ORISSA HIGH COURT: CUTTACK

WRIT PETITION (CIVIL) NO.3026 OF 2015

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

Dhruba Suna ..... *Petitioner*

-versus-

State of Orissa and another ..... *Opposite Parties*

For Petitioner : Mr. S.K. Swain, D.R. Rath,
S.K. Rout & S.C. Bairiganjan.

For Opp. Parties : Mr. Jyoti Prakash Patnaik
(Addl. Government Advocate)

Date of Judgment:31.03.2015

P R E S E N T:

THE HONOURABLE ACTHING CHIEF JUSTICE SHRI PRADIP MOHANTY
AND
THE HONOURABLE SHRI JUSTICE BISWAJIT MOHANTY

Biswajit Mohanty, J. In this writ application, the petitioner has prayed for quashing the order dated 9.2.2015 under Annexure-11 whereby he has suffered the punishment of "removal from Government service" and order dated 13.2.2015 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.448(C) of 2015 under Annexure-12 to the extent it refuses the interim prayer of the petitioner to stay operation of order under Annexure-11.

2. The case of the petitioner is that the petitioner was appointed as VLW on 14.2.1986 and as GPEO on 26.5.1989 by the then Collector, Bolangir. While working there, he was appointed as ABDO on 13.1.2005 under Raikia Block of Kandhamal district by way of promotion. While working as ABDO in Patnagarh Block, the Collector, Bolangir posted him as BDO-in-Charge of Belpada Block under Patngarh Sub-Division in the district of Bolangir. While working there, he was roped in a trap case on 9.9.2008 vide Sambalpur Vigilance P.S. Case No.49 of 2008 and pursuant to such case, he was put under suspension by opposite party no.2 – Director of Panchayati Raj vide order dated 20.9.2008 (Annexure-1). On 19.2.2009 vide Annexure-2, the petitioner was reinstated as ADBO-cum-Accounts Officer in Firingia Block of Kandhamal district. Thereafter, while working as ABDO under Paikamal Block in the district of Bargarh, the learned Special Judge (Vigilance), Bolangir vide his judgment dated 27.9.2014 passed in CTR No.3 of 2009 (arising out of Sambalpur Vigilance Case No.49 of 2008) held the petitioner guilty under Sections 7 & 13(2) read with Section 13(1)(d) of the P.C. Act and convicted him. The petitioner was sentenced to undergo R.I. for one year and to pay fine of Rs.5000/-, in default, to undergo R.I. for two months under Section-7 of the P.C. Act and to undergo R.I. for two years and to pay fine of Rs.5,000/-, in default to undergo R.I. for two months under Section 13(2) read with Section 13(1)(d) of the P.C. Act. Learned Special Judge (Vigilance) directed that both the sentences to run

concurrently. Being aggrieved by the aforesaid judgment dated 27.9.2014 passed by the learned Special Judge (Vigilance), Sambalpur in C.T.R. No.3 of 2009, the petitioner preferred Criminal Appeal before this Court styled as CRLA No.536 of 2014. In the said Criminal Appeal, the petitioner filed two Misc. Cases - One Misc. Case for stay realization of fine as directed in the above noted judgment dated 27.9.2014 and another for suspension of sentence/grant of bail. On 20.10.2014, this Court was pleased to admit the appeal, called for the LCR and directed stay realization of fine and also directed that the petitioner to be released on bail till disposal of the Criminal Appeal.

3. The petitioner submitted the aforesaid order of this Court before opposite party no.1 vide representation dated 22.10.2014 (Annexure-5 Series) and prayed that no action should be taken against him. Since during pendency of the above representation, opposite party no.2 made a move to take disciplinary action against the petitioner on the basis of his conviction, the petitioner filed O.A. No.3391(C) of 2014 before the learned Tribunal with a prayer that opposite party nos.1 and 2 therein be directed not to inflict any penalty on the petitioner on the basis of his conviction during pendency of Criminal Appeal No.536 of 2014 without following the principles of natural justice and fair play. In the said O.A., the petitioner also prayed for disposal of his representation dated 22.10.2014 under Annexure-5 Series. In that case, the learned Tribunal was pleased to "Issue notice on admission" on 13.11.2014 under

Annexure-6. During pendency of O.A. No.3391(C) of 2014, opposite party no.2 issued show-cause notice on 29.12.2014 (Annexure-7) directing the petitioner to file reply on proposed penalty of removal from Government service. Being aggrieved by the aforesaid show-cause notice dated 29.12.2014, the petitioner filed O.A. No.132(C) of 2015 before the learned Tribunal. Since during pendency of O.A. No.132(C) of 2015, the time limit allowed to the petitioner under Annexure-7 dated 29.12.2014 was going to expire, he filed show-cause reply on 16.1.2015 vide Annexure-8. On 6.2.2015, O.A. No.132(C) of 2015 was taken up for adjudication and on that date, the learned Tribunal was pleased to "Issue notice on admission". Vide representation dated 10.2.2015 (Annexure-10), the petitioner submitted the above noted order dated 6.2.2015 before opposite party nos.1 and 2 requesting them not to take up disciplinary action against him during pendency of his cases before this Court and before the learned Tribunal. In the meantime, on 9.2.2015, the order under Annexure-11 was issued removing the petitioner from Government service. Being aggrieved by the aforesaid order of penalty under Annexure-11, the petitioner moved the learned Tribunal in O.A. No.448(C) of 2015. On 13.2.2015, the learned Tribunal was pleased to "Issue notice on admission". However, it refused to pass any interim relief as the order of conviction has not been set aside and no interim orders have been passed in earlier two Original Applications. This order has been filed as Annexure-12. As indicated earlier, challenging the order

of removal from Government service under Annexure-11 and challenging the refusal of prayer for interim relief under Annexure-12, the present writ application has been filed.

4. Heard Mr. S.K. Swain, learned counsel for the petitioner and Mr. J. Patnaik, learned Additional Government Advocate for the State.

5. Mr. Swain, learned counsel for the petitioner submitted that since the leaned Tribunal was pleased to admit O.A. No.448(C) of 2015, it ought to have protected the petitioner by passing an interim order staying operation of order under Annexure-11 in the facts and circumstances of the case. In absence of such an interim order, the petitioner was greatly prejudiced. According to him in the present case three salient principles for granting an interim order i.e. prima facie case, balance of convenience and irreparable loss and irremediable injury existed in favour of the petitioner. Secondly, he contended that on account of pendency of his two original applications, i.e. O.A. No.3391(C) of 2014 and O.A. No.132(C) of 2015 on the self-same subject matter the proceeding against the petitioner pending before the opposite parties stood abated under Section 19(4) of the Administrative Tribunals Act, 1985, for short "the Act". In such background, the authorities could not have passed the order of penalty under Annexure-11. For all these reasons, the learned Tribunal should have stayed the operation of order under Annexure-11 removing the petitioner from Government services.

6. Mr. Patnaik, learned Additional Government Advocate for the State submitted that it was no where the requirement of law that once a case was accepted by the Court for examining legality or otherwise of the impugned order, the court was bound to pass an interim order. While strongly refuting the arguments of Mr. Swain, learned counsel for the petitioner; Mr. Patnaik, learned Additional Government Advocate submitted that the petitioner has already been convicted by the learned Special Judge (Vigilance), Sambalpur and he has not yet obtained an order of suspension of his conviction from this Court. Relying on the decision of the Hon'ble Supreme Court in the case of **K.C. Sareen** v. **C.B.I., Chandigarh** reported in **AIR 2001 SC 3320**, Mr. Patnaik submitted that it is well settled that when a public servant was found guilty of corruption after a judicial adjudicatory process conducted by a court of law, judiciousness demanded that he should be treated as corrupt until he was exonerated by a Superior Court. If a public servant, who was convicted of corruption would be allowed to continue to hold public office, it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. Thus he pointed out that the petitioner neither has got any prima facie case nor has got any balance of convenience in his favour. Mr. Patnaik also submitted that in case if

ultimately the petitioner would be acquitted, he could get back his service and all monetary dues. Thus, it could not be said that in view of the order under Annexure-11, he would suffer irreparable loss and irremediable injury. With regard to Section-19(4) of "the Act", Mr. Patnaik submitted that the same had no application to the present case. None of the three Original Applications filed by the petitioner has been admitted by the learned Tribunal and in all the cases, the learned Tribunal was only pleased to "Issue notice on admission". Conceding for a moment, but not admitting that the learned Tribunal has admitted all the applications, even then, the petitioner could not derive any benefit out of the said provisions of Section-19(4) of "the Act". According to him only the proceedings for redressal of grievances connected with the subject matter of the Original Application would abate unless it is otherwise directed by the learned Tribunal. Mr. Patnaik put special emphasis on the phrases, i.e., "as to rederessal of grievances" and "in relation to the subject of such application" as contained in Section 19(4) of "the Act". According to him the subject matter of O.A. No.3391(C) of 2014 & O.A. No.132(C) of 2015 did not deal with the grievance of the petitioner on removal order. Because by the time O.A. No.3391(C) of 2014 and O.A. No.132(C) of 2015 were filed, no removal order was there. So far as O.A. No.448(C) of 2015 was concerned, the same was filed challenging the removal order. As per Section-19(4) of "the Act", a proceeding relating to redressal of grievance of an employee in relation to which he has filed an

Original Application would abate once such original application was admitted by the learned Tribunal. The key phrase here is “redressal of grievance’. Therefore, according to him if before challenging the removal order, the petitioner had filed a representation before the appropriate authority for redressal of his grievances vis-à-vis the removal order, the proceeding pursuant to such representation would abate once the Original Application challenging the removal order was admitted. In other words once Original Application was admitted, the authorities to whom the grievance redressal representation has been addressed, could not do anything on such representation. Section 19(4) could not be interpreted to give a handle to the employee to say that every proceeding in relation to the subject matter of the Original Application would abate even if such proceeding was not connected with the redressal of the grievances of the employee. In that case every employee would use the same as a sword to stall future departmental disciplinary action. Here after the conviction the authorities were proceeding as per law and prior to passing any order affecting him, the petitioner has unnecessarily filed two earlier original applications, namely, O.A. No.3391(C) of 2014 & O.A No.132(C) of 2015. In any case, according to him proceeding pursuant to his own representation would only abate after admission of the case and the steps/proceedings taken by the authorities to act as per law pursuant to conviction of the petitioner could not be treated to be a proceeding for rederessal of grievances and therefore, the same would not abate. In

such background, he submitted that the contention of the learned counsel for the petitioner was without any merit and the same ought not to be entertained.

7. With regard to two fold contentions raised by the petitioner, we would like to answer the second contention relating to Section 19(4) of "the Act" first. The said provision reads as follows:

> "19(4) Where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise direct by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules."

Reading of the above provision makes it clear that in a case like present one, if a proceeding under relevant service rule is pending before the authorities as to redressal of grievances of the employee on his removal from service and if on such subject matter an Original Application is filed and the same is admitted by the learned Tribunal such proceeding with regard to rederessal of grievances of the employee pending before the authorities would abate unless otherwise directed by the learned Tribunal.

8. In the present case, it is clear that till date the Original Applications filed by the petitioner have not been admitted. In all these cases, the learned Tribunal has only issued notice on admission. In any case for this purpose filing of only first two Original Applications are relevant. The distinction between admitting a case and issuing notice on

admission is well known. When a court issues notice on admission, it is yet to make up its mind whether to admit the matter or not which it may do after considering the return in such a case. In the present case, since Original Applications have not yet been admitted Section 19(4) of "the Act" has no application to the case. Conceding for a moment, but not admitting that the learned Tribunal has admitted the first two Original Applications, now the question would arise whether the petitioner is right in contending that all the proceedings connected with such Original Applications would abate in tune with Section 19(4) of "the Act". To this our answer would be an emphatic no. Section-19(4) of "the Act" deals only with the proceeding for redressal of grievances of the employee. For example, when an employee has been removed from services, before coming to court, he can always file appeals and representation for redressal of his grievances. If after filing of such appeal and representation, he approaches the learned Tribunal and the learned Tribunal admits the matter then such grievance redressal proceedings pursuant to his appeal/representation vis-à-vis his removal order would abate. The reason for this is obvious. After cognizance of a matter has been taken by the adjudicating authority, it would be anomalous to allow a departmental authority to have a say on the same matter, which may result in contradictory decisions. However, the steps taken in a proceeding by the departmental authorities for removing the petitioner from service upon his conviction in a case under P.C. Act cannot be

described as a grievance redressal proceeding at the instance of the employee. It is only a proceeding which the authorities are embarking upon as required under law. Only after such proceeding culminates in a final order like removal order, the employee can initiate a grievance redressal proceeding under the relevant service rule vis-à-vis the removal order. It is this later proceeding which would abate, in case an Original Application is filed challenging the removal order is admitted by the learned Tribunal. Thus the proceeding which would abate has to be a grievance redressal proceeding. The departmental process undertaken by the Government authorities to take steps in accordance with law after conviction of the petitioner in a competent court of law to reiterate again cannot be said to be a proceeding under Section 19(4) of "the Act". Therefore, the submissions of the learned counsel for the petitioner with regard to abatement of the proceeding initiated by the departmental authorities, which ultimately culminated in his removal cannot be accepted. If such a contention is accepted, then the result would be disastrous. In that case every employee coming to know about imposition of a probable/future punishment would rush to the Tribunal before the punishment order is passed and accordingly they would stall the hands of the authorities. For all these reasons, the contention of the petitioner in this regard does not merit acceptance.

9. Now with regard to refusal of passing of interim order by the learned Tribunal, we find no illegality committed by the learned Tribunal.

It is well settled that the order of termination or removal or dismissal should not be stayed during pendency of the proceeding challenging those orders in the court. By such interim order if an employee is allowed to continue in service and if ultimately the writ petition is dismissed, then it would tantamount to usurpation of public office without any right to the same. Further if an interim order is passed staying operation of the removal order, the same would be giving the final relief to an employee at an interim stage which he would have got in case the order of dismissal, removal, termination and compulsory retirement is found not to be justified. If the order of removal is set aside then an employee can be compensated by moulding the relief appropriately in terms of arrears of salary, promotions which may have become due or otherwise compensating him in some other way. But in case the order of removal is found to be justified then holding of the office during the operation of the interim order would amount to usurpation of an office which the employee was not entitled to hold. The action becomes irreversible as the salary paid to the employee cannot be recovered as he has worked during that period and the orders passed by him during the period he holds office cannot also be put at naught. All these things have been made clear in ***AIR 2003 SC 1115 (Public Services Tribunal Bar Association*** *v.* ***State of U.P. & another)***.

10 Thus, judging from any angle, we do not find any fault in the impugned order passed by the learned Tribunal refusing to grant interim

relief as at Annexure-12. With regard to challenge of the petitioner to Annexure-11 is concerned, we refrain from saying anything as the learned Tribunal has already issued notice on admission and is ultimately going to adjudicate the same. In such background, the writ application is dismissed. However, we make it clear that observations made here except those relating to interpretation of Section 19(4) of "the Act" would in no way affect/influence adjudication of the Original Applications filed by the petitioner, which are pending before the learned Tribunal.

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BISWAJIT MOHANTY, J.

Pradip Mohanty, ACJ. I agree

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PRADIP MOHANTY, ACJ.

High Court of Orissa, Cuttack
Dated 31st day of March, 2015/amit