nd August, 2011 of the Deputy Secretary to the Government Textiles & Handlooms addressed to the Respondent stating that he was insisting copies of the squad report "which does not exist at all". He accordingly, submits that the learned Single Judge has justified in quashing the disciplinary proceeding which was passed on the basis of a non-existent squad report.

2. Mr.M.K.Khuntia, learned Additional Government Advocate for State-Appellants requires one more adjournment to verify the correct position regarding supply of copies of the squad report to the Respondent.

3. At his request as a last opportunity, list on 20th April, 2023."

6. The Appellant-State has filed an affidavit dated 18th April, 2023 placing on record an entire bunch of documents as Annexure-A series including copy of the letter dated 4th December, 2009 addressed to Respondent No.1 on the subject of "Supply of Squad Reports and other relevant reports pursuant to the order of Hon'ble High Court dated 3.11.2009 and 17.11.2009." This letter lists out four documents. Serial No. 4 reads: "Copies of the consolidated joint verification report on Tasar Plantation of the 5 nos. of joint squad consisting of 5 members each formed by Collector, Mayurbhanj, raised by Asst. Director of Sericulture, Baripada in different places under different Blocks."

7. Accordingly, Mr. Manoja Kumar Khuntia, learned Additional Government Advocate submits that the squad report copies were indeed supplied to Respondent No.1.

8. Mr. Niranjan Biswal, learned counsel appearing for the Respondent No.1, on the other hand, draws attention to the hand written noting of Respondent No.1 beside the above listing of documents in the aforementioned letter where he mentioned that he has not received copies of the Squad Reports of the squad consisting of Sri S. N. Pattanaik, S.K. Acharya, Smt. Namita Biswal and Sri D.P. Dash since it was not available.

9. Mr. Khuntia insisted that the aforementioned reports were not relied upon in the inquiry and what was relied upon was the squad report of two officers which was in fact provided to Respondent No.1.

10. Mr. Biswal further submits that Respondent No.1 was never provided with copies of the transcript of cross-examination. He points out that the Disciplinary Authority (Commissioner-cum-Secretary, Department of Textile & Handlooms) in a letter dated

15 th May, 2006 addressed to Respondent No.1 claimed that Respondent No.1 "has not cross-examined the witnesses during the course of departmental enquiry." On the other hand, in the second para of the Inquiry Report itself the Inquiry Officer adverts to the fact that the deposition of witnesses of the Department "have been recorded and they were cross-examined by the delinquent."

11. The Court finds that in the Inquiry Report, the following observation has been made by the Inquiry Officer:

"Even though a straight line cannot be drawn regarding the maintenance cost of plots, but taking into the area found on measurement, the witnesses of the Secretaries and the visit reports of the squad and the officers and looking into the production aspect it can be concluded that, maintenance of plantations has suffered drastically and hap-hazard maintenance has been taken up. I find 40-60% of the maintenance cost may have been utilized for the purpose of maintenance."

12. The above paragraph makes no distinction between the different kinds of squad reports as was sought to be contended by Mr. Khuntia. It is, therefore, not possible to agree with him that the Inquiry Officer relied only on one set of squad reports which were provided to Respondent No.1 and not the other which plainly was not provided.

13. Be that as it may, it is undeniable that the Inquiry Officer relied on the deposition of the witnesses including the cross-examination, whereas the Disciplinary Authority appears to have proceeded on the basis that Respondent No.1 never cross-examined any of the Departmental witnesses. Clearly the Disciplinary Authority was wrong in this respect. It is evident even from a reading of the affidavit filed by the Department in these proceedings on 18th April, 2023 that Respondent No.1 was not provided with copies of the depositions relied upon by the Inquiry Officer in the inquiry. Even if it is accepted that the learned Single Judge erred in observing that the disciplinary proceedings could not have continued after the retirement of the Respondent No.1, it would not affect the ultimate conclusion that the disciplinary proceedings were for the reasons explained, vitiated in law.

14. Consequently, this Court is unable to find any error having been committed by the learned Single Judge in quashing the inquiry proceedings and the

resultant punishment on account of the failure of the Department to supply to Respondent No.1 delinquent employee the documents which were relied upon against him during the inquiry. The legal position in this regard has been explained by this Court which followed the decisions of the Supreme Court of India, in its judgment dated 23rd November, 2022 in W.A. No.337 of 2019 (Union of India v. Janardan Mohanty).

15. Finally, the Court notes that Respondent No.1 is today over 74 years old. He has been battling the Department in courts for over a decade and has had to approach first the OAT and then this Court twice just to seek documents for the purposes of defending himself in the disciplinary proceedings. The Court fails to understand why over an issue of a punishment of withholding of 10% of the pension five years on cumulative basis being set aside by the learned Single Judge, the State Government would insist on pursuing Respondent No.1.

16. For all of the aforementioned reasons, the Court finds no reason to interfere with the impugned judgment of the learned Single Judge. The appeal is accordingly dismissed.

I.A. 1142 of 2023

17. For the reasons stated therein, the application is allowed. The delay in filing the appeal is condoned.

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