

**ORISSA HIGH COURT : C U T T A C K**

**W.P.(C) NO.21003 OF 2021**

*An application under Articles 226 & 227 of  
the Constitution of India.*

*Tapan Kumar Das*

*: Petitioner*

*-Versus-*

*State of Odisha and others*

*: Opposite Parties*

For Petitioner

: Mr. M.K. Mishra, Sr. Advocate  
Mr. T. Mishra, Advocate  
Mr. D.Tripathy, Advocate  
Mr. P.K.Panigrahi, Advocate  
Mr. S.S. Parida, Advocate  
Mr. S. Das, Advocate

For Opposite Parties

: Mr.N.K.Praharaj, Additional  
Government Advocate

**J U D G M E N T**

**CORAM :**

**JUSTICE SIBO SANKAR MISHRA**

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Date of Hearing: 13.09.2023 :: Date of Judgment : 15.09.2023

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1. By way of the Writ Petition, the Petitioner has raised its grievance that he was working as a Junior Engineer (Civil) on contractual basis. While serving as such he was terminated from service on 08.06.2020 on the basis of certain allegation of

irregularities committed by him. He was not subjected to any disciplinary proceeding as mandated in the provision of OCS (CC & A) Rules, 1962, therefore, the unilateral termination order dated 08.06.2020 is directly in violation of the principle of natural justice. Against the aforementioned termination order, he had filed the Writ Petition bearing W.P.(C) No.29633 of 2020 and highlighted the same grievance. After hearing the parties in detailed, the learned Single Judge of this Court vide its order dated 09.11.2020 has been pleased to pass the following order:-

“Referring to different documents as well as the Service Rules appended herein, Sri Pattnaik, learned counsel for the petitioner ultimately taking this Court to the findings of the enquiry report submitted by the Superintending Engineer contended that the report went against the present petitioner and some other persons, as finds place at page-32 of the brief. Further taking this Court to the development through Annexures-5 & 6, Sri Pattnaik alleged that the service of the petitioner has been taken away only on the basis of such enquiry report and without entering into any disciplinary proceeding involving the petitioner and/or giving opportunity to the petitioner before dismissing him from service. It is on the self same ground, the petitioner brought to the notice of this Court that the petitioner, vide Anenxure7 series has already submitted a protest to the Additional Chief Secretary, Rural Development Department as well as the Engineer-in-chief, which are pending consideration.

For the allegation made in the writ petition in substantiating the case of the petitioner, this Court finds, such allegation in the first hand is required to be taken care of by the disciplinary authority inasmuch as the Additional Chief Secretary, Rural Development Department as well as the Engineer-in-chief. Keeping this in view and for pendency of the representation on the selfsame allegation, this Court in disposal of the writ petition directs O.Ps.1 & 2 to look into the grievance of the petitioner, vide Annexure-7 series and W.P.(C) NO.29633 OF 2020 2 take decision, as appropriate also taking into consideration the plea taken in the writ petition and also the support of documents appended therein by completing the entire exercise giving opportunity of hearing to the petitioner within a period of two months from the date of communication of this order by the petitioner.”

2. The Petitioner reiterated his representation dated 24.06.2020 & 19.06.2020 before the Additional Chief Secretary, Rural Development Department & the Engineer-in-Chief, Rural Works Organization respectively. In compliance to the direction issued by this Court on 09.11.2020, it appears, the Engineer-in-Chief, Rural Works, Bhubaneswar asked the Petitioner to appear in person on 25.02.2021. The Petitioner was orally heard and thereafter an order dated 27.05.2021 was passed by the Additional Chief Secretary to Government rejecting the representation made by the Petitioner.

3. The Petitioner by way of the present Writ Petition is assailing the order dated 27.05.2021 at Annexure-12 and also the order of termination dated 08.06.2020 at Annexure-6.

4. The detailed counter affidavit to the Writ Petition has been filed by Opposite Party Nos.1 to 3 on 20.02.2023. The Petitioner by way of rejoinder dated 04.05.2023 reverted the contention raised by the Opposite Parties justifying the termination order in the counter affidavit.

5. The sole contention of the Petitioner is that the principle of natural justice is paramount in cases where penalty of removal from service is inflicted as the same is stigmatic. Therefore, preceding the termination at least he should have been heard. The Petitioner is not trying to justify his conduct or not adverting to the nature of allegation level against him of this stage.

6. The Petitioner also contended that for the selfsame allegation one Subodh Kumar Muduli JE (Contractual) was subjected to disciplinary proceeding drawn up against him, however, as against the Petitioner no disciplinary proceeding was initiated, rather he was straightway terminated from service.

7. To substantiate his argument, Mr. Mishra, learned Senior Counsel for the Petitioner strongly relied upon the Odisha Group-B Posts (Contractual Appointment) Rules, 2013. The Rule 14 of the said Rule, 2013 reads as follows:-

“14. Conduct and Discipline:

They shall be abide by the Odisha Civil Services Conduct Rules, 1959 and shall be subject to the Odisha Civil Services (Classification, Control and Appeal) Rules, 1962.”

On the basis of the aforementioned Rules, Mr. Mishra, learned Senior Counsel for the Petitioner contended that the termination order passed against the Petitioner should have been preceded an inquiry by giving the Petitioner sufficient opportunity to explain. Although record reveals that the entire departmental inquiry has been conducted to ascertain the allegation but the said inquiry appears to be a unilateral inquiry without affording any opportunity to the Petitioner to explain the allegation made against him.

8. To buttress his argument, Mr. Mishra, learned Senior Counsel relied upon the judgment of this Court passed in W.P.(C) No.9514 of 2013 in the case of *Ganeshwar Hansda Vs. State of*

***Odisha and Ors.*** and he has strongly relied upon paragraphs-10, 11

& 18 of the said judgment, which has been reproduced below:-

“10. In course of hearing, Mr. B. Senapati, learned Addl. Government Advocate laid emphasis on the proceedings of joint verification report dated 12.02.2013 and contended that because of such report, action has been taken against the petitioner. Though office order dated 16.04.2013 has relied upon the said inquiry report, nothing has been placed on record to indicate that such a report has ever been served on the petitioner calling upon him to give reply. Learned Addl. Government Advocate further contended that the petitioner being not a government employee, the provisions of OCA (CCS) Rules may not have any application to the petitioner. But in absence of rules applicable to the employee, at least the provisions of natural justice has to be complied with.

11. In *Bhagawan v. Ramchand*, MANU/SC/0320/1965: AIR 1965 SC 1767, the apex Court held that the rule of law demand that the power to determine questions affecting rights of citizens would impose the limitation that the power should be exercised in conformity with the principles of natural justice.

18. In view of the aforesaid law laid down by the apex Court and applying to the same to the present context, if the opposite parties have relied upon the documents dated 18.01.2013 and also the joint verification report dated 12.02.2013, the same could have been confronted with the petitioner by providing him an opportunity of hearing and calling upon him to show cause. But such documents have been relied upon by the opposite parties while passing the order impugned dated 16.04.2013 and no reference has been made to those documents while show cause for

disengagement was called for from the petitioner. Therefore, the petitioner had no occasion to explain such documents which have been relied upon in the order of disengagement dated 16.04.2013 passed by the authority concerned and more particularly when the notice of show cause was issued the petitioner had already been found guilty on the charges of misappropriation of public money, negligence in duty and misconduct. Once the authorities have prejudged the matter finding the petitioner guilty, calling upon him to show cause, pursuant to show cause notice, was an empty formality. Therefore, the consequential order dated 16.04.2013 passed by the authority on the basis of preliminary inquiry report dated 18.01.2013 and proceeding dated 12.02.2013 finding him guilty of misappropriation of government money, gross negligence in government duty and gross misconduct and unsatisfactory performance, is contrary to the notice of show cause issued on the charges of misappropriation of public money, negligence in duty and misconduct, where the authority had already prejudged the matter finding him guilty of the said charges.” सत्यमेव जयते

In the same line, learned Senior counsel for the Petitioner has also relied upon the judgment passed in W.P.(C) No.15552 of 2012 in the case of **Santosh Kumar Pandu Vs. Collector-cum-DCP-MGNREGS, Rayagada and Ors.** and emphasized at paragraphs-13 & 17 of the said judgment, which reads as follows:-

“13. In A.P. State Federation of Coop. Spinning Mills Ltd. v. P.V. Swaminathan, MANU/SC/1173/2001: (2001) 10 SCC 83, the apex Court held that although the termination

simpliciter of a tenure employee is permissible, the courts will review and set aside such termination where it is penal. And for this purpose even though the order itself is innocuously couched, the Court will consider the attendant circumstances, as well as the affidavit filed, to come to the conclusion that the termination was penal.

17. If the above meaning of “misconduct” is applied to the present context, nothing has been placed on record to indicate the manner and the way in which the petitioner has misconducted himself, save and except alleging that muster roll was prepared at the behest of the opposite parties no. 4 and 5 by the petitioner. But the Ombudsman in his enquiry report has specifically mentioned to take action against the opposite parties no. 4 and 5 and nothing has been stated about the petitioner. Thereby, this Court comes to a definite conclusion that in order to cause harassment, the petitioner, who was engaged on contractual basis for his livelihood, has been deprived of the same by issuing the impugned order of termination dated 31.07.2012 under Annexure-12, which is liable to be quashed and is hereby quashed. The Collector, Rayagada-opposite party no.1 is directed to forthwith reinstate the petitioner in service as before”.

9. Per contra, Mr. Praharaj, learned counsel for the State availing his counter affidavit contended that a detailed inquiry was conducted by the Superintending Engineer in Rural Works Circle, Sambalpur. At the time of said inquiry the Petitioner was also present and an opportunity was afforded to him to explain. The said inquiry culminated into an inter-departmental report dated

09.05.2020. Perusal of the said inquiry report indicates that it is unilateral report appears to have been submitted on the basis of site inspection and the explanation offered by the Petitioner is not even taken into consideration.

10. Mr. Praharaj, learned counsel for the Opposite Party-State while admitting to the contention of the Petitioner regarding the discrimination vis-à-vis Mr. Subodh Kumar Muduli has referred to paragraph-13 of the counter affidavit, which reads as follows:-

“That as regards para-11 & 12 of the writ petition, it is humbly submitted that at the time of field investigation by the O.P. No-3 petitioner himself was present in the work site and when the notice was issued for personal hearing in view of the direction of this Hon’ble Court dtd.09.11.2020 in W.P.(C) No.29633 of 2020, the petitioner was unable to produce a single document against the allegations and even petitioner did not feel it proper to file a written statement/objection before the O.P. No-2 during personal hearing. So, all the statements of petitioner has got no force to stand.

It is pertinent to mention here that Sri. Muduli was given additional charge as Estimator in the PMGSY project under the name “construction of road from Kansar to Jamankira “PKG No.OR-08-108 under the office of the Executive Engineer, R.W. Division, Deogarh. The charges against Sri Muduli is quite different to that of the petitioner.”

11. It is an admitted case on record that one Subodh Kumar Muduli JE (Contractual) and the present Petitioner both were

involved in alleged irregularities. Although both of them are contractual employees governed under the same set up Rules, two different procedures has been adopted. In case of Mr. Muduli, a disciplinary proceeding has been drawn up whereas in the case of the Petitioner termination order has been passed without subjecting him to any inquiry or departmental proceeding. Therefore, this is a clear case of violation of natural justice.

12. A co-ordinate Bench of this Court while dealing with a case matching to the facts of the present case i.e. in W.P.(C) No.10146 of 2018 in the case of **Bichitrananda Barik Vrs. State Of Odisha and others** have held that:-

“9. A perusal of the impugned notice under Annexure-5 shows that the findings of the enquiry have been relied upon and apparently form the basis for issuing the impugned notice of disengagement. This Court is not impressed with the argument that being a contractual employee no rules or procedure are required to be followed before disengaging him. It is rather the settled position of law that even in case of a contractual employee the rules of natural justice are required to be followed to the hilt. In the instant case, as already stated, the enquiry was conducted entirely behind the back of the petitioner, inasmuch as he was not given any opportunity to participate and to have his say therein.”

13. On this ground alone, this Writ Petition is liable to be allowed.

14. For the foregoing reasons, the Writ Petition is allowed and the termination order dated 08.06.2020 at Annexure-6 and the subsequent order dated 27.05.2021 at Annexure-12 stands quashed. The Opposite Parties are at liberty to initiate departmental proceeding against the Petitioner by following procedure established under law, if so advised. It is made clear that this Court has not expressed any opinion on merits of the present case. Therefore, if the departmental proceeding is initiated against the Petitioner, the same shall be dealt with on its own merit without being influenced by the observation made in this judgment.

15. The Writ Petition is allowed accordingly.

**(S.S. Mishra)**  
**Judge**

Orissa High Court, Cuttack.  
The 15<sup>th</sup> September, 2023 /Swarna Prava Dash, Junior Stenographer