

(2024) 05 OHC CK 0100

Orissa High Court

Case No: Writ Petition (C) No.3216 Of 2024

Dillip Kumar Pradhan

APPELLANT

Vs

State Of Odisha &
Others

RESPONDENT

Date of Decision: May 7, 2024

Acts Referred:

- Oisss Civil Services (Classification, Control & Appeal) Rules, 1962 - Rule 12(6), 91(4), 91(5)

Hon'ble Judges: Biraja Prasanna Satapathy, J

Bench: Single Bench

Advocate: B.S. Tripathy(1), S.S. Pradhan

Final Decision: Disposed Of

Judgement

Biraja Prasanna Satapathy, J

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.

2. Heard learned counsel appearing for the Parties.

3. Petitioner has filed the present Writ Petition inter alia with the following prayer:-

â€œi) quash impugned order in Annexure-9 by holding the same as not only bad and illegal but also violative of provisions of OCS (CCA) Rules, 1962, Odisha

Leave Rules and the settled principles of law; and thereby;

ii) direct Ops to treat the period of suspension of the Petitioner from 10.04.2003 to 29.04.2005 as period spent as duty for all purposes and to release entire

unpaid arrear salary of the petitioner for the period of suspension from 10.04.2003 to 29.04.2005 with all consequential service and monetary benefitsâ€.

4. It is contended that Petitioner earlier had approached this Court in WPC(OA) No.3286 of 2000, wherein challenge was made to the proposed termination.

4.1. It is contended that since during subsistence of the interim order, Petitioner attained the age of superannuation and was also allowed to retire, this

Court while disposing the matter vide order dtd.17.05.2022 has held as follows:-

“8. Since the Petitioner has been acquitted in the vigilance case and the said order having attained finality in the eye of law, the orders under challenge in the present writ petition has lost its force. Accordingly, this Court is inclined to quash the order under Annexures-5 & 7. Accordingly, while quashing the same, this Court directs Opp. Parties to extend all service and financial benefits as due and admissible in favour of the petitioner. It is directed that the entire exercise be completed within a period of four months from the date of receipt of the order”.

4.2. It is contended that in view of the nature of order passed by this Court on 17.05.2022 the period of suspension should have been treated as duty

for all purposes. But instead of doing that the period of suspension has been treated as leave due and admissible vide the impugned communication

issued on 23.05.2023 under Annexure-9 and that too without following the provisions contained under Rule-12(6) of OCS (CC&A) Rules, 1962 and

Rule-91(4) & (5) of Odisha Service Code. It is accordingly contended that the period of suspension so treated as leave due and admissible is not

sustainable in the eye of law.

5. Learned Addl. Government Advocate on the other hand contended that since the proposed termination issued in favour of the Petitioner was stayed

by the Tribunal and during subsistence of the said order, Petitioner was allowed to retire, this Court while quashing the orders so issued proposing

termination disposed of the writ petition by holding that Petitioner is entitled to get all service and financial benefits. But since the Petitioner admittedly

remained under suspension for the period from 10.04.2003 to 29.04.2005, unless the said period is regularized, Petitioner cannot be extended with the

pension and other pensionary benefits.

5.1. It is accordingly contended that in order to regularize the said period, Opposite Party No.1 treated the same as leave due and admissible vide

Annexure-9.

6. Having heard learned counsel appearing for the Parties and considering the nature of order passed by this Court on 17.05.2022 in WPC(OA)

No.3286 of 2000, this Court is of the view that the period of suspension is required to be regularized in accordance with law and by giving an

opportunity of hearing to the Petitioner.

7. Therefore, this Court while disposing the Writ Petition directs Opposite Party No.1 to take a fresh decision with regard to regularization of the

period of suspension from 10.04.2003 to 29.04.2005 in accordance with law and by giving a personal hearing to the Petitioner. Such a fresh decision

be taken within a period of two (2) months from the date of receipt of this order. Consequentially Annexure-9 is quashed.

8. Accordingly, the Writ Petition stands disposed of.

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