

(1971) 02 OHC CK 0004

In the Orissa High Court

Sudhir Ch. Das

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 12-02-1971

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : (1971) 2 LLJ 65

Hon'ble Judges : G.K. Misra, C.J.;A. Misra, J

Bench : Division Bench

Judgement

G.K. Misra, C.J.—The petitioner was appointed as a work-sarkar under work-charged establishment of the Public Health Sub-division in Baripada. The appointment was purely temporary and was liable to be terminated at any time without prior notice and without assigning any reason. His services were terminated on 15-10-69 by the following order:

Sri Sudhir Chandra Das, Work-Sarkar is discharged from service from 15-10-69 forenoon.

It is this order which is assailed in this writ application under Article 226 of the Constitution as being contrary to law, inasmuch as, though ex facie it appears to be innocuous, it was given by way of punishment. The facts referred to in the petition to make out a case of punishment are that the Superintending Engineer, Bhubaneswar Circle wrote a letter to the Chief Engineer on 9-10-69 to the following effect:

I have to inform you that Sri Sudhir Chandra Das, Work-Sarkar under work-charged Establishment of Baripada P.H. Divn. has been arrested by the Police in P.S. No. 122/69 and has been released on bail.

As per Article 93A of the O.S. Code, a Government servant against whom a criminal charge or a proceeding for arrest may be placed under suspension by the issue of specific orders. But there is no such rule or any Government Circular in which the work-charged staff involved in criminal charges will be suspended.

Hence I would therefore request that the necessary decision may kindly be issued on the matter to take further action against the person concerned and for strict guidance.

To this letter, the Chief Engineer replied by saying in Annexure-3 on 9-10-69 that the petitioner should be discharged from service from the date he has been arrested. Thereafter, the petitioner was discharged by the order at Annexure 1 on 15-10-69.

2. It is contended by Mr. Panda on behalf of the petitioner that the correspondence between the Chief Engineer and the Superintending Engineer ultimately culminating in the discharge of the petitioner by the order of the Assistant Engineer as per Annexure-1 clearly shows that the foundation of the order was the factum of arrest of the petitioner in the criminal case. This contention requires careful examination.

3. The law on the point is well settled and is no longer in doubt.

Even if an order is innocuous on the face of it and appears to be an order of discharge simpliciter, it is open to the Court to lift the veil and find out the real nature and character of that order. If it was inflicted by way of punishment, then even in the case of a temporary servant who has no right to the post, a proceeding under Article 311 of the Constitution is essential. There again, a distinction is to be made between the conduct of the petitioner which constitutes the motive for taking action against him and the same constituting the foundation of such an order. If the latter is the basis of such an order, then the discharge is one by way of punishment. If, on the other hand, that circumstance constitutes the motive for the discharge order, the order itself is a discharge simpliciter. The ultimate conclusion in each case would depend on the facts and circumstances of that case. No rule of thumb can be prescribed: vide *The State of Bihar v. Shiva Bhikshuk Mishra* (1970) II S.C.W.R. 606.

4. In this particular case, from the facts narrated, it appears that the Chief Engineer did not want that a further enquiry was necessary as no punishment was intended to be imposed. The petitioner was a temporary servant and when it came to his knowledge that petitioner was arrested in a criminal case, he considered that it was not necessary to retain him further in service. The factum of arrest, therefore, did not constitute the foundation of the ultimate conclusion for discharging the petitioner. It may at best be a motive.

5. On the aforesaid analysis, we are clearly of opinion that the discharge order is not by way of punishment.

6. Mr. Panda further advanced a contention that the petitioner has been discharged from service by an officer lower in rank than the appointing authority. It is not disputed in this case that the Executive Engineer was the appointing authority. The foundation of this argument is that in his letter the Chief Engineer suggested that the petitioner should be discharged. In the counter-affidavit, it

has been stated that on receipt of the letter from the Chief Engineer, the Executive Engineer passed an order to discharge the petitioner and that order was merely carried out by the Assistant Engineer. We are satisfied from the facts and circumstances of this case that the real discharge order was passed by the Chief Engineer himself or at any rate by the Executive Engineer. The mere use of the word "should" cannot be construed to mean that the order was not passed by the Chief Engineer.

7. We find no merit in this application which is accordingly dismissed, but in the circumstances without costs.

A. Misra, J.

8. I agree.