

(2017) 03 OHC CK 0056

In the Orissa High Court

Case No : 15242 of 2014

State of Orissa

APPELLANT

Vs

Miss. Manjulata Panigrahi

RESPONDENT

Date of Decision : 21-03-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs

Citation : (2017) 03 OHC CK 0056

Hon'ble Judges : Sanju Panda, Sujit Narayan Prasad

Bench : DIVISION BENCH

Advocate : Manjulata Panigrahi

Judgement

1. The petitioner - State of Orissa has invoked the extra ordinary jurisdiction of this court conferred under Article 226 of the Constitution of India by way of this writ petition whereby and where under the order passed by the Odisha Administrative Tribunal, Cuttack Bench Cuttack dtd.27.08.2013 in O.A. No.1110(C) of 2010 is under challenge whereby and where under the Tribunal has directed the State to reinstate the applicant with immediate effect on appropriate post and complete the departmental proceeding within one year from the date of receipt of copy of the order, failing which the charge shall be deemed to have been quashed.

2. The brief fact of the case in narrow compass is that a departmental proceeding has been initiated against the private opposite party vide memorandum of charge on 06.05.2010 which has been challenged before the Odisha Administrative Tribunal on the ground that the memo of evidence attached to the memorandum of charge have not been supplied to the applicant and also the order of suspension be quashed. The Tribunal has passed order on 27.8.2013 revoking the order of suspension with a direction to reinstate her in service with a further direction to provide the relevant documents and to conclude the departmental proceeding within one year from the date of receipt of copy of the

order, failing which the charge shall be deemed to have been quashed.

3. The order passed by the Tribunal is assailed in this writ petition on the ground that on the one hand the Tribunal has directed to conclude the departmental proceeding failing which it will be deemed to have been quashed, while on the other hand the entire departmental proceeding has been stalled vide order passed on 23.05.2014 in O.A. No.1613(C) of 2014 which has been filed by the opposite party challenging the appointment of Enquiry Officer. It has been submitted that the departmental proceeding is not been concluded due to continuous litigation filed by the opposite party on the one pretext or the other and the Tribunal has passed an interim order in that original application, hence there is no fault on the part of the disciplinary authority as such the part of the order by which the departmental proceeding has been directed to be completed within one year from the date of receipt of copy of the order, failing which the charge shall be deemed to have been quashed is not sustainable in the eye of law and liable to be quashed.

However, it has been argued by the learned Additional Government Advocate that the Tribunal has passed order for reinstatement by revoking the order of suspension on the ground of prolonged suspension due to pendency of the departmental proceeding, but that ground is also not available in the facts and circumstances of the case, reason being that it is the opposite party, the delinquent employee, who intentionally lingering the matter and further considering the nature of allegation which is serious in nature, the order of reinstatement is not proper. Learned counsel appearing for State of Orissa put reliance upon the order passed by the Odisha Administrative Tribunal in O.A. No.1613(C) of 2014 dtd.23.05.2014.

4. Miss. Manjulata Panigrahi, the opposite party is present in person and argued out her case at length. She submits that the relevant documents have not been supplied to her and due to that reason she is not in a position to defend herself in a proper manner. She further submits that in spite of specific direction passed by the Tribunal, the relevant document is not being supplied and as such the departmental proceeding should not be allowed to continue.

5. While rebutting the argument learned Addl. Government Advocate has submitted that the disciplinary authority is ready to supply the relevant documents, even the opposite party has been informed to have inspection of the original record and if still she is in requirement of the relevant documents, she may make an application before the Enquiry officer or even before this Court pointing out the relevant documents along with urgency and if such application will be made the disciplinary authority will supply the same.

6. We have heard Mr. Sahoo, learned Addl. Govt. Advocate appearing for the State and Miss Manjulata Panigrahi, the opposite party in person and perused the documents available on record. The admitted position in this case is that the departmental proceeding has been initiated against the private opposite party by

serving the memorandum of charge and she was put under suspension. The opposite party has approached before the Odisha Administrative Tribunal vide O.A. No.1110(C) of 2010 raising her grievance that the despite repeated direction, some documents have been issued cited in the memo of evidence attached to the memorandum of charge but still the relevant documents have not been supplied, due to that reason she is not in a position to defend herself properly and the disciplinary proceeding is prolonging for no fault of her own while she is also facing suspension.

The Odisha Administrative Tribunal, after hearing the parties, has passed order revoking the suspension with a direction to reinstate the opposite party in service with a further direction to the disciplinary authority to conclude the disciplinary proceeding within one year from the date of receipt of copy of the order, failing which the charge shall be deemed to have been quashed.

We are not in disagreement with the settled proposition that the relevant document is to be supplied to the delinquent employee. We are also not in disagreement that there should not be any prolong suspension, but simultaneously it is to be seen that as to whether the disciplinary proceeding is prolonging due to the fault of the disciplinary authority or the delinquent employee.

We, on examination of the facts and circumstances of the instant case, have found that the Odisha Administrative Tribunal has directed to conclude the disciplinary proceeding within one year from the date of receipt of copy of the order vide order dtd.27.08.2013 in O.A. No.1110(C) of 2010 and during subsistence period of that order one another O.A. has been filed by the opposite party being O.A. No.1613(C) of 2014 challenging the appointment of Enquiry Officer with an interim prayer to restrain the disciplinary authority to proceed with the disciplinary proceeding. The Odisha Administrative Tribunal, vide order dtd.23.05.2014, has stayed the disciplinary proceeding, the content of the order dtd.23.05.2014 passed in O.A. No.1613(C) of 2014 is being quoted herein below for ready reference:-

"xxxxxxx The applicant has challenged the order appointing inquiring officer as at Annexure-11 and the order at annexure-12 stating that all the documents have been supplied to him. It is submitted that vide order of this Tribunal dtd.27.08.2013, it was made clear that some documents are yet to be supplied to the applicant as per the memo of evidence. It is pointed out that as per Annexure-A to Annexure-12 documents have been supplied in the year, 2012 and no further documents have been supplied pursuance to the order dtd.27.08.2013. Therefore, the respondents should be restrained from proceeding with the inquiry without supplying the documents.

Issue notice on admission. Counter be filed within four weeks and rejoined, if any, be filed two weeks thereafter.

List in the first week of July, 2014.

So far as prayer for interim order is concerned, the respondents are restrained from proceeding with the inquiry without supplying all the documents pursuant to order dtd.27.08.2013 as at Annexure-10. However, the state respondents are at liberty to seek modification of the order, if so advised.

Notice along with the order be issued at the cost of the applicant."

It is evident from the record that the disciplinary proceeding has been stalled at the instance of the opposite party which is now pending for consideration before the Tribunal, hence it would not be proper for this court to go into the merit of the claim of the parties at this stage rather the proper course would be to direct the Tribunal to adjudicate upon the issue which is pending before it for consideration in O.A. No.1613(C) of 2014 at an early date, preferably before ensuing summer vacation.

7. So far as the prayer of the opposite party that the authority may be directed to reinstate her in service, according to our conscious view, since the opposite party herself has filed an original application before the Tribunal challenging the appointment of Enquiry Officer while there was already specific direction to conclude the departmental proceeding within a period of one year from the date of receipt of copy of the order, failing which the charge shall be deemed to have been quashed, but during subsistence period of that order the entire departmental proceeding has been stalled at the instance of opposite party, as would be evident from the order dtd.23.05.2014 as quoted herein above. Hence the opposite party cannot be allowed to take the advantage of her own conduct to enjoy the fruits of the order on the one hand and stalled the departmental proceeding on the other. Further, apart from these two litigations other litigations have also been filed before the Tribunal by the opposite party.

There is no dispute about the settled position that prolong suspension on the ground of pendency of departmental proceeding is not advisable, but before quashing the order of suspension on this ground, it is relevant to assess that who is at fault in prolonging the suspension by keeping the departmental proceeding pending and if it is found that delay in conclusion of departmental proceeding is attributable to the State authorities, certainly the delinquent employee cannot be made to suffer for their laches, but simultaneously, if the delay is on the part of the delinquent employee, the employee cannot be allowed to take the fruit of his / her own wrong.

Applying the said principle and on scrutiny of the facts of this case what we have gathered from the material available on record is that the opposite party has approached the court of law time and again for supply of relevant documents and latest is now pending before the Odisha Administrative Tribunal being O.A. No.1613(C) of 2014 in which the departmental proceeding itself has been stalled by the Tribunal and as such on this ground the learned counsel appearing for the State has submitted that the order of reinstatement having been passed by the Tribunal in O.A. No.1110(C) of 2010 is not to be approved since the Tribunal has

not taken into consideration the reason for prolonging the disciplinary proceeding while the specific stand of the State all along is that whatever document the opposite party is desirous to get, which is relevant for the purpose of defending herself, she can give a list, the same will be supplied or she even can be allowed to inspect the documents, but instead of doing so, the original applications have been filed before the Tribunal keeping the departmental proceeding in abeyance.

We, on appreciation of this argument and on comparison of the materials available on record, are in agreement with the argument advanced on behalf of learned Addl. Government Advocate, hence come to the conclusion that the revocation of suspension cannot be categorized under the prolong suspension so that opposite party be given its benefit. Further we are in agreement with the submission of learned Addl. Government Advocate considering the nature of allegation, hence we are not inclined to approve the order of Tribunal by which the opposite party has been directed to be reinstated in service.

In view thereof, the part of the order regarding reinstatement of the applicant - opposite party in service, at this stage, is not being approved by us, hence quashed.

Since we have directed the Tribunal to decide the O.A. No.1613(C) of 2014 before ensuing summer vacation, as such the opposite party is at liberty to raise this point before the Tribunal which will be considered by it on its own merit.

With these observations and directions the writ petition stand disposed of.