



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.23038 of 2024

In the matter of an application under Articles 226 & 227 of
the Constitution of India, 1950

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Sarat Chandra Mohanty **Petitioner**

-versus-

State of Odisha & Anr. **Opposite Parties**

For Petitioner : Mr. K.K. Swain, Advocate

For Opp. Parties : Mr. P.K. Panda,
Addl. Standing Counsel

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing:22.08.2025 and Date of Judgment:22.08.2025

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. The present Writ Petition has been filed *inter alia* challenging the order of punishment passed vide order



dtd.22.05.2024 under Annexure-11 and consequential order passed by the self-same authority on 18.06.2024 under Annexure-12. Vide the said order issued under Annexure-11, Petitioner was terminated from Government service w.e.f. 13.10.1983.

4. It is the case of the Petitioner that Petitioner while in service, the proceeding in question was initiated against him vide Memorandum dtd.10.03.1997 under Annexure-1. Petitioner submitted his written statement of defence on 28.04.1997 under Annexure-2.

4.1. Even though Petitioner submitted the written statement of defence immediately after receipt of the memorandum, but no further step was taken up by the disciplinary authority and while the matter stood thus, Petitioner retired from service on attaining the age of superannuation on 31.03.2014. However, on the ground of pendency of the proceeding when the retiral benefits of the Petitioner was not released for a pretty long period, nor the proceeding was finalized, Petitioner finding no alternative, approached this Court by filing W.P.(C) No.1973 of 2023. This Court vide order dtd.01.02.2023 disposed of the said Writ Petition with the following direction:-

“6. Considering the aforesaid submissions, this Court deems it proper to dispose of the writ application at the stage of admission by directing the authorities to conclude the Disciplinary Proceeding within a period of two months from the date of production of certified copy of this order. Further, the Petitioner is directed to



cooperate with the proceeding and the proceeding shall be conducted and conclude the same strictly in accordance with law. Further, it is directed that in the event the proceeding is not concluded within the stipulated period, the same shall be deemed to have been quashed and the authorities are directed to calculate, sanction and disburse if any service benefit and pensionary benefit which is due and admissible to the Petitioner as per law”.

4.2. It is contended that on the face of the stipulation contained in order dtd.01.02.2023, the proceeding was never concluded within a period of two months and accordingly in view of the said order the proceeding should have been treated as lapsed. However, basing on an I.A filed by the State, time was extended to conclude the proceeding within a period of one month vide order dtd.09.05.2024 and while disposing the proceeding vide the impugned order dtd.22.05.2024 under Annexure-11. Petitioner has been terminated from service with retrospective effect i.e. w.e.f.13.10.1983.

4.3. It is however contended that since the proceeding in question was initiated while the Petitioner was in service under Rule-15 of the OCS (CCA) Rules, 1962, after retirement of the Petitioner w.e.f. 31.03.2014, the same could not have been disposed of without converting the same to a proceeding under Rule-7 of OCS (Pension) Rules, 1992 (in short ‘1992 Rules’). But taking into account the nature of order passed by this Court in W.P.(C) No.1973 of 2023, the 2nd show cause notice was issued on 23.02.2024 by proposing



punishment of termination from Government service w.e.f. 13.10.1983.

4.4. It is contended that even though Petitioner submitted his reply to the 2nd show cause, but without proper appreciation of the same, Petitioner was terminated from his services vide the impugned order dtd.22.05.2024 under Annexure-11.

4.5. Learned counsel appearing for the Petitioner vehemently contended that since the proceeding in question was never converted to a proceeding under Rule-7 of the 1992 Rules after retirement of the Petitioner on 31.03.2014, no order of termination could have been passed and that too from retrospective effect i.e. from 13.10.1983.

4.6. It is also contended that since Petitioner retired from service on attaining the age of superannuation on 31.03.2014 after such retirement, no order of termination can be passed in view of the decision of the Hon'ble Apex Court so relied on by this Court in its order dtd.21.03.2023 in WPC(OA) No.2279 of 2015. View taken by this Court in Para-6 and 6.1 of the said order reads as follows:-

“6. Having heard learned counsel for the petitioner Page 13 of 16 and after going the materials available on record with due perusal of the proceeding file, it is found that the joint proceeding against the petitioner was initiated under Annexure-1 with due approval of the O.P. No.1 on 26.06.2008. Therefore, the plea taken by the learned counsel for the petitioner that



proceeding under Annexure-1 has been initiated without having any order from the Governor or the Competent Authority cannot be accepted. But from the file, it is found that though the proceeding under Annexure-1 was initiated under Rule-15 and Rule-17 of the Rules and the petitioner during continuance of the proceeding retired from his service on 31.01.2014, no order of punishment could have been imposed taking recourse to the provisions contained under OCS(CCA) Rules, 1962. As per the considered view of this court since during continuance of the proceeding, the petitioner retired from his service on 31.01.2014, the proceeding should have been allowed to continue in accordance with the provision contained under Rule-7 of the OCS Pension Rules, 1992.

6.1. Since from the impugned order it is evident that the order of punishment has been passed taking recourse to the provisions contained under Orissa OCS (CCA) Rules, 1962, as per considered view of this Court, the said order of punishment is not sustainable in the eye of law. Therefore, on that ground only, this Court is inclined to interfere with the order dated 28.02.2015 under Annexure-10. While interfering with the same, this Court is inclined to quash the order. But while quashing the order impugned, this Court remits the matter to is Opposite Party No.1 to conclude the proceeding in accordance with the provisions contained under Rule7 of the Orissa Pension Rules, 1992. However, it observed that, prior to imposition of any punishment against the petitioner, Opposite Party No.1 is to take into account the final outcome of Kantabanji P.S. Case No.48 of 2008, which has been registered with regard to the theft of the amount in question. Since this Court is remitting the matter for disposal of the proceeding, it is further observed that the retiral dues of the petitioner as due and admissible be released within a period of 2 (two) months, from the date of receipt of this order and such disbursal of the amount shall be subject to the final order to be passed in the proceeding.”

4.7. Reliance was also placed to the following decisions with regard to impermissibility to pass an order of termination after retirement:- **(i) (2007) 6 SCC-694 (UCO Bank & Anr. vs. Rajinder Lal Capoor), (ii)**



(2013) 6 SCC-515 (Anant R. Kulkarni vs. Y.P. Education Society & Ors), (iii) (2018) 14 SCC-98 (UCO Bank & Ors. vs. Prabhakar Sadashiv Karvade) & (2018) 14 SCC-92 (UCO Bank & Anr. vs. Rajendra Shankar Shukla).

4.8. Hon'ble Apex Court in the case of **Rajinder Lal Capoor** in Para-23 held as follows:-

“23. An order of dismissal or removal from service can be passed only when an employee is in service. If a person is not in employment, the question of terminating his services ordinarily would not arise unless there exists a specific rule in that behalf. As Regulation 20 is not applicable in the case of the respondent, we have no other option but to hold that the entire proceeding initiated against the respondent became vitiated in law”.

4.9. Hon'ble Apex Court in the case of **Anant R. Kulkarni** in Para-24 held as follows:-

*“24. xxx xxx xxx
Generally, if the enquiry has been initiated while the delinquent employee was in service, it would continue even after his retirement, but nature of punishment would change. The punishment of dismissal/removal from service would not be imposed”.*

4.10. Hon'ble Apex Court in the case of **Prabhakar Sadashiv Karvade** in Para-9 held as follows:-

*“9. xxx xxx xxx
The sum and substance of these regulations is that even though a departmental inquiry instituted against an officer employee before his retirement can continue even after his retirement, none of the substantive penalties specified in Regulation 4 of*



1979 Regulations, which include dismissal from service, can be imposed on an officer employee after his retirement on attaining the age of superannuation”.

4.11. Hon’ble Apex Court in the case of **Rajendra Shankar Shukla** in Para- 18 held as follows:-

“18. Under the circumstances, we have no hesitation in dismissing the appeal filed by the Bank also on the ground that the punishment of dismissal could not have been imposed on Shukla after his superannuation”

4.12. It is accordingly contended that since no order of termination can be passed against a retired employee that too with retrospective effect, the order passed on 22.05.2024 under Annexure-11, is a nullity in the eye of law and the consequential order passed basing on the said order on 18.06.2024 under Annexure-12 is also not sustainable and requires interference of this Court.

5. Mr. P.K. Panda, learned Addl. Standing Counsel for the State on the other hand placing reliance on the stand taken in the counter affidavit contended that, the Departmental Proceeding since was initiated while the Petitioner was in service on 10.03.1997 and the Petitioner during pendency of the proceeding retired on 31.03.2014, there is no bar to proceed in the said proceeding with passing of the impugned order of punishment. The stand taken in Para-10 of the counter affidavit reads as follows:-



“10. That in reply to the averments made in Paragraphs-6, 7 & 8 of the writ petition, it is humbly submitted that when the case came to knowledge of opposite party no.2, departmental proceeding was instituted against the petitioner vide memorandum no.2169, dated. 10.03.1997 by opposite party no.2 being the disciplinary authority. The PPO O/o of DDA Sundergarh was appointed as enquiry officer vide Order No.6197, dtd.31.07.1997 of opposite party no.2 to enquire into the charges leveled against petitioner on the above mentioned memorandum. The said enquiry was not completed in time due to non co-operation of petitioner properly and thereafter abolition post of PPO & up gradation of DDR to CDAO.”

5.1. It is also contended that pursuant to the direction issued by this Court in W.P.(C) No.1973 of 2023 in its order dtd.01.02.2023 and 09.05.2024, the proceeding since has been disposed of within the time stipulated by this Court, no illegality or irregularity can be found with the action of the Opposite Parties.

6. Having heard learned counsel appearing for the Parties and considering the submissions made, it is found that Petitioner while in service, the proceeding in question was initiated vide Memorandum dtd.10.03.1997 under Annexure-1.

6.1. Even though Petitioner filed his written statement of defence under Annexure-2, but no further action was taken and Petitioner during pendency of the proceeding, retired on attaining the age of superannuation on 31.03.2014, which is not disputed. After retirement of the Petitioner on 31.03.2014, when the retiral benefits were not released for a pretty long



period nor the proceeding was finalized, Petitioner approached this Court by filing W.P.(C) No.1973 of 2023. However, 1st show cause was issued on 25.01.2024 under Annexure-9, which is contrary to the order passed by this Court on 01.02.2023.

6.2. It is found that subsequently though the proceeding was disposed of in terms of the further order passed by this Court on 09.05.2024, but since the proceeding was never converted to a proceeding under Rule-7 of the 1992 Rules, which should have been carried out, taking into account the retirement of the Petitioner on 31.03.2014, no order of punishment terminating the Petitioner from his services from a retrospective date, could have been passed and no such punishment is also prescribed under Rule-7 of the 1992 Rules.

6.3. In view of the aforesaid analysis, since the proceeding was never converted to a proceeding under Rule-7 of the 1992 Rules, which is a mandatory requirement with due approval of the Government, the order of punishment passed against the Petitioner vide the impugned order dtd.22.05.2024 under Annexure-11 and consequential order passed on 18.06.2024 under Annexure-12 are not sustainable in the eye of law.



6.4. Therefore, this Court is inclined to quash order dtd.22.05.2024 and 18.06.2024 so passed under Annexures-11 & 12. While quashing both the orders, this Court remits the matter to Opposite Party No.1 with a direction to convert the proceeding to a proceeding under Rule-7 of the OCS (Pension) Rules, 1992 and finalize the proceeding in accordance with law by giving due opportunity of hearing to the Petitioner. This Court taking into account the fact that the proceeding is of the year 1997 and Petitioner has retired since 31.03.2014 directs Opposite Party No.1 to complete the entire exercise on or before 31.12.2025, failing which the proceeding shall be treated to have been lapsed.

7. Accordingly, the Writ Petition stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 22nd August, 2025/Subrat

Signature Not Verified

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Signed by: SUBRAT KUMAR BARIK
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 08-Sep-2025 18:41:02

