

Nabakishore Mohapatra Vs. Cuttack Development Authority and ors.

Nabakishore Mohapatra Vs. Cuttack Development Authority and ors.

SooperKanoon Citation : sooperkanoon.com/536990

Court : Orissa

Decided On : Nov-18-2008

Reported in : 107(2009)CLT207

Judge : B.P. Das and; R.N. Biswal, JJ.

Appellant : Nabakishore Mohapatra

Respondent : Cuttack Development Authority and ors.

Advocate for Pet/Ap. : Mr. Mishra

Disposition : Petition allowed

Judgement :

B.P. Das, J.

1. The Petitioner has filed this writ application challenging the order of his removal from service passed by the Vice-Chairman, Cuttack Development Authority (CDA) on 25.3.2001; in purported exercise of power conferred under Rule-6 of the Orissa Development Authorities Rules, 1983 (ODA Rules), vide Annexure- 7.

2. According to Mr. Mishra, Learned Counsel for the Petitioner, the impugned order of removal from service was passed on the allegation that the Petitioner was indulged in preparation of forged documents like approval of building plan and permission letter in favour of one B.K. Panda of Nayabazar. After the order of

removal was passed, a criminal case was registered against the Petitioner and ultimately, he was acquitted of the charges in the criminal proceeding. Mr. Mishra submits that in view of acquittal of the Petitioner in the criminal proceeding, the order of removal from service passed on the selfsame charges should be set aside. Apart from the aforesaid ground, Mr. Mishra has taken the ground that Rule-6 of the ODA Rules even though empowers the Vice-Chairman of the CDA to remove or dismiss an employee, it requires prior approval of the authorities, such approval having not been obtained in the present case, the impugned order cannot stand. As per Rule-6, prior approval is required in case of removal or dismissal of any officer belonging to Class-I and Class-II post, the post held by the Petitioner being Class-I or Class-II, the submission of the Learned Counsel for the Petitioner can not be accepted.

Mr. Mishra, Learned Counsel for the Petitioner, further submits that the GDA adopted the Orissa Civil Services (Classification, Control & Appeal) Rules, 1962 (CCA Rules)-mutatis and mutandis by virtue of its resolution dated 11.6.1984. Rule-15 of the CCA Rules provides that the disciplinary authority shall frame definite charges on the basis of the allegations, on which the inquiry is to be held and major penalty shall be imposed. Admittedly, in this case without following the aforesaid procedure, recourse has been taken to the provision contained in Rule-6 of the ODA Rules.

3. Our attention is drawn to a decision of the Apex Court rendered in *Ajit Kumar Nag v. General Manager, Indian Oil Corporation Ltd. and Ors.* 2005 AIR SCW 4986, wherein the Apex Court held that the order of dismissal of an employee without inquiry and without following the rule of audi alteram partem cannot be termed to be an illegal one. On perusal of the aforesaid decision, we find that the Standing Order applicable to the employees of the Indian Oil Corporation authorizes the General Manager to dismiss an employee without following the rule of audi alteram partem. So the Apex Court held that the order of dismissal was correct even though no chance of being heard was given to the employee concerned.

4. The facts of the case at hand are different from the case cited above. Here is a case, where the CCA Rules are applicable to the employees of the authority and admittedly, the said Rules have not been followed while passing the impugned order.

5. As the said procedure has not been followed in the case of the Petitioner, we have no hesitation to set aside the Order Dated 25.3.2001 passed by the Vice-Chairman, Cuttack Development Authority, vide Annexure-7 and remit the matter back to the authorities to frame definite charges against the Petitioner and proceed and conclude the inquiry in terms the provisions of CCA Rules. Accordingly, we do so.

The writ application is accordingly disposed of.

R.N. Biswal, J.

I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com