

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

WRIT PETITION (CIVIL) NO. 1042 OF 2021

SUCHISMITA MISRA

... Petitioner(s)

VERSUS

HIGH COURT OF ORISSA & ORS.

... Respondent(s)

ORDER

A retired Judicial Officer of the State of Odisha had approached this Court by filing the writ petition under Article 32 of the Constitution of India for quashing of the departmental proceedings initiated against her pursuant to a chargesheet dated 11/16.10.2021.

The facts in brief culled out from the record are that the Judicial Officer served as a Registrar of the Odisha Administrative Tribunal for the period from 28.06.2012 to 01.10.2015.

At the relevant point of time, during her service as Registrar of the Tribunal, an advertisement came to be

published for the post of 'Caretaker' dated 25.11.2012, pursuant to which the selection was held and later the suitable candidates came to be appointed.

The process of selection of 2012 came to be challenged before the Odisha Administrative Tribunal and that was dismissed by an order dated 01.03.2016. The order of the Tribunal was further challenged before the High Court by the unsuccessful candidates and that came to be dismissed by the High Court assigning cogent reasons by Judgment dated 14.02.2019.

The matter did not end at that stage. A fact-finding enquiry was initiated by the High Court on the Administrative Side to examine the process of selection held seeking appointment to the post of Caretaker initiated pursuant to an advertisement dated 25.11.2012.

Two days before her retirement, a letter dated 28.07.2021 was issued to the petitioner for the alleged irregularity committed in the process of selection held to the post of Caretaker and later chargesheet dated

11/16.10.2021 was served upon her.

The nature of charges is in relation to the appointments made in reference to the advertisement dated 25.11.2012 during the period from 28.06.2012 to 03.10.2015, the period during which the petitioner served as a Registrar of the Tribunal.

Mr. Vikas Singh, learned senior counsel appearing for the petitioner, submits that as the petitioner stood retired from service on attaining the age of superannuation on 31.07.2021, under the Odisha Civil Service (Pension) Rules, 1992, and Rule 7 in particular, the departmental inquiry can be initiated against a retired officer/employee with the sanction of the Government and shall not be in respect of any event which took place more than four years before such institution, as referred to under Rule 7(2)(b)(ii) and further submits that if it is read along with the explanation, it clearly manifest that initiation of departmental proceedings could be from the day the statement of charges has been served/issued from the

office of the Government.

Counsel further submits that from the admitted facts which have come on record, the allegations which are indicated in the chargesheet is beyond the period of four years and the respondents were not justified in serving a chargesheet, which, according to him, is in clear breach of Rule 7(2) of the Rules, 1992.

Learned counsel for the respondents, in counter, submits that the notice was issued to the petitioner before her retirement on 28.07.2021 itself and the chargesheet dated 11/16.10.2021 was served in continuation of the notice dated 28.07.2021 and that before the petitioner retired from service, hence the respondents were justified and in the present facts and circumstances, to initiate the departmental proceedings against her, the restriction under Rule 7, of which reference has been made by the petitioner, may not come in the way.

We have heard learned counsel for the parties and gone through the records of the case with their assistance.

Before we proceed to examine the facts of the case in question, it may be relevant to take note of the Scheme of Pension Rules, 1992 and Rule 7(2)(b) is reproduced hereunder :-

“7. Right of Government to Withhold or Withdraw Pension-

(1) XXXX

(2) (a) XXXX

(b) Such departmental proceedings as referred to in sub-rule(1) if not instituted while the Government servant was in service, whether before his retirement or during his re-employment -

(i) shall not be instituted save with the sanction of Government;

(ii) shall not be in respect of any event which took place more than four years before such institution ;

... ..

Explanation – For the purpose of this rule

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(a) Departmental proceedings shall be deemed to be instituted on the date on which the statement of charges are issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from the date of his suspension;

... ..”

From the very scheme of Rule 7 of Rules, 1992, it needs no interpretation that in reference to the officer/employee, who stood retired from service, inquiry indeed can be initiated against him/her, provided sanction is obtained from the Government and must be during the period of 4 years before such institution and the Explanation added to the scheme of Rules makes it abundantly clear that proceedings shall be deemed to be instituted on the date on which the statement of charges are issued to the Government servant/pensioner, as the case may be.

Admittedly, in the instant case, the petitioner stood retired from service on 31.07.2021 and chargesheet was served on 11/16.10.2021 and this is for the period when the petitioner served as a Registrar from 28.06.2012 to 03.10.2015, and that it is indisputedly beyond the period of four years of such institution.

In the given facts and circumstances, in our considered view, the chargesheet served on the petitioner dated 11/16.10.2021 is in clear breach of the mandate of Rule 7 of Rules 1992.

Consequently, the writ petition succeeds and is allowed. The chargesheet dated 11/16.10.2021 and other consequential departmental proceedings initiated against the petitioner stand quashed.

The petitioner is entitled to all terminal/retiral benefits, if the same have been withheld because of pendency of the departmental inquiry, along with interest at the rate of 9% per annum from the date it was withheld, until actually paid.

No costs.

.....**J.**
[AJAY RASTOGI]

.....**J.**
[BELA M. TRIVEDI]

New Delhi;
MAY 17, 2023.

ITEM NO.38

COURT NO.4

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s)(Civil) No(s). 1042/2021

SUCHISMITA MISRA

Petitioner(s)

VERSUS

HIGH COURT OF ORISSA & ORS.

Respondent(s)

(IA No. 147227/2022 - EARLY HEARING APPLICATION)

Date : 17-05-2023 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE AJAY RASTOGI
HON'BLE MS. JUSTICE BELA M. TRIVEDI

For Petitioner(s) Mr. Vikas Singh, Sr. Adv.
Mr. Mrityunjai Singh, AOR
Ms. Deepeika Kalia, Adv.
Mr. Keshav Khandelwal, Adv.

For Respondent(s) Mr. Sibho Sankar Mishra, AOR
Mr. Niranjana Sahu, Adv.
Mrs. Prabhati Nayak, Adv.
Mr. Debabrata Dash, Adv.
Ms. Apoorva Sharma, Adv.

Mr. Shibashish Misra, AOR

UPON hearing the counsel the Court made the following
O R D E R

The Writ Petition is allowed in terms of the signed order.

Pending interlocutory application(s), if any, is/are disposed
of.

(JAYANT KUMAR ARORA)
ASTT. REGISTRAR-cum-PS

(VIRENDER SINGH)
BRANCH OFFICER

(Signed order is placed on the file)