
(2006) 09 OHC CK 0013
In the Orissa High Court

Trinath Sahoo

APPELLANT

Vs

The Registrar of Cooperative Societies and Others

RESPONDENT

Date of Decision : 19-09-2006

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2007) 103 CLT 479 : (2007) 113 FLR 983 : (2006) 2 OLR 812

Hon'ble Judges : I. Mahanty, J

Bench : Single Bench

Final Decision : Allowed

Judgement

I. Mahanty, J. 1. The petitioner while working as the Supervisor in Malkangiri Branch of Koraput Central Co-operative Bank was placed under suspension on 14.2.2001 on the basis of various allegations, inter alia, that the petitioner while working as the Managing Director in Korkunda LAMPS in Malkangiri District along with one Subal Rout, the Accountant have misappropriated an amount of Rs. 13,86,060/-. Necessary charge sheet was issued to him on 28.4.2001 and the notice of proposed punishment of dismissal was issued to the petitioner on 14.5.2003.

The petitioner challenged the aforesaid notice of proposed punishment before this Court in W.P.(C) No. 5314 of 2003 and the said writ petition while not being entertained, this Court dismissed the same by directing the petitioner to approach the Tribunal challenging the action of the Disciplinary Authorities within a period of four weeks from the date of the said order (17.6.2003) and granted interim stay of the operation of the impugned order for the said period of four weeks.

2. The petitioner thereafter approached the Cooperative Tribunal in Service Dispute Case No. 14 of 2003 and the Tribunal vide its order dated 26.8.2003 has granted stay of the proposed punishment till disposal of the Dispute Case and the said matter remains pending as on date.

3. The petitioner, however, filed Misc. Case No. 24 of 2004 in the aforesaid Dispute Case praying for a direction to the employer-opposite party No. 3 to enhance his subsistence allowance and to pay 75% of his salary in the revised scale as subsistence allowance. The Tribunal by its order dated 27.5.2004 partly allowed the Misc. Case and directed that the petitioner is entitled to the payment of subsistence allowance on the basis of the "revised pay scale" but rejected the prayer of the petitioner for enhancement of subsistence allowance thereby directing continuance of subsistence allowance @ 50% of salary in "revised pay scale".

4. The petitioner has sought to impugn this part of the order of the Tribunal dated 27.5.2004 denying his prayer for enhancement of subsistence allowance.

5. Learned Counsel for the petitioner in support of his contention in the writ application has placed reliance upon Rule-36 of the Staff Service Rule 1984 issued by the Koraput Central Co-operative. Bank Ltd.-opposite party No. 3 and the same is quoted herein below:

(A) An employee may be placed under suspension from service by the appointing authority by an order in writing for any misconduct. The Chief Executive of the Bank may also place an employee of the Bank borne under Grade-III services and below under suspension by an order in writing for any misconduct.

Draft charges in the proceedings shall be served on the employee so suspended within a month from the date of suspension. All efforts shall be made for disposal of the enquiry against him within ninety days from the date of service of the draft charges.

The suspended employee, during the period of suspension without permission of the competent authority shall not leave headquarters fixed for him.

(B) An Employee under suspension shall be eligible to get subsistence allowance, which shall be calculated as under.

(i) A subsistence allowance at an amount equal to the leave salary which the employee would have drawn if he had been on leave on half pay in addition to Dearness and other allowance based on such leave salary. If the period of suspension exceeds 12 months the authority shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first twelve months as follows.

(ii) The amount of suspension allowance may be increased by a suitable amount not exceeding 50% of the subsistence allowance admissible during the period of first 12 months, if in the opinion of the authority the period of suspension has been prolonged for the reasons, not directly attributable to the employee.

(iii) The amount of subsistence allowance may be reduced by suitable amount not exceeding 50% of the subsistence allowance admissible during the period of the first 12 months, if in the opinion of the authority, the period of suspension

has been prolonged due to reasons directly attributable to the employee.

(iv) The rate of Dearness Allowances will be based on the increased or decreased amount of subsistence allowance.

xxx xxx xxx

6. Placing reliance on the aforesaid rules, the petitioner claims that in terms of Rule-36 (B)(ii) since suspension proceeding has been prolonged for reasons not attributable to the employee, the petitioner is entitled to such a benefit of enhancement of subsistence allowance and accordingly, the Tribunal has erred in not granting such statutory benefit to the petitioner.

7. Learned Counsel for opposite party No. 3 vehemently objected to the contention raised by the petitioner, inter alia, advancing the following contentions:

(i) The writ application is premature, inasmuch as, Rule-36(B)(ii) contemplates "if in the opinion of the authority" the period of suspension has been prolonged for the reasons, not directly attributable to the employee. It is submitted that since the employer has not formed any opinion, the writ application is premature.

(ii) From the nature of the allegations against the petitioner in the Department Proceeding, i.e., misappropriation of huge amount of money, the employee-petitioner is not entitled to the relief claimed in the present writ application.

(iii) The petitioner's claim before the Co-operative Tribunal challenging the order of proposed punishment itself is not maintainable inasmuch as no appeal to the Tribunal would lie against the second show cause notice proposing punishment.

(iv) In the event the Court was inclined in favour of the petitioner to grant the relief sought for then the Court may consider for passing a further direction to the Tribunal to dispose of the pending service dispute Case No. 14 of 2003 within a limited period since the matter has been pending for more than 3 years.

8. In the light of the aforesaid contentions raised by the rival parties, the moot question that arises for consideration in the present case relates to whether the petitioner, in the circumstances noted herein above, would be entitled to the benefit of enhancement of subsistence allowance in terms of Rule-36(B)(ii) or not. Rule-36 of the Staff Service Rule, 1984 clearly stipulates that an employee who is placed under suspension shall be eligible to subsistence allowance and in reality, there is no quarrel on this aspect.

A further question arises as to the manner of calculation of such subsistence allowance. Sub-rule (B)(i) clearly stipulates that the subsistence allowance shall be paid at an amount equal to the leave salary which the employee would have drawn if he had been on the leave on half pay in addition to dearness and other allowance based on such leave salary. Such subsistence allowance would be payable for the first 12 months of the period of suspension. Sub-rule (B)(ii) contemplates enhancement or deduction of subsistence allowance, i.e.,

"enhancement"- if prolongation of the suspension period was for the reason "not directly attributable to the employee" and "reduction"-if the period of suspension has been prolonged due to the reasons directly attributable to the employee.

9. While considering Rule-36 of the Staff Service Rule, 1984, in the impugned order vide Annexure-5, the Tribunal has taken note of the objection raised by the employer-Opp. Party No. 3 in his written objection to the following effect:

The petition of the petitioner was resisted by the defendants in written objection on the ground that the Departmental proceeding is lingering only at the instance of the petitioner.

Accepting such an objection, the Tribunal came to the following conclusion:

In the case at hand the Departmental Proceeding was stayed at the instance of the petitioner.

Therefore, the Tribunal upheld the objection raised by the employer and viewed the action of the petitioner in approaching the Tribunal as being responsible for prolonging the suspension period and therefore, rejected the prayer of the petitioner for enhancement of the subsistence allowance.

10. At this stage, it would be appropriate to deal with the objection raised by the learned Counsel for Opp. Party No. 3. I am of the view that the first contention raised as to the objection to the present petition that the present application is "premature" is of no consequence, inasmuch as, the employer-Opp. Party No. 3 filed his written objection before the Tribunal and the said objection obviously contained averments denying the claim of the petitioner. Such objection has to be treated in law as the expression of opinion of the employer as contemplated under Rule-36 of the aforesaid Rules and therefore, the objection that the writ application is premature on account of the employer having not formed any opinion, is wholly misconceived. The next contention raised by Opp. Party No. 3 is the contention on the merit of the proceeding pending before the Tribunal. Therefore, I refrain from expressing any opinion on the same, since it would amount to pre-judging the issue which arises for consideration by the Tribunal in the pending proceeding.

11. Therefore, the only question that is left to be decided in the present proceeding is whether, approaching a Court of law or Tribunal and the consequential orders being passed by the Tribunal or Court of law, may be treated as reasons contemplated under Rule-36(B)(ii) as attributable to the petitioner for the purpose of denying the petitioner the benefit of enhancement of subsistence allowance.

I am clearly of the view that accepting such a proposition would tantamount to negating the very foundation of judiciary, since approaching a Court of law and the direction of such a Court cannot ever be attributable to a litigant for the purpose of denying him his lawful price. Accepting the converse proposition would tantamount to become a discouragement/impediment to the citizens from

approaching the Court of law for redressal of their grievances. In other words, while it is true that the petitioner had approached the Tribunal and the Tribunal passed an order of stay on his application, continuance of suspension, if at all, is directly attributable to the direction of the Tribunal. Therefore, accepting the objection raised by Opp. Party No. 3 and holding that the petitioner's action in moving the Tribunal as adequate ground for denying him the enhanced subsistence allowance would be a complete negation of the procedure of law, justice and the entire judicial mechanism.

12. The Constitution of India and in particular, Article 14 stipulates as follows:

14. Equality before law :- The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

The Constitution of India itself, not only declares equality before law, but also promises and also demands "equal protection of law" within the territory of India. The term "equal protection of law" would include within its scope, protection from being unfairly treated on account of having sought "for protection of law".

13. In view of the findings arrived at herein above, I am of the view that the prayer of the petitioner ought to be allowed and accordingly, the writ petition is allowed with a direction to Opp. Party No. 3 to pay the petitioner, subsistence allowance at the rate of 75% of the revised pay scale in terms of Rule-36(B)(ii) of the Staff Service Rules, 1984 from the date of expiry of one year of his suspension period i.e. March, 2002 till disposal of S.D. Case No. 14 of 2003 pending before the Tribunal and to such extent, the order dated 27.5.2004, Annexure-5, is modified. Computation of the petitioner's dues and payment thereof be made within a period of 3 months from the date of service of a copy of this order on the employer. The Co-operative Tribunal, Orissa is also directed to dispose of S.D. Case No. 14 of 2003 expeditiously, preferably within a period of six months from the date of communication of this order. The parties are directed to cooperate with the Tribunal to ensure that the proceeding is expeditiously disposed of, as directed.

The writ application is allowed, but in the circumstances without any costs.