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STATE OF ORISSA
v.
KANHU CHARAN MAJHI
(Civil Appeal No. 9650 of 2013)

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OCTOBER 28, 2013

[ANIL R. DAVE AND DIPAK MISRA, JJ.]

Service Law:

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Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 - rr.31 and 32 - Review under - Of the order passed by Government authorities, dropping disciplinary proceedings against respondent-employee - Permissibility - Held: An order passed by Government authorities can be reviewed u/s.31 and 32 - Under s.32 it can be reviewed within a period of 6 months - Under s.31, it can be reviewed by the Governor, for which the rule does not prescribe any limitation - In the instant case, review of the order dropping the disciplinary proceedings, can be said to have been passed by the Governor u/r.31 in view of rr.11 and 12 of Orissa Government Rules of Business - Though Rule 31 does not prescribe any limitation period, the power should be exercised within reasonable period - Review of the order in the present case after a period of 5 years cannot be said to be reasonable period - Hence, the review was rightly held bad by courts below - In view of peculiar circumstances of the case, on the principle of 'no work no pay' direction not to pay back-wages, but to pay pension on the basis of last pay actually drawn by him from the date on which the employee would have been superannuated - Orissa Government Rules of Business - rr.11 and 12.

Departmental proceedings initiated against the respondent-employee were dropped by order dated 16.10.1995. The said order was reviewed and by order

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dated 4.9.2000, the departmental proceedings were reinitiated. The review of the order dated 16.10.1995 and re-initiation of disciplinary proceedings were held to be bad in law by the courts below. Hence the present appeal.

Dismissing the appeal, the Court

HELD: 1. In view of Rules 31 and 32 of Orissa Civil Services (Classification, Control and Appeal) Rules, 1962, it is clear that an order, passed by the Government Authorities, can be reviewed. Thus, initiation of proceedings in pursuance of order dated 4th September, 2000 was bad and rightly held so by the Tribunal and confirmed by the High Court. [Paras 15 and 16] [538-G-H]

2. The provisions of Rule 31 of the Rules, whereby power has been given to the Governor to review any order and therefore, it was open to the Governor to review the order dated 16th October, 1995. It is also true that when any statute empowers the Governor to pass an order, the Governor himself need not sign and need not pass the order. The Rules of business of the particular State deal with the procedure as to how an order is to be passed by the Governor or in the name of the Governor. In the instant case, the order dated 4th September, 2000 was passed by the Under Secretary, Food Supplies & Consumer Welfare Department of the Government of Orissa. According to Rules 11 and 12 of the Orissa Government Rules of Business, an Under Secretary is empowered to sign in the name of the Governor. Thus, in view of the said legal position, the order dated 4th September, 2000 can be said to have been passed by the Governor, exercising power under Rule 31 of the Rules. [Para 14] [538-A-E]

3. Rule 31 of the Rules does not prescribe any period of limitation. Normally, when no period of limitation is prescribed, for exercising the power of review, the power

- A of review should be exercised within a reasonable period from the date of order which is sought to be reviewed. In the instant case, the Governor had reviewed the order after about five years. In any case, period of five years cannot be said to be a reasonable period. The action with
- B regard to review of the order, so as to make it effective, ought to have been passed within reasonable period and the facts of each case would determine as to what period would be reasonable. Therefore, even if the Governor had power to review the order dated 16th October, 1995,
- C which pertains to dropping of the departmental proceedings initiated against the respondent, the said power could not have been exercised after about five years, as by no stretch of imagination, period of five years can be said to be reasonable, in the facts of the case. [Para 17] [539-B-F]
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4. So far as Rule 32 of the Rules is concerned, in a disciplinary case the Appellate Authority can review the order but the Authority can review the order within six months from the date of passing of that order and thereafter the order cannot be reviewed as specified in the proviso to Rule 32 of the Rules. By virtue of the order dated 4th September, 2000, the order dated 16th October, 1995 had been taken into review and as it was taken into review after more than six months, the order would be
- E bad if it was passed under Rule 32 of the Rules. [Paras 15 and 16] [538-F-H; 539-A]
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5. It might be open to the appellant-State to initiate some proceedings against the respondent-employee again. However, the subsequent development in the matter is that the respondent-employee has already reached the age of superannuation. Therefore, in view of the peculiar facts of the case and in the interest of justice, no further action should be taken against the respondent-employee as the matter is pending since long
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and it requires a quietus. In view of these peculiar circumstances, following the principle of "no work, no pay", it is directed that no back wages should be paid to the respondent-employee for the period during which he had not worked with the appellant-State. The respondent-employee should, however, be paid pension from the date on which he would have been superannuated on the basis of the last pay actually drawn by him. [Para 18] [539-F-H; 540-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9650 of 2013.

From the Judgment and Order dated 21.01.2011 of the High Court of Orissa at Cuttack in WP (C) No. 2492 of 2010.

Shibashish Misra, Suvinay Dash for the Appellant.

Ranjan Mukherjee, Sachin Das, Chandra Bhushan Prasad for the Respondent.

The Judgment of the Court was delivered by

ANIL R. DAVE, J. 1. Leave granted.

2. Being aggrieved by the judgment delivered in Writ Petition (C) No. 2492 of 2010 by the High Court of Orissa, the appellant-State has filed this appeal. By virtue of the impugned judgment delivered by the High Court, the order passed by the Orissa Administrative Tribunal in O.A. No. 831 of 2006 dated 27th November, 2008 has been confirmed.

3. The facts giving rise to the present litigation, in a nutshell, are as under :-

The respondent was appointed as an Inspector of Supplies on the post which had been reserved for SC/ST candidates. It was reported to the Government Authorities that, in fact, the respondent was not belonging to either SC or ST and therefore, proceedings were to be initiated against him so as to ascertain

- A whether the information received was correct. Though the proceedings had been initiated, by an order dated 16th October, 1995, the said proceedings had been dropped. Thereafter, on 4th September, 2000, the aforesaid decision with regard to closing the proceedings under order dated 16th October, 1995 had been reconsidered and a notice was issued to the respondent with regard to initiation of the departmental proceedings.

C 4. The re-initiation of the proceedings had been challenged by the respondent before the Orissa Administrative Tribunal even at an earlier point of time and the Tribunal had decided the same in favour of the respondent but, at this stage, we are not concerned with the earlier proceedings and therefore, we do not refer to the same.

- D 5. Ultimately the respondent had challenged the disciplinary proceedings initiated against him as well as the decision dated 4th September, 2000, whereby the order dated 16th October, 1995 had been reviewed and it was decided to initiate departmental proceedings against the respondent.
- E Thereafter, by an order dated 27th November, 2008, the Orissa Administrative Tribunal decided the said case in favour of the respondent and therefore, the appellant-State had filed the above referred Writ Petition (C) No. 2492 of 2010 before the High Court, which has been finally dismissed and thus, the State
- F of Orissa has filed this appeal.

G 6. The issue involved in the present litigation is with regard to powers of the Governor and the State Government Authorities in relation to review under the provisions of Rules 31 and 32 of the Orissa Civil Services (Classification, Control & Appeal) Rules, 1962 (hereinafter referred to as "the Rules").

H 7. The case of the respondent before the Tribunal as well as the High Court was that once a decision was taken on 16th October, 1995 to drop the departmental proceedings initiated against him, the said decision could not have been reviewed

on 4th September, 2000. Therefore, no proceedings could have been initiated against the respondent in pursuance of the said order dated 4th September, 2000. A

8. The submissions advanced before the Tribunal, the High Court and before this Court on behalf of the respondent-employee were to the effect that under Rule 31 of the Rules only the Governor has the power to take any order in review whereas under Rule 32 of the Rules, the appellate-authority can take any order into review, but in the instant case, none could have reviewed the order dated 16th October, 1995. The aforesaid two Rules have been reproduced hereinbelow :- B C

"31. Governor's power to review - Notwithstanding anything contained in these rules, the Governor may, on his motion or otherwise, after calling for the records of the case, review any order which is made or is appealable under these rules or the rules repealed by Rule 33, and, after consultation with the Commission where such consultation is necessary - D

- (a) confirm, modify or set aside the order ; E
- (b) impose any penalty or set aside, reduce, confirm or enhance the penalty imposed by the order ;
- (c) remit the case to the authority which made the order or any other authority directing such further action or inquiry as he considers proper in the circumstances of the case; or F
- (d) pass such other orders as he deems fit;

Provided that - G

- (i) an order imposing or enhancing a penalty shall not be passed unless the person concerned has been given an opportunity or making any representation H

A which he may wish to make against such enhanced penalty;

(ii) if the Governor proposes to impose any of the penalties specified in Clauses (vi) to (ix) of Rule 13 in a case where an enquiry under Rule 15 has not been held, he shall, subject to the provisions of Rule 18, direct that such inquiry be held and, thereafter, on consideration of the proceedings of such inquiry and after giving the person concerned an opportunity of making any representation which he may wish to make against such penalty, pass such orders as he may deem fit.

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32. **Review of Orders in Disciplinary Cases** -The authority to which an appeal against an order imposing any of the penalties specified in Rule 13 lies may, of its own motion or otherwise, call for the records of the case in a disciplinary proceeding, review any order passed in such a case and, after consultation with the Commission, where such consultation is necessary, pass such orders as it deems fit as if the Government servant had preferred an appeal against such order :

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Provided that no action under this rule shall be initiated more than six months after the date of the order to be reviewed."

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9. It had been submitted on behalf of the respondent-employee that in the instant case, the order dated 4th September, 2000 was not passed by the Governor and therefore, the power under Rule 31 of the Rules had not been exercised. So far as Rule 32 of the Rules is concerned, there is a period of limitation, which is six months and if the power was exercised under Rule 32, it was bad in law because the order dated 4th September, 2000, was passed in review after about 5 years from the initial order. So, in either case, the order

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dated 4th September, 2000, whereby it was decided to initiate departmental proceedings was not in accordance with the Rules and therefore, the impugned judgment upholding the view of the Tribunal is correct. Therefore, the appeal should be dismissed. A

10. On the other hand, it had been submitted on behalf of the appellant-State that the order dated 4th September, 2000 had been passed under the provisions of Rule 31 of the Rules and therefore, there was no question with regard to limitation because only Rule 32 of the Rules provides for limitation of six months whereas power of the Governor to take an order into review can be exercised at any time. B C

11. It had been further submitted that, in fact, the order had been passed by the Governor because according to the Rules of business of the appellant-State it is not necessary that the Governor himself should sign the order to be passed by the Governor. The Rules of business provide that in the name of the Governor, an order can be passed by the concerned officer. Thus, all the departmental proceedings were just and proper and the Division Bench of the High Court had committed an error by upholding the view of the Tribunal. D E

12. We have heard the concerned counsel and have carefully gone through the impugned judgment as well as the order passed by the Tribunal dated 27th November, 2008. We have also gone through the relevant orders placed on record before this Court by both the parties. F

13. Upon hearing the learned counsel and looking to the provisions of the Rules we are of the view that the order dated 4th September, 2000, reviewing the order dated 16th October, 1995 was not in accordance with the Rules. By virtue of the order dated 16th October, 1995, it was decided to drop the departmental proceedings initiated against the respondent-employee and the said decision was taken in review by virtue of the order dated 4th September, 2000 and upon review, the G H

A order dated 16th October, 1995 was set aside and it was decided to initiate proceedings against the respondent-employee again.

14. We have considered the provisions of Rule 31 of the Rules, whereby power has been given to the Governor to review any order and therefore, it was open to the Governor to review the order dated 16th October, 1995. Now the question is whether the order was passed by the Governor. It is true that when any statute empowers the Governor to pass an order, the Governor himself need not sign and need not pass the order. C The Rules of business of the particular State deal with the procedure as to how an order is to be passed by the Governor or in the name of the Governor. In the instant case, the order dated 4th September, 2000 was passed by the Under Secretary, Food Supplies & Consumer Welfare Department of the Government of Orissa. According to Rules 11 and 12 of the Orissa Government Rules of Business, an Under Secretary is empowered to sign in the name of the Governor. Thus, in view of the said legal position, the order dated 4th September, 2000 can be said to have been passed by the Governor, exercising power under Rule 31 of the Rules. E

15. So far as the exercise of power under Rule 32 of the Rules is concerned, it is very clear from the proviso to the Rule that no action can be taken under the said Rule after more than six months from the date on which the order to be reviewed was passed. By virtue of the order dated 4th September, 2000, the order dated 16th October, 1995 had been taken into review and as it was taken into review after more than six months, the order would be bad if it was passed under Rule 32 of the Rules. F Thus, initiation of proceedings in pursuance of order dated 4th September, 2000 was bad and rightly held so by the Tribunal and confirmed by the High Court. G

16. Upon perusal of both the aforesaid Rules, it is clear that an order, passed by the Government Authorities, can be reviewed. So far as Rule 32 of the Rules is concerned, in a H

disciplinary case the Appellate Authority can review the order but the Authority can review the order within six months from the date of passing of that order and thereafter the order cannot be reviewed as specified in the proviso to Rule 32 of the Rules. A

17. So far as the power of the Governor with regard to review of an order is concerned, Rule 31 of the Rules does not prescribe any period of limitation. Normally, when no period of limitation is prescribed, for exercising the power of review, the power of review should be exercised within a reasonable period from the date of order which is sought to be reviewed. In the instant case, the Governor had reviewed the order after about five years. In any case, period of five years cannot be said to be a reasonable period. The action with regard to review of the order, so as to make it effective, ought to have been passed within reasonable period and the facts of each case would determine as to what period would be reasonable. In the instant case, looking at the fact that Rule 32 of the Rules prescribe period of six months as limitation for exercising power of review in disciplinary cases, one can reasonably infer that period of five years cannot be said to be reasonable for exercise of power under Rule 31 of the Rules. We, therefore, conclude that even if the Governor had power to review the order dated 16th October, 1995, which pertains to dropping of the departmental proceedings initiated against the respondent, the said power could not have been exercised after about five years, as by no stretch of imagination, period of five years can be said to be reasonable in the facts of the case. B C D E F

18. It might be open to the appellant-State to initiate some proceedings against the respondent-employee again. However, the subsequent development in the matter is that the respondent-employee has already reached the age of superannuation. Looking at the peculiar facts of the case and in the interest of justice, we feel that no further action should be taken against the respondent-employee as the matter is pending since long and it requires a quietus. In view of these G H

- A peculiar circumstances, following the principle of "no work, no pay", we direct that no back wages should be paid to the respondent-employee for the period during which he had not worked with the appellant-State. The respondent-employee should, however, be paid pension from the date on which he would have been superannuated on the basis of the last pay actually drawn by him. The amount so payable to the respondent-employee shall be calculated and paid to him within three months from today and thereafter, he should be paid the pension so determined in normal course.
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- C 19. The appeal is dismissed subject to the aforesaid direction and modification in the judgment delivered by the High Court. There shall be no order as to costs.

K.K.T.

Appeal dismissed.