
(2015) 08 OHC CK 0057
In the Orissa High Court
Case No : Writ Petition (C) No. 19612 of 2010

State of Orissa

APPELLANT

Vs

Somanath Das and Others

RESPONDENT

Date of Decision : 28-08-2015

Acts Referred:

Citation : (2015) 08 OHC CK 0057

Hon'ble Judges : D.H. Waghela, C.J.; Biswanath Rath, J

Bench : Division Bench

Advocate : M.S. Sahu, Addl. Government Advocate, for the Appellant; A. Misra, Senior Advocate, J. Sengupta, D.K. Panda and G. Sinha, Advocates for the Respondent

Final Decision : Allowed

Judgement

Biswanath Rath, J—By filing this writ petition, State of Orissa, as petitioner, has sought to question legality of the order dated 04.11.2009 of State Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 1944(C) of 1998.

2. Learned Additional Government Advocate submitted that when the original applicant i.e. the present Opp.party No. 1 challenged the punishment awarded by the Disciplinary Authority, before the State Administrative Tribunal by filing O.A. No. 1944 (C) of 1998 on the premises that the order of punishment was vitiated firstly for non-observance of Rules 6 and 7 of the O.C.S. (Pension) Rules, 1992 and, secondly, the punishment was disproportionate to the quantum of offence, the learned Tribunal traversed beyond the issues raised by the Opp. party No. 1 and set aside the impugned order of punishment for which the impugned judgment ought to be set aside.

3. Per contra, Sri Mishra, learned Senior Counsel appearing for the Opposite-party No. 1, apart from trying to justify the findings of the learned Tribunal on the above two counts, further submitted that Tribunal's findings in interfering with the impugned order on the premises that the impugned order of punishment

suffered on account of non-supply of documents, was not only based on pleadings in the Original Application but also based on material available on record and thus, claimed that the impugned order was justified and need not be interfered.

4. On scanning the impugned order passed by the State Administrative Tribunal, it was observed that even though the Tribunal has taken into consideration several aspects, stress was laid mainly on non-supply of documents to the delinquent-Opp. Party No. 1 during the disciplinary proceeding and ultimately it arrived at the conclusion that the impugned order suffered from non-supply of material documents. It was seen that the Opp. party No. 1 had not in the entire Original Application, raised the issue of non-supply of documents. Tribunal has further observed that the impugned order also suffered on account of not referring to the provisions contained in Rule-7 of the O.C.S. (Pension) Rules, 1992 either in the second show-cause or in the final order of punishment.

5. We have considered the submissions of Sri Sahu, learned Additional Government Advocate appearing for the State as well as the rival contentions of Sri Mishra, learned Senior Counsel appearing for the Opp. party No. 1. Perusing the second show cause notice as well as the impugned order of punishment, we find that even though there is no reference to Rule-7 of the O.C.S. (Pension) Rules, 1992, it clearly appears that the Disciplinary Authority has applied its mind taking into consideration the requirements of the Rule-7 of the O.C.S. (Pension) Rules, 1992 and, thereafter, issued both the above documents. Thus, we find the observation of the Tribunal in so far it relates to the illegality in the impugned second show cause notice as well as in the order of punishment on account of non-reference to Rule-7 of the O.C.S. (Pension) Rules, 1992, is improper and thus the findings of the learned Tribunal in that regard cannot be sustained.

6. Now coming to the other issue of non-supply of material documents to the Opp. party No. 1, as observed by the Tribunal and referring to paragraph Nos. 6.5 and 6.6 of the Original Application it is found that there is absolutely no mention of non-supply of any document, by which the Opp. party No. 1 was prejudiced. The entire Original Application is absolutely silent on this score. Learned Senior Counsel for the Opp. Party No. 1 took us to several documents to satisfy that the Opp. Party No. 1's claim for supply of documents having not been complied with, the Opp. Party No. 1 has been prejudiced. In absence of any pleadings in that regard, we are not inclined to entertain any such plea at this stage. It is well settled law that to sustain the allegation of violation of principle of natural justice, one must establish that prejudice has been caused to him by non-observance of the principles of natural justice.

7. The Opp. Party No. 1 submitted detailed representation with reference to the enquiry report and it nowhere even whispered about non-supply of any material document. Therefore, there was clear absence of any pleading about non-supply of documents at any stage. On the issue of punishment, there was a serious

allegation of receiving bribe against the Opp.Party No. 1. However, since the Opp. Party No. 1 was already superannuated, taking a lenient view, the authority has imposed a milder punishment which cannot be said to be disproportionate to gravity of the misconduct.

8. In deciding the case of prejudice upon non-supply of documents, the Hon''ble Apex Court in the case of State Bank of India and Others Vs. Bidyut Kumar Mitra and Others, (2011) 130 FLR 328 : (2011) 1 JT 146 : (2011) 1 LLJ 735 : (2011) LLR 561 : (2011) 1 SCALE 390 : (2011) 2 SCC 316 : (2011) 1 SCC(L&S) 323 : (2011) 1 SCR 298 : (2011) AIRSCW 5471 : (2011) AIRSCW 798 , observed that neither the delinquent had indicated anything regarding non-supply of any document nor for non-supply of any such document, he has been prejudiced. In the ultimate decision, the Hon''ble Apex Court held that the respondent had failed to prove any prejudice, which resulted in miscarriage of justice.

Similarly, in another decision, the Hon''ble Apex Court in the case of K.L. Tripathi Vs. State Bank of India and Others, AIR 1984 SC 273 : (1984) 48 FLR 38 : (1983) LabIC 1680 : (1984) 1 LLJ 2 : (1983) 2 SCALE 587 : (1984) 1 SCC 43 : (1984) 1 SCR 184 : (1983) 2 SLJ 623 as well as in N.K. Prasada Vs. Government of India and Others, (2004) 1 JT 326 Supp : (2004) 4 SCALE 845 : (2004) 6 SCC 299 : (2004) 3 SCR 1178 : (2004) AIRSCW 2673 : (2004) 4 Supreme 473 held that violation of principles of natural justice cannot be examined in vacuum without reference to the relevant facts and circumstances of the case.

In another decision, in Syndicate Bank and Others Vs. Venkatesh Gururao Kurati, AIR 2006 SC 3542 : (2006) 108 FLR 1043 : (2006) 2 JT 73 : (2006) 1 LLJ 988 : (2006) 2 SCALE 101 : (2006) 3 SCC 150 : (2006) SCC(L&S) 487 : (2006) 1 SCR 920 : (2006) 2 SLJ 285 : (2006) AIRSCW 680 : (2006) 1 Supreme 582 , the Hon''ble Apex Court held that for sustaining the allegation of violation of principle of natural justice, one must establish that prejudice has been caused to him.

9. Under the above facts and circumstances as well as position of law, this Court is satisfied that the claim of the Opp. Party No. 1 on both the above scores suffers. This is a clear case of the Tribunal travelling beyond the pleadings in the Original Application and further passing the impugned order without due consideration of the material on record, due to which the impugned order cannot be sustained. We hereby allow the writ petition by setting aside the impugned order dated 04.11.2009 at Annexure-4.

10. Under the circumstances, the writ petition succeeds. However there is no order as to cost.

We have considered the submissions of Sri Sahu, the learned Additional Government Advocate appearing for the State as well as the rival contentions of Sri Mishra, learned Senior Counsel appearing for the Opp. party No. 1 with regard to the detail show cause notice which clearly shows that even if there is an observance of Rule 7 of the O.C.S. (Pension) Rules, 1992 by the learned Tribunal yet no such rule finds place either in the second show cause notice or in

the punishment order.