

IN THE HIGH COURT OF ORISSA : CUTTACK
W.A. No. 25 of 2018

Khirod Kumar Das

....

Petitioner

Mr. L. Tripathy proxy counsel
for Sri G.A.R. Dora, Senior Advocate

-versus-

State of Odisha & Another

....

Opposite Parties

Mr. Manoj Kumar Khuntia,
Additional Government Advocate
for opposite party No.1

CORAM:
THE CHIEF JUSTICE
JUSTICE MURAHARI SRI RAMAN

ORDER
31.10.2022

Order No. **M.S. Raman, J.**

05. **01.** This is an intra-Court Appeal preferred by the appellant/petitioner, Senior Clerk who was dismissed from service by virtue of order dated 19.08.2002 passed by the President of the Odisha Khadi & Village Industries Board, assailing the Order dated 12.12.2017 passed in W.P.(C) No.1757 of 2010 by learned Single Judge of this Court under Article 4 of the Odisha High Court Order, 1948 read with Clause 10 of the Letters Patent of High Court Rules, 1948.

02. Facts leading to filing of Appeal are outlined as under:

2.1. On the allegation of embezzlement of funds while working as Senior Clerk in the Khadi & Village Industries Board, the appellant was dismissed from service by Order dated 19.08.2002 passed by the Disciplinary Authority, which was challenged

before this Court invoking provisions of Articles 226 and 227 of the Constitution of India in W.P.(C) No.3133 of 2002. Said writ petition came to be disposed of on 22.12.2003 with a direction to the appellant-petitioner to approach the Appellate Authority and thereby the writ petition was not entertained by this Court.

- 2.2. The Board of Directors, as the Appellate Authority, confirmed the order of dismissal in the meeting dated 04.01.2005, which was assailed before this Court in W.P.(C) No.5355 of 2005. During the pendency of said case, subsequent (new) Board having reconsidered the grievance of the appellant-petitioner in its meeting held on 10.02.2009 decided to reinstate the petitioner in service. Therefore, this Court disposed of said writ petition by the following Order dated 09.09.2009:

“In course of hearing, learned counsel for the petitioner submits that the grievance of the petitioner has been mitigated by the Orissa Khadi and Village Industries Board.

In view of the aforesaid facts, the petitioner does not want to press this writ petition any more.

The writ petition is accordingly disposed of with an observation that the decision taken by the opposite party No.2 be implemented expeditiously at an early date.”

- 2.3. The opposite party-Board thereafter filed a Miscellaneous Application for recall of Order dated 09.09.2009 which was turned down by this Court and the Hon'ble Supreme Court being approached against such Order, the same was rejected. The contempt petition filed by the appellant-petitioner before this Court was refused on the ground that the writ petition being W.P.(C) No.5355 of 2005 was withdrawn. However, liberty was

granted by this Court to take steps to avail remedy as available under law for enforcement of Order dated 09.09.2009 passed in W.P.(C) No.5355 of 2005. Thus, the petitioner availed the opportunity to implement said order by way of filing W.P.(C) No.1757 of 2010.

- 2.4. Being aggrieved by Order dated 12.12.2017 passed by learned Single Judge of this Court in said writ petition, the present appeal has been preferred at the behest of the petitioner-Khirod Kumar Das *inter alia* on the ground(s) that:

“(A) *For that according to Hon’ble Single Judge, the appellant withdraw the writ petition No.5355 of 2005 challenging the dismissal for which reason, the merit could not be adjudicated and hence, no right accrued in his favour. The Hon’ble Single Judge failed to appreciate that the appellant did not withdraw the said writ petition on his own volition. During pendency of the writ petition, the Board of management by order dated. 10.02.2009 exonerated the appellant and passed an order of reinstatement and directed the appellant to withdraw the writ petition within 15 days and inform the board while taking the said decision, the board expressed unhappiness for wrongly placing the facts in earlier meetings. Therefore, there remained nothing for adjudication. Due to board decision for reinstatement, the Division Bench of this Hon’ble Court by order dated.09.09.2009 rightly observed that the decision of the Board for reinstatement should be implemented expeditiously. This is the right accrued in favour of the appellant;*

(B) *For that against 09.09.2009 order of this Hon'ble Court, the respondents filed Misc. Case No.12779 of 2009 at Page 23 of W.P.(C) 1757 of 2010 for recalling 09.09.2009 order. All points were taken in the Misc. Case and the main point was that 10.02.2009 decision of the Board for reinstatement was not approved by the Board. Government approval was not required; Section 32 of the Odisha Khadi and Village*

Industries Board Act says that 'in discharge of its functions the Board shall be guided by such instructions, on question of policy, as may be given to it by the State Government'. Regulation 2(i)(iv) says 'disciplinary authority means the authority competent under the regulation to impose penalty on employee of the Board. The Misc. Case was dismissed by the Division Bench by Order dated 18.12.2009 at page 53 of SLP.

(C) *For that against 18.12.2009 order dismissing the Misc. Case for recalling 09.09.2009 order and for expeditious implementation of the decision as per 09.09.2009 order, the respondents filed SLP before the Hon'ble Supreme Court ***"*

2.5. It is stated by the appellant-petitioner in the writ appeal that since the Hon'ble Supreme Court by order dated 12.03.2010 dismissed the SLP [Special Leave to Appeal (Civil)...../2010 (CC 3295/2010)] filed by the State of Odisha, the Order dated 09.09.2009 in WP No.5355 of 2005 of this Court got confirmed. Hence, there is no scope left for the opposite party-Board to deny implementation of subsequent decision dated 10.02.2009 taken by the Board of Directors for reinstatement of the petitioner in service.

03. Mr. Manoj Kumar Khuntia, learned Additional Government Advocate has supported the reasons contained in Order dated 12.12.2017 passed by the learned Single Judge.

3.1. The learned Single Judge in the impugned order dated 12.12.2017 passed in W.P.(C) No.1757 of 2010 highlighted that:

*“*** He further submitted that the act of the petitioner is fraudulent and the fraud is also evident on the face of the pleading made in the writ petition being W.P.(C) No.5355 of 2005 wherein the petitioner himself has disclosed that the appeal was filed on*

*26.12.2003, disposed of on 04.01.2005 and the same has been annexed as Annexure-16 to the said writ petition has been sought to be quashed, but this material fact has been suppressed by the petitioner in the subsequent round of litigation i.e. W.P.(C) No.1757 of 2010 and as such, merely on the ground of the suppression of material fact and commission of fraud, the writ petition is fit to be dismissed. ***”*

- 3.2. Therefore, while referring to the assertion made in the counter affidavit filed in W.P.(C) No.5355 of 2005, this Court is taken to the following observation of the Single Judge:

*“*** It is also evident from the counter-affidavit that after the order having been passed by this Court in W.P.(C) No.5355 of 2005 on 09.09.2009, the Government has deprecated the stand of the new Board, who has passed an order dated 10.02.2009 on the ground that the Board has got no power to review its own decision and as such, the State Government has not approved the decision taken by new Board over and above the decision taken on 04.01.2005 and as such, not approved the same. ***”*

- 3.3. Under such premise, the learned Additional Government Advocate urged to dismiss the present writ appeal.

04. From the records it is evident that the petitioner was dismissed from service by an Office Order dated 19.08.2002 issued vide Memo No.12122/OKVIB, dated 19.08.2002. It has been observed in the said Office Order as follows:

*“*** Whereas after careful consideration of charges, your explanation, finding of the Inquiring Officer and evidences on record, the disciplinary authority has been pleased to decide that your services as Senior Assistant of Orissa Khadi and Village Industries Board are no longer required as all the charges framed against you have been proved and since your continuance in service is considered detrimental to the interest of the Board, you deserve to be dismissed as per provision enumerated in Regulation 29(ix) of Odisha Khadi and Village Industries Board Regulation 1960.*

Therefore you, Sri Khirod Kumar Das, Sr. Assistant of Odisha Khadi and Village Industries Board are hereby dismissed from the service of the Board with immediate effect.”

- 4.1. Appeal being preferred by the petitioner pursuant to relegation by this Court *vide* Order dated 22.12.2003 in W.P.(C) No.3133 of 2002, the Board held a meeting on 04.01.2005 to consider justification of order of dismissal *qua* the petitioner-Sri Khirod Kumar Das. Discussing material fact as available on record, the Board resolved as follows:

*“*** After careful consideration of the matter by all the members it is resolved that the order of dismissal issued against Sri Das for his heinous conduct is justified and the punishment is neither less nor excess in any respect. So the order of dismissal issued against Sri Das on 12.08.2002 is upheld. As the aforesaid acts of Sri Das are cognizable offence it is resolved by the Board that necessary action shall be taken against Sri Das and Smt. Das in accordance with the provisions of Indian Penal Code and the Secretary is authorized to taken necessary steps for this purpose. ***”*

- 4.2. This Court finds that such fact has not been indicated by the petitioner in the petition being W.P.(C) No.1757 of 2010. Rather it is merely styled to implement the subsequent decision dated 10.02.2009 of the Board (new Board). To this decision, it is apt to refer to the clarification *vide* Annexure-H enclosed to counter-affidavit dated 18.08.2010 sworn to by Secretary of the Board to the writ petition. Said clarification issued by the Government of Odisha in Industries Department *vide* Letter No. 7142-IV-HCI-7/08/I, dated 20.05.2010 runs as follows:

“With reference to your Letter No.2991 dtd 7.5.10 on the captioned subject, I am directed to say that the appeal petitions of both Sri U.K. Mishra, Ex Sr. Accountant and Sri K. K. Das, Ex-Sr. Assistant were earlier rejected by the Board after due consideration. Thus, their dismissal was conclusive. When the

Board has itself confirmed such a decision, after ... the same Board cannot review its own decision as per the provisions of O.K.&V.I. Board Regulations as well as general principle adopted ...where.

The Board Resolution as passed in para 1(Kha) of the proceedings of the meeting held on 10.02.09 is thus ultra vires and without competency of the Board.

Therefore, Government have been pleased to rescind the decision taken in para-1(kha) of OK&VI Board meeting held on 10.02.09 regarding re-employment of Sri Umakanta Mishra and Sri Khirod Kumar Das, the two dismissed employees of the Board.

On the same set of facts, Government have earlier rescinded para-4 of the proceedings of the Board Meeting held on 29.01.08 vide this Department Letter No. 17675 dated 27.11.09."

- 4.3. Further reference to counter-affidavit dated 24.08.2010 of the opposite party No.1-Government of Odisha suggests the following:

"That with regard to averments made in para-4 it is humbly submitted that as stated supra, the Board is a Statutory Body, formed under the Act. The State Govt. provides grant-in-aid for its staff salary and other establishment expenditure. The State Govt. U/S 32 of the Act, has ample power to intervene into the affairs of the Board where there is necessity to intervene in the interest of the public. The State Govt. has thus acted in a just and equitable manner as per the provisions of the Statute."

- 4.4. This Court, thus, finds that the decision dated 10.02.2009 has been disapproved by the Government of Odisha in Industries Department on 20.05.2010 and therefore, no occasion arises for the appellant-petitioner to insist on issue of writ of *mandamus* for implementation of decision dated 10.02.2009 taking shelter of Order dated 09.09.2009 passed by this Court in W.P.(C) No.5355 of 2005, while allowing the petitioner for withdrawal of the writ petition.

- 4.5. It may be pertinent to reiterate that by way of writ petition being W.P.(C) No.5355 of 2005 the appellant-petitioner sought for writ in the nature of *certiorari* to quash order of dismissal from service dated 19.08.2002 as also its confirmation in the appellate proceeding *vide* Order dated 04.01.2005. However, said writ petition stands withdrawn. Therefore, while the decision of the Board in appeal confirming the order of dismissal from service subsists, the later decision of the (new) Board cannot be held to prevail over the earlier one. The State Government also did not approve such a conduct of the subsequent Board, which had no power to review its earlier decision.
05. While subscribing to the view expressed by the learned Single Judge this Court makes the observation that the Order dated 12.12.2017 suffers from no infirmity inasmuch as it has rightly been held that “the order dated 10.02.2009 is having no force having been passed without any authority of law that is in absence of any power to review has reviewed the decision taken on 04.01.2005 by the erstwhile Board”. The petitioner is, therefore, does not deserve invocation of writ of *mandamus* under Article 226 in exercise of extraordinary jurisdiction of this Court.
06. The learned Single Judge also made pertinent observation that the petitioner had not come with clean hand and clear mind. Since the writ petition lacks *bona fide*, Court of equity cannot lend aid to rescue the petitioner.
07. This Court affirms the following reason of the learned Single Judge:

- “17. *** Further, it is evident from the pleading made in the writ petition that the petitioner has not disclosed regarding the order dated 4.1.2005 which has been passed by the appellate Board, rather specific stand has been taken by the petitioner at paragraph-2 to the effect that he has been dismissed from service from 21.02.2002 vide order dated 19.08.2002, preferred appeal before the Board and the said appeal was disposed of vide Board proceeding dated 10.2.2009, but very surprisingly the petitioner, who was knowing about the earlier order passed by the Board on 4.1.2005 has been suppressed in this writ petition which has got material bearing in passing appropriate order in the writ petition.
18. It is settled position of law that when the parties are approaching before any court of law especially the court of equity, it is his duty to approach this Court with clean hand and whether any document is required and not required it is not his domain to think over, rather his duty only is to place the entire record to show his bona fide, but the petitioner has failed in doing so and as such, the Court of equity is not available to him.
19. This Court is of the view that suppression of the appellate order dated 4.1.2005 is a material suppression and when the party is approaching to the court of equity, which is purely based upon the pleadings, no relief can be granted to such type of litigant.

Reference in this regard may be made in the case of K.D. Sharma -Vs.- Steel Authority of India Limited and others, reported in (2008) 12 SCC 481 wherein at paragraph-52 the Hon'ble Apex Court, after taking into consideration several authoritative pronouncements, has come to conclusion that the appellant has not come forward with all the facts. He has chosen to state the facts in the manner suited to him by giving an impression to the writ court that an instrumentality of State (SAIL) has not followed doctrine of natural justice and fundamental principles of fair procedure. This is not proper. Hence, on that ground alone, the appellant cannot claim equitable relief.

It is settled that the court of equity is meant for such litigants, who are approaching to the court with clean hand and if the parties approaching with the suppression of material fact, the remedy available under Article 226 of the Constitution of India is not available to them. In this regard paragraph-34 of the aforesaid judgment is enumerated herein below for better appreciation:-

'34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial Justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts and the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.

20. It is evident from the discussion made hereinabove that since the decision of new Board dated 10.2.2009 is without having any jurisdiction as per the elaborate discussion made hereinabove, no writ of mandamus can be issued for its implementation. Further, for the reason also that the petitioner has not approached this Court by giving true disclosure of the facts and as such, applying the principle as discussed hereinabove."

08. The learned Single is correct in saying that dismissal of SLP without considering merit of the matter would not stand in the way to consider legality and propriety of the decision of the Board dated 10.02.2009 in exercise of powers conferred under Article 226 of the Constitution of India. After threadbare discussion on the merit of the matter, the learned Single Judge has passed the Order dated 12.12.2017 dismissing the writ petition.

- 09.** For all the above reasons, this Court does not warrant it necessary to show any indulgence in the well-reasoned order rendered by the learned Single Judge touching each aspect of the matter. As a consequence, the writ appeal is dismissed.

(M.S. Raman)
Judge

(Dr. S. Muralidhar)
Chief Justice



Laxmikant