

Bira Kishore Das Vs. State of Orissa

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Court : Orissa

Decided On : May-19-2005

Reported in : [2005(107)FLR596]

Judge : I.M. Qudussi and ;N. Prusty, JJ.

Acts : Orissa Civil Service (Classification, Control and Appeal) Rules, 1962 - Rules 15 and 18; [Constitution of India](#) - Articles 311(2) and 311 (3)

Appeal No. : W.P.(C) Nos. 8871 of 2004 and 2741 of 2005

Appellant : Bira Kishore Das;state of Orissa

Respondent : State of Orissa;bira Kishore Das

Advocate for Def. : Government Adv. in W.P.(C) No. 8871/2004

Advocate for Pet/Ap. : Aswini Kumar Mishra, Adv. in W.P.(C) No. 8871/2004 and ;Addl. Government Adv. in W.P.(C) No. 2741/2005

Judgement :

I.M. Qudussi, J.

1. The present Writ Petitions have been filed against the judgment dated 18.3.2004 passed by the Orissa Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 907(C) of 2003. The Tribunal while disposing of the O.A. quashed the

order of punishment i.e., dismissal from service of Bira Kishore Das-petitioner in WPC No. 8871 of 2004 and further directed that he shall be deemed to be under Suspension from the date he was relieved from his respective post on issue of the dismissal order and a proceeding under Rule 15 of the Orissa Civil Service (Classification, Control and Appeal) Rules, 1962 (for short 'the Rules') be initiated against him and further ordered that he shall be entitled to subsistence allowance at the prescribed rate from the deemed date of suspension.

2. At the very outset it is necessary to mention here that no departmental proceeding against the delinquent was conducted and the enquiry was dispensed with under Rule 18(ii) of the Rules read with 2nd proviso to Article 311(2) of the [Constitution of India](#).

3. The brief facts of the case are that Bira Kishore Das, the petitioner in WPC No. 8871 of 2004 was serving as Treasury Officer in the District Treasury, Cuttack. The preliminary enquiry was conducted by the Additional Secretary, Finance Department on the allegation of the Principal, Sailabala Women's College, Cuttack (for short 'the College') that Sri Das, the Senior Clerk and the Accountant of the District Treasury, Cuttack were not passing the bills submitted by her raising flimsy objections. In the preliminary enquiry the Additional Secretary, Finance Department held that the arrear UGC pay bills submitted by the College duly supported by allotment were initially endorsed with the pass orders, but subsequently, the pass orders were cut and cancelled by Shri Pratap Chandra Khuntia, Senior Clerk, District Treasury, Cuttack and the bills were objected to at the last moment of the financial year 2001-2002 on flimsy grounds with an ulterior motive and Shri Harihar Behera, the Accountant of District Treasury, Cuttack as Supervising Officer without verifying the correctness of the objections raised, endorsed the flimsy objection for signature by the District Treasury Officer, namely, Bira Kishore Das. Bira Kishore Das, District Treasury Officer without applying his mind signed the objection slips leading to lapse of fund and harassment to the teaching staff of the College. The Collector, Cuttack (the Drawing and Disbursing Officer) and other lecturers of the College requested to pass the bill and not to object on flimsy grounds and not to harass the Senior Readers of the College, but their requests were turned down. Bira Kishore Das,

District Treasury Officer blindly supported the Senior Clerk and the Accountant and did not make use of his role as the Supervising Officer and the Final Scrutinising Officer.

4. The Additional Secretary had also reported that the staff and lecturers of the College were so much harassed and fear-stricken that they are afraid of further harassment and tearing of the bills, if they give anything further in writing or provide evidence during any enquiry, apprehending organized harassment of the College Teachers by the Government Treasury Staff everywhere in the State.

5. On the preliminary enquiry report of the Additional Secretary, the State Government vide order dated 3.2.2003 hold that the Government is satisfied that it is not reasonably practicable to hold further detailed enquiry in view of the threats to the witnesses and their reluctance to come forward to depose against the delinquents, in the interest of their own community and as such dispensed with detailed further enquiry under Rule 18(ii) of the Rules read with 2nd proviso to Article 311(2) of the [Constitution of India](#) and passed the order dismissing Bira Kishore Das (the applicant in the O.A. before the Tribunal) from service. At the time when the order of dismissal from service was passed, Bira Kishore Das was working as Special Officer (AFA) and Manager (Finance & Audit), Tribal Development Co-operative Corporation Ltd., Bhubaneswar. Before that he was posted as OFS-I (Jr. Branch) Special Officer (AFA) in S.C. and S.T. Department, meaning thereby that he was not posted as Treasury officer at all when the Government held that it was not reasonably practicable to hold a detailed enquiry.

6. Before passing the impugned order of dismissal, Orissa Public Service Commission (for short 'the Commission') was consulted and the Commission had sent its concurrence vide letter No. 356 dated 16.1.2003 with the proposal of Government, i.e., dismissal of Sri Das from Government service.

7. The Tribunal upholding its decision taken in the matter of two other employee, i.e., the Senior Clerk and the Accountant who were also dismissed in similar manner and who had filed their O.As. which were decided by the Tribunal by a Common order dated 24.7.2003, in the case in hand (WPC No. 8871 of 2004) the Tribunal also passed the similar order quashing the order of dismissal directing to

hold enquiry and during the pendency of the enquiry, to keep the applicant-petitioner Bira Kishore Das under suspension.

8. The applicant before the Tribunal in the O.A., the petitioner in WPC No. 8871 of 2004 was not under suspension when the impugned order of dismissal from service was passed. Hence while quashing the dismissal order, it was not proper for the Tribunal to direct that he should be placed under suspension, enquiry should be conducted against him and appropriate action be taken.

It is the discretion of the appointing authority to place a delinquent under suspension during the pendency of the enquiry or not. This power cannot be exercised by the Courts or the Tribunal if there would have been a situation that at the time of passing the dismissal order from service, the petitioner would have been under suspension, then of course the Tribunal could have directed to maintain the status before passing the order of dismissal from service. But when the petitioner was already discharging his duties as Manager (Finance & Audit), Tribal Development Co-operative Corporation Ltd., it was not within the jurisdiction of the Tribunal to direct to place him under suspension during the course of enquiry.

9. It is also a matter of consideration that the delinquent was not at all posted as Treasury Officer and was working in the Tribal Development Co-operative Corporation Ltd. How can it be presumed that the staff and lecturers of the College would be afraid of being further harassment in case they come forward to give evidence. Apart from that, the then Collector who was the Drawing and Disbursing Officer, appears to be one of the witnesses and the objections raised on the bill submitted by the Principal of the College appears to be a documentary evidence in the enquiry. In the case of *Union of India and Anr. v. Tulsiram Patel*, reported in : (1985) IILLJ206SC , the Constitution Bench of the Apex Court has held that a disciplinary authority is not expected to dispense with disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail. The finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the Court so far as its power of judicial review is

concerned and in such a case the Court will strike down the order dispensing with the inquiry as also the order imposing penalty. Therefore, in the facts and circumstances mentioned above, it cannot be said that it was not reasonably practicable to hold enquiry under the Rules against the delinquent.

10. In view of the above, the W.P.(C) No. 2741 of 2005 is dismissed and W.P.(C) No. 8871 of 2004 is allowed in part. The impugned order of the Tribunal by which a direction has been issued that the petitioner shall be deemed to be under suspension from the date he was relieved from the respective post on issue of dismissal order, is quashed. However, the quashing of the impugned order of dismissal from service is upheld. The petitioner shall be reinstated. However, it will be open for the opposite party-State (in WPC No. 8871 of 2004) to initiate disciplinary proceedings against the petitioner and place him under suspension during the pendency of the disciplinary proceedings.

N. Prusty, J.

11. I agree.