
(2000) 11 OHC CK 0020

In the Orissa High Court

Case No : Original Jurisdiction Case No. 7324 of 2000

State of Orissa and Another

APPELLANT

Vs

Bichitrananda Muduli and Another

RESPONDENT

Date of Decision : 24-11-2000

Acts Referred:

Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 — Rule 12

Citation : (2001) 1 OLR 45

Hon'ble Judges : R.K. Patra, Acting C.J.; P.K. Misra, J

Bench : Division Bench

Advocate : S.K.Das, Addl. Government Advocate, for the Appellant; Bijan Ray, B. Panda, C. Choudhury, B. Mohanty, D.R. Das, S. Mohanty, S. Pattanaik and B. Moharana, for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, A.C.J.

1. The suspension of opposite party No. 1 having been upset by the Orissa Administrative Tribunal in its order dated 31.7.2000, the State of Orissa has filed this writ application for quashing of the said order.

2. Opposite party No.1 is the Chief Engineer, Rural Works-I, Orissa, Bhubaneswar. The State Government in the Rural Works Department Order No. 5842 dated 28.4.2000 (Annexure-2) placed him under suspension with immediate effect pending institution of criminal case and/or disciplinary proceeding. He challenged the said order of suspension before the Orissa Administrative Tribunal, Bhubaneswar (hereinafter referred to as " the Tribunal") in Original Application No. 1217 of 2000. The Tribunal by the impugned order dated 31.7.2000 (Annexure-1) has quashed the order of suspension holding that further continuance of his suspension cannot be allowed.

3. Learned Additional Government Advocate submitted that the D.O. letter of the Chief Secretary and the letter of the General Administration Department relied on

by the Tribunal are inconsistent with the provisions contained in Rule 12 of the Orissa Civil Services (Classification, Control and Appeal), Rules, 1962 (hereinafter referred to as "CCA. Rules"). In any event, the D.O. letter of the Chief Secretary and the letter of the General Administration Department contain mere guidelines as to how a case of suspension has to be dealt with and, as such, infraction thereof cannot invalidate the order of suspension.

Shri Bijan Ray, learned Senior Counsel appearing for opposite party No. 1, on the other hand contended that the order of suspension is vulnerable as it was passed contrary to the observations of the Supreme Court made in *State of Orissa Vs. Bimal Kumar Mohanty*, and the Tribunal has rightly set at naught the order of suspension.

4. Rule 12 of the CCA. Rules deals with the power of suspension. Sub-rule (1) thereof which is relevant for the purpose of this case is extracted hereunder :

"Rule 12(1): The appointing authority or any authority to which it is subordinate or any authority empowered by the Governor or the appointing authority in that behalf may place a Government servant under suspension -

(a) where a disciplinary proceeding against him is contemplated or is pending; or

(b) where a case against him in respect of any criminal offence is under investigation or trial."

The Supreme Court in *Bimal Kumar Mohanty* (supra) in para 12 observed as follows :

" it is thus settle law that normally when an appointed authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words, it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending enquiry without any impediment or to prevent an opportunity to

the delinquent officer to scuttle the enquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or enquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending enquiry or contemplated enquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or enquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental enquiry or trial of a criminal charge."

5. The order of suspension of the opposite party No .I recites that he is placed under suspension with immediate effect pending institution of criminal case and/or disciplinary proceedings. In the counter affidavit filed before the Tribunal (Annexure-4). the State Government stated inter alia that on the basis of search warrants issued by the Special Chief Judicial Magistrate (CBI and Vigilance), Bhubaneswar in Bhubaneswar Vigilance Misc. Case No. 9 of 2000, simultaneous searches were conducted in the premises of the residential Government quarters of opposite party No. I. his own triple storied building at Plot No. 67, Saheed Nagar, Bhubaneswar; two apartments occupied by his son at Ashirbad Apartments, Bomikhal, Cuttack Road, Bhubaneswar; farm house etc. which disclosed that he has acquired huge assets/pecuniary resources to the tune of Rs. 77,50,615.75 disproportionate of the known sources of his income which is about 645% over and above it. As it clearly reveals a case of commission of offences punishable u/s 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988, Bhubaneswar Vigilance P.S. Case No. 25 dated 27.4.2000 has been registered against him and investigation is in progress. In Flat No. 210 of Ashirbad Apartments, Cuttack Road, Bhubaneswar occupied by his son, one country made pistol, one revolver without licence, DBBL gun and cash amounting to Rs. 11,70,000/- were found concealed. In course of investigation of the aforesaid Vigilance Case, the Investigating Agency getting further information that opposite party No.I has concealed huge cash and other incriminating documents in the Government quarters No. IV-B-1/3 occupied by one Miss Manjulata Panigrahi, Assistant Law Officer of the Department of Water Resources, as well as in the quarters occupied by opposite party No.I himself in the same locality nearby, search was made on 28.4.2000 and a sum of Rs. 4,94,209/- was found besides foreign currency of 1935 pounds and some incriminating documents. During simultaneous search on 20.4.2000 from the almirahs in the office room of the P.A. of the opposite party No.I which adjo'ins to his office chamber, cash amounting to Rs. 6,77,350/- was recovered. The plea of the P.A. was found prevaricating and not believable. Many other facts have also been mentioned in the said counter concerning acquisition of assets and pecuniary resources by his son. We need not refer to them in our order as this Court is not sitting in appeal over the order of suspension nor was the Tribunal doing so while

dealing with the case. This being the factual position, we have not been able to persuade ourselves to hold that the order of suspension was made mechanically or without any basis as contended by Shri Ray.

6. The short question that arises for consideration is whether the Government was justified in placing the opposite party No. I under suspension in view of what has been stated by it in the counter filed before the Tribunal. Rule 12 of the CCA. Rules empowers the appointing authority to suspend a Government servant where a disciplinary proceeding against him is contemplated or is pending or where a case against him in respect of any criminal offence is under investigation or trial. As has been held by the Supreme Court in Bimal Kumar Mohanty (supra), pending inquiry or pending investigation into the grave charges of misconduct or serious acts of omission and commission, order of suspension can be passed after taking into consideration the gravity of the misconduct said to be enquired into or investigated.

7. Let us now proceed to consider the validity of the impugned order of the Tribunal. It has ascribed three reasons to invalidate the order of suspension.

The first reason is that no charge having been served on the opposite party No. I within three months from the date of suspension, his further continuance in suspension is not permissible. In support of this conclusion, the Tribunal has relied upon the Chief Secretary's D.O. letter No. 4042 dated 13.9.1999 (Annexure-5) and has also referred to its decision rendered in O.A. No. 731 of 2000. On persual of the said D.O. letter, it appears that the Chief Secretary impressed upon all the Secretaries to Government and all Heads of Departments that the sword of suspension should not hang over an officer for a long period and the charges against him should be enquired into and disposed of with utmost expedition and as a first step he advised that charges should be served on him within three months from the date of suspension. The Chief Secretary has also suggested many other steps for quick disposal of the proceedings. But since we are not concerned with them, we need not refer to the same. In our considered opinion, the D.O. letter of the Chief Secretary contains certain instructions by way of guidelines to the appointing authority/disciplinary authority. It is true, those instructions are not meant to be ignored or disregarded. But they being in the nature of administrative instructions cannot take the place of statutory rules. It has been held by the Supreme Court in *Union of India v. Majji Jangammayya*, AIR 1977 SC 757 that administrative instructions, if not carried into effect for good reasons, cannot confer a right (vide para 36). Besides this, nowhere it was stipulated in the said letter that if charges are not served on the officer concerned within the three months from the date of suspension, his continued suspension would become illegal. In absence of any mention in the said D.O. letter that on failure to comply with the prescribed requirement, a certain consequence would flow, it cannot be held that the instructions contained therein are mandatory in nature. For the aforesaid reasons, we are of the opinion that mere failure to serve the charges on the opposite party No. I within three months

from the date of his suspension does not vitiate the order of suspension. The earlier decision of the Tribunal referred to by it (O.A. No. 731 of 2000) has to be declared as having no precedential value.

The second ground ascribed by the Tribunal to invalidate the order of suspension is that no charge has been framed or served on the opposite party No. 1 within three months of submission of Vigilance report as required by the General Administration Department Letter No. 19247 dated 7.9.1993 (Annexure-6). In this Government letter, it was reiterated that delay in initiation of departmental/disciplinary action should be avoided and immediate action for drawal of disciplinary proceedings should be taken within three months of the date of receipt of the Vigilance inquiry report. This Government letter also contains mere administrative instructions. It was obviously issued with a view to impress upon the disciplinary authority that there should not be delay in disposal of the disciplinary proceedings. This letter like that of the Chief Secretary's D.O. letter (supra) does not state that on failure to initiate disciplinary proceeding within the term-frame, the order of suspension would become illegal. For the self-same reasons the Tribunal has clearly erred in law in quashing the order of suspension.

The third reason give by the Tribunal is that since the opposite party No. 1 is going to retire from service by the end of November, 2000, there is little scope of tampering with any evidence or gaining over of any material witness by him. This is totally an extraneous matter for considering whether the order of suspension is legal or not. The necessity of disciplinary action being taken against the Government servant for inefficiency, dishonesty and other appropriate reasons cannot be doubted. Therefore, suspension has to be regarded as the first step before charges are framed against him.

There is no dispute that he disciplinary authority can revoke the order of suspension in exercise of its inherent power for good and valid reasons. In the case at hand, since the opposite party No. 1 retires on superannuation by the end of November, 2000, the Government may, if it thinks fit, consider to revoke the impugned order. That is a matter within the exclusive domain of the State Government. Neither the Court nor the Tribunal should encroach upon that arena. We accordingly leave this matter to the State Government for its due consideration.

For all the reasons stated above, the order of the Tribunal quashing the order of suspension of opposite party No.1 cannot be supported in law.

8. In the result, the writ application succeeds. The order of the Tribunal dated 31.7.2000 at Annexure-1 is hereby quashed.

P.K. Misra, J.

9. I agree.