
(2015) 01 OHC CK 0033

In the Orissa High Court

Case No : Writ Petition (C) No. 10323 of 2006

Ashok Kumar Sukla

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 19-01-2015

Acts Referred:

Citation : (2015) 01 OHC CK 0033

Hon'ble Judges : Biswanath Rath, J.

Bench : Single Bench

Advocate : G.P. Dutta, K.C. Nayak and M.K. Swain, for the Appellant; P.K. Biswal, Learned Additional Government Advocate, Advocates for the Respondent

Judgement

Biswanath Rath, J.—This is a writ petition filed at the instance of the Councilors of Berhampur Municipality as it was then challenging the order passed by the Government vide order dtd. 11.06.2006 as available under Annexure 4 of the writ petition. By issuing a direction vide Annexure-4, the Government in Housing and Urban Development Department passed an order following the provision contained in the Orissa Service Code directing therein that Mr. Simanchal Das, Executive Engineer, P.H. is entitled to get his salary and other allowance from the Berhampur Municipality till joining in his new place of posting and the said order indicated nonpayment of salary of Mr. Simanchal Das from 05.10.2005 onwards is not proper.

2. The materials available on record vide Annexure-1 discloses that vide notification No. 22433/HUD dtd. 23.09.2005 his services of Mr. Simanchal Das was placed at the disposal of Rural Development Department for his subsequent posting in R.W.S.S. Wing. In the very same notification there are several transfer orders against several other persons including one Mr. V. Satyanarayan, A.E.E., Town Planning Unit, Jeypore vide communication No. 22434/HUD, was transferred and posted as Municipal Engineer in the Berhampur Municipality, Berhampur as against Mr. Simanchal Das. In a subsequent development vide Annexure-2, Mr. Simanchal Das (opposite party No. 4) was relieved from his

posting at Berhampur Municipality, Berhampur.

Annexure-3 discloses that said Mr. V. Satyanarayan was again transferred from Berhampur Municipality, Berhampur and in his place one Mr. Ratindra Narayan Mallik was posted as the Municipal Engineer in the Berhampur Municipality, Berhampur.

3. It is on this premises the petitioners have claimed that since the opposite party No. 4 is already relieved on his transfer and posting the R.W.S.S. Wing, the Housing and Urban Development Department, Government of Odisha is not justified in issuing the direction contained in Annexure-4 and submits that since Mr. Simanchal Das (opposite party No. 4) was already relieved from Berhampur Municipality, Berhampur, as it was then the Berhampur Municipality, Berhampur cannot be directed to make any payment to Mr. Simanchal Das (opposite party No. 4).

4. This matter is pending since 2006. Even though no counter has been filed as on date, Mr. Biswal, learned Additional Government Advocate appearing for the opposite party No. 1 today during course of hearing produces a para-wise comments. Para-14 of the para-wise comment reads as follows:

"That, with regard to the averments made in this paragraph, it is humbly submitted that, the contention of the applicant that O.P. No. 1 i.e. State Government acted illegally and arbitrarily is not correct. In order to avoid the wrong decision of Municipal Authority the petitioners are taking such plea. A Govt. Department may not act illegally and arbitrarily but to function and issue instructions abide by certain rules and principles framed by Govt. from time to time. Rather Municipal Authority have disobeyed the instructions of O.P. No. 1. As per existing provisions, Municipal Authority have to pay the salary and allowances of O.P. No. 4. If necessary, Municipal Authority have to pay interest on the principal amount of legal claim of salary and allowances of O.P. No. 4." 5. Considering the submission of the parties as well as the averments made in the para-wise comments at paragraph-14, this Court finds from Annexure-1 that Mr. Simanchal Das is already transferred from the Berhampur Municipality, Berhampur. The mere indication in the transferred order that his services are placed at the disposal of the R.D. Department for his subsequent posting in R.W.S.S. wing cannot be treated as a mere placement of his service in the particular establishment and he is to get his salary from the previous employer. If the indication in the order of transfer of Mr. Simanchal Das be read in full, this is a clear case of transfer however awaiting posting of the opposite party No. 4-Mr. Simanchal Das in R.W.S.S. Wing and the services of Mr. Simanchal Das was placed temporarily at the R.D. Department.

6. Further documents at Annexure-2 also makes it clear that in view of transfer of Mr. Simanchal Das-opposite party No. 4, he was also relieved from this services in the Berhampur Municipality, Berhampur. And in the circumstances the Department where the opposite party No. 4 joined following the transfer order

vide Annexure-1 is liable to pay the Mr. Simanchal Das (opposite party No. 4) and in no circumstances, Berhampur Municipality continues to be the employer.

7. Under the circumstances, this Court does not find any rational behind the direction contained in Annexure-4, which is hereby set-aside.

8. The writ petition succeeds to the extent directed hereinabove. However, there shall be no order as to cost.