



THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.652 of 2021

(An application under Article-4 of the Orissa High Court Order, 1948 read with Clause-10 of the Letters Patent constituting the High Court of Judicature at Patna and Rule-6 of Chapter III of the Rules of the High Court of Orissa, 1948)

Somanath Rout (dead)

***1. Sagarika Rout,
D/o. Late Somanath Rout***

***2. Smaranika Rout.
D/o. Late Somanath Rout***

.....
-Versus-

Appellants

State of Orissa & others

.....

Respondents

For the Appellants : Mr. Laxmikanta Mohanty, Advocate

For the Respondents : Mr. Jayanta Kumar Bal,
Additional Government Advocate

CORAM:

THE HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

A N D

THE HON'BLE MR. JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 18.03.2026 :: Date of Judgment: 20.03.2026

S.S. Mishra, J. The present Writ Appeal is directed against the order dated 29.06.2021 passed by the learned Single Judge of this Court in W.P.(C) No.18173 of 2021 directing the appellant to prefer an appeal before the appellate authority ventilating his grievance.



2. Following conspectus of facts as borne out from the record is recounted for the convenience of ready appreciation:

The appellant, while continuing as Senior Clerk in the Office of the Respondent No.4-Accountant General, Odisha (A & E), Bhubaneswar, was placed under suspension vide order dated 07.02.1994 issued by the District Education Officer, Bhadrak.

The departmental proceeding was initiated against the appellant on 10.10.1996 and charge memo was issued alleging some financial irregularities in the Office of the D.I. of Schools, Bhadrak. The appellant filed his response by denying all the charges. Thereafter, the appellant was reinstated in the service on 25.11.2003.

The departmental proceeding did not proceed further and in the meantime, on 31.03.2006, the appellant demitted the office on superannuation. After lapse of about six years on 29.10.2013, an Enquiring Officer was appointed by the Respondent No.3 to further continue the departmental proceeding initiated on 10.10.1996. The Enquiring Officer submitted his report after completion of the enquiry



to the respondent no.3 on 29.01.2014, which was communicated to the appellant on 18.02.2019.

Owing to the aforementioned departmental proceeding, the appellant was deprived of his pensionary benefits, hence he approached this Court by filing writ petition bearing W.P.(C) No.22898 of 2020 with a prayer to quash the entire departmental proceeding since the same suffered unexplained prolongation. The learned Single Judge disposed of the writ petition vide order dated 07.10.2020, directing the respondent no.3 to finalise the proceeding within eight weeks. Since the timeline was not followed by the respondent no.3, another writ petition being W.P.(C) No.8722 of 2021, was filed. The learned Single Judge disposed of the matter vide order dated 30.03.2021, directing that the proceeding be finalised within one month, failing which the order shall be passed for quashing of the entire departmental proceeding.

The appellant was noticed by the respondent no.3, to which he replied on 03.05.2021. On the same day, i.e., on 03.05.2021, the



respondent no. 3 rejected the appellant's appeal and directed recovery of Rs. 3,92,561/- from the appellant's pensionary benefits.

The said order of the respondent no.3 dated 03.05.2021 was questioned by the appellant in W.P.(C) No.18173 of 2021. The learned Single Judge vide order dated 29.06.2021 refused to entertain the writ petition, rather directed the appellant to resort to the remedy available under the Rules by filing appropriate appeal and liberty was also granted to the appellant to raise all the issues before the appellate authority.

3. Aggrieved by the aforementioned, the appellant has filed the present intra-Court appeal. This court while issuing notice to the respondents vide the order dated 28.02.2025 observed as under:

“It appears from the impugned order dated 29.06.2021 that the learned Single Judge after hearing the parties and going through the records and since both the parties admitted that being the disciplinary authority, the District Education Officer on the basis of the proceeding initiated against the petitioner under Rule 15 of the OCS (CC & A) Rules, 1962 passed the impugned order of punishment dated 03.05.2021 held that the order is an appealable one. Since, contention was raised by the learned counsel for the appellant during the hearing of the writ petition that after the retirement of the appellant, the OCS (CC & A) Rules, 1962 is not applicable, the learned Single Judge observed that the question of jurisdiction would also be considered by the appellate authority. Accordingly, the writ petition was disposed of permitting the petitioner to approach



the appellate authority raising all questions, which were raised in the writ petition before the appellate authority which was to be considered in accordance with law.

Learned counsel for the appellants drew the attention of this Court to the order no.3396 dated 23.04.2021 passed by the District Education Officer, Bhadrak wherein after careful consideration of the charges vis-a-vis the statement of defence and findings of the enquiry officer, the decision was taken to accept the findings of the enquiry officer and punishment was proposed in accordance with clause(i)(b) of sub-rule (10) of Rule 15 of CCS (CC & A) Rules, 1962 and the appellant was called upon to submit his representation against the proposed penalty.

Learned counsel for the appellant submits that the appellant submitted his representation before the District Education Officer, Bhadrak and the District Education Officer, Bhadrak vide order dated 03.05.2021 awarded penalty on the appellant which was challenged before the learned Single Judge in W.P.(C) No.18173 of 2021. The appellant was directed to deposit the misappropriated Govt. money of Rs.3,92,561/- (rupees three lakhs ninety two thousand five hundred sixty one), failing which the same was directed to be recovered from retiral benefits or by way of filing certificate case as per the provision of the Odisha Public Demands Recovery Act, 1962.

The contention of the learned counsel for the appellant is that in view of Rule 7 of the Orissa Civil Services (Pension) Rules, 1992 (hereafter 1992 Rules), the Govt. reserve to themselves the right of ordering recovery of part of any pecuniary loss caused to the Govt., If In any departmental proceeding, the pensioner Is found guilty of grave misconduct during the period of his service.

He further submits that Rule 7 (2)(a) of 1992 Rules Indicates that when the departmental proceeding Is Instituted by an authority while the Govt. servant was In service, after retirement, the departmental proceeding would be deemed to be a proceeding under 1992 Rules and shall be continued and concluded by the authority and the authority shall submit a report recording Its findings to the Government and the Government Is the final authority to take the decision and the



Impugned order of punishment has been passed contrary to such provision of the 1992 Rules.”

4. After notice, the respondents appeared and opposed the appeal vehemently. Mr. Jayanta Kumar Bal, learned Additional Government Advocate appearing for the State, submitted that the learned Single Judge by the impugned order has kept it open for the appellant to agitate all the issues as have been raised in the present proceeding before the appellate authority. The order passed by the respondent no.3 imposing penalty is, in fact, an appealable order under Rule-15 of the OCS (CC & A) Rules, 1962. If the order under challenge in the writ petition was not sustainable in lieu of any of the provisions under the Pension Rules, the same could also be urged before the appellate authority, which is competent under the Rules to examine all the issues appertaining to the dispute arising out of departmental proceeding. That's precisely the view taken by the learned Single Judge, which is not prejudicial to the petitioner in any manner whatsoever. Therefore, there is no illegality or perversity in the order of the learned Single Judge that may lead to the interference by this court in the present appeal.



Since the entire case of the appellant revolves around Rule-7 of the Orissa Civil Services (Pension) Rules, 1992, it is appropriate to reproduce Sub-rule (2)(a) of Rule 7, which reads as under:

“(2)(a) Such departmental proceedings referred to in Sub-rule (1), if instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be a proceeding under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that when the departmental proceedings are instituted by an authority, subordinate to Government that authority shall submit a report recording its finding to the Government.”

Proviso to sub-rule (2)(a) of Rule-7 provides that once a delinquent officer demits the office after superannuation, it is only the Government that is authorised under the rules to pass the order of penalty in a departmental proceeding even initiated prior to the retirement. Since under the rules, the Government reserves to itself the right to pass the order of recovery being the culmination of the departmental proceeding against the appellant after his retirement, the order dated 03.05.2021 passed by the respondent no.3- District Education Officer, Bhadrak, is not sustainable under law.



5. It is admitted on fact that the departmental proceeding was initiated on 10.10.1996 and it continued even after the appellant was superannuated on 31.03.2006. The Enquiring Officer was appointed only in the year 2013, who had given the enquiry report in the year 2014. Therefore, under operation of the proviso to sub-rule (2)(a) of Rule-7 of the Orissa Civil Services (Pension) Rules, 1992, the enquiry report should have been placed before the State Government and appropriate order as desirable under law on the basis of such report ought to have been passed by the competent authority under the State Government. However, the respondent no.3 assumes such power contrary to the mandate of Rule-7(2)(a) of the Orissa Pension Rules and passed the order dated 03.05.2021. Since the very order under challenge before the writ Court was perverse being vitiated under the Rules, hence was contrary to the law, the learned Single Judge ought not to have relegated the petitioner to resort to the remedy of appeal provided under Rule-15 of the OCS (CC & A) Rules, 1962.

6. We are of the view that the learned Single Judge has committed an error by ignoring the fact that the order under challenge before him was illegal and contrary to the rules. Therefore, the same ought to



have been nullified instead of directing to file an appeal to perpetuate further wrong. Hence, we have no hesitation to allow the Writ Appeal by setting aside the primary impugned order No.3632, dated 03.05.2021, passed by the respondent no.3- District Education Officer, Bhadrak. However, it is open for the respondents to place the enquiry report dated 29.01.2014 before the Government as per the proviso to Rule-7(2)(a) of the Orissa Civil Services (Pension) Rules, 1992 to obtain appropriate order in accordance with law.

7. We are not inclined to delve upon the issue of inordinate delay in the conclusion of the departmental enquiry, which had stretched for more than two decades, although the same has been highlighted by the learned counsel for the appellant before us, as we found the impugned order is unsustainable on singular count of vitiation Rule. It is also open for the appellant to raise all those issues at the appropriate stage. We have not expressed any opinion on the merits of the case so far as the merits of the enquiry report on the strength of which the penalty in the departmental proceeding has been inflicted on the appellant.



8. Accordingly, the Writ Appeal succeeds to the extent alone. No cost.

(Sibo Sankar Mishra)
Judge

M.R. Pathak, J. I agree.

(Manash Ranjan Pathak)
Judge

The High Court of Orissa, Cuttack.
Dated the 20th Day of March, 2026/Subhasis Mohanty