

(2005) 08 OHC CK 0007
In the Orissa High Court
Case No : O.J.C. No. 844 of 2002

Jagabandhu Tunga and Another

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 17-08-2005

Acts Referred:

Orissa Local Fund Service Rules, 1975 — Rule 3, 3(1), 3(2), 3(3), 4
Orissa Municipal Act, 1950 — Section 392, 75, 81, 81(1), 81(2)
Orissa Municipal Rules, 1953 — Rule 81, 81A, 81B, 81C

Citation : (2005) 08 OHC CK 0007

Hon'ble Judges : N. Prusty, J; I.M. Quddusi, J

Bench : Division Bench

Advocate : M. Mishra, R.B. Sinha and B. Routray, for the Appellant; A. Routray, Addl Govt. Advocate for Opp. Parties 1 and 2 and Swapnajit Lenka, for Opp. Parties 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

I.M. Quddusi, J.—The Petitioner No. 1 who is the Member of Local Fund Service and is serving in Cuttack Municipal Corporation and Petitioner No. 2 the General Secretary of Class-III Employees Union, represented by Baikunthanath Rout posted in the Corporation as Head Assistant, have filed this writ application claiming all the time scale of pay and other allowances as are admissible to the Govt. employees of similar cadre. In paragraph 9 of the writ application, it has been stated that the initial appointment of the L.F.S. employees is like the State Govt. Employees and they are doing similar work like election work of both Parliament as well as Assembly as Presiding Officers and Polling Officers, Census work in concerned local body areas, cyclone and flood work through the control rooms and preparation of voter lists etc. But the benefits which have been provided to the Govt. Employees have not been extended to Class-III employees of Urban Local Bodies. Moreover, they are also transferred like Govt. Employees from one urban local body to Anr. . It has further been stated in the writ application that the authorities do not extend the benefit of the report of the 5th

Pay Commission for which earlier also the Petitioners had filed writ application in this Court registered as the OJC No. 1186/2001 which was disposed of vide order dated 16.11.01 with a direction to consider the representation of the Petitioners and to intimate them the result thereof. The Govt. have framed the Orissa Local Fund Service Rules, 1975 (for short "the Rules") which have already come into force vide notification SRO No. 588/1975 dated 18th August, 1975.

2. In the counter-affidavit filed on behalf of the O.Ps 1 and 2, it has been stated that there are so many posts of Urban Local Bodies which are under the Local Fund Service Cadre, constituted under Sub-rule (1) of Rule 3 of the Rules required to be filled up on the basis of the recommendation of the Selection Board constituted under Rule 7 of the Rules at Government level whereas the selection and appointment of non-LFS Cadre employees is made by the Selection Committee u/s 75 of the Orissa Municipal Act, 1950 (for short "the Act"), at Municipality level. But both the Local Fund Service Cadre employees and non-Local Fund Service Cadre Employees are the Municipal Employees. Their pay and allowances are being paid from the Municipal Fund, out of their own sources of income and the Government bear certain portion towards pay and allowances of the non-teaching posts, which have been created prior to 1.1.74 and teaching posts created prior to 1.11.1976. Further it has been mentioned therein that in case the employees of Local Fund Service Cadre will be allowed to get time scales of pay and allowances as admissible to Government employees of similar cadre, it will create discrimination among the Municipal employees and also lead towards administrative difficulties, since the number of non-Local Fund Service Cadre Employees are much more than the Local Fund Service Cadre employees. Relevant portion of the counter-affidavit is reproduced as under:

xx xx the following posts of Urban Local Bodies coming under the Local Fund Service Cadre, Constituted under Sub-rule (1) of Rule 3 of the Orissa Local Fund Service Rules, 1975.

1. Executive Engineer
2. Assistant Executive Engineer
3. Assistant Engineer
4. Junior Engineer
5. Homoeopathic Medical officer
6. Ayurvedic medical Officer
7. Assistant Law Officer
8. Establishment Officer
9. Head Assistant
10. Senior Assistant

11. Junior Assistant

12. Community Organiser

In this context, it is also submitted that the appointment against the aforesaid posts are required to be made on the basis of the recommendation of the Selection Board constituted under Rule 7 of the Orissa Local Fund Service Rules 1975 at Government level. But in case of selection and appointment of non-LFS Cadre employees, the Selection Committee u/s 75 of the Orissa Municipal Act, 1950, at Municipality level shall have the power for selection of candidate for non-LFS Cadre. But both the Local Fund Service Cadre employees and non-Local Fund Service Cadre Employees are the Municipal Employees. Their pay and allowances are being paid from the Municipal Fund, out of their own sources of income and the Government bear certain portion towards pay and allowances of the non-teaching posts, which have been created prior to 1.1.74 and teaching posts created prior to 1.11.1976. In case the employees of Local Fund Service Cadre, will be allowed to get time scales of pay and allowances as admissible to Government employees of similar cadre, it will create discrimination among the Municipal employees and also lead towards administrative difficulties, since the number of non-Local Fund Service Employees are much more than the Local Fund Service Cadre employees. As the financial position of almost all Urban Local Bodies of the State is not sound, it is not possible to allow the Local Fund Service Cadre employees the facilities as has been provided under Sub-rule (1) of Rule 4 of the Orissa Local Fund Service Rules.

3. Further, in Paragraph-8 of the counter-affidavit it has been averred that a separate policy decision for revision of the scales of pay of the Municipal Employees working under different Urban Local Bodies of the State was taken into consideration by the State Government and accordingly, their scales of pay have been revised with effect from 1.8.2002, vide Housing and Urban Development Department Resolution No. 33202/HUD. Dated 29.8.2002 and No. 33960/HUD. Dated 28.7.2003.

4. Before proceeding further, it is necessary to mention that u/s 81 of Orissa Municipal Act, it has been provided that the State Government may, by notification, constitute any class of officers or servants of Municipal areas into a Local Fund Service for the State of Orissa and the State Govt. shall have power to make rules to regulate classification, methods of recruitment, conditions of service, pay and allowances, discipline and conduct of the officers and servants belonging to the Local Fund Service and such rules may vest jurisdiction in relation to such service in the State Government or in such other authority or authorities as may be prescribed therein. In Section 81B it has been provided that whenever any officer or servant belonging to the Local Fund Service, is posted or transferred to any Municipal area, the concerned Municipalities shall be bound to employ him in its services and to pay all amounts due to such employee on account of his pay, allowances and other dues from out of the Municipal fund. Rules 81, 81A, 81B and 81C of the Act are quoted as under:

81. Power of State Government to create a Local Fund Service:

(1) Notwithstanding anything contained in this Act, [but subject to the provisions of Sections 81A, 81B, and 81C] the State Government may, by notification, constitute any class of officers or servants of Municipal areas into a Local Fund Service for the State of Orissa.

Provided that no notification shall be issued under this Sub-section unless the Municipal areas concerned have been consulted in respect thereof.

(2) The State Government shall, subject to the provisions of Section 392, have power to make rules to regulate classification, methods of recruitment, conditions of service, pay and allowances, discipline and conduct of the officers and servants belonging to the Local Fund Service and such rules may vest jurisdiction in relation to such service in the State Government or in such other authority or authorities as may be prescribed therein:

Provided that the terms and conditions of services prescribed under such rules in respect of the officers and servants who, on the constitution of the Local Fund Service have been absorbed therein, shall not in any way be less favourable than the terms and conditions which were applicable to them immediately prior to such constitution.

(3) The State Government shall have power to transfer any officer or servant of the Local Fund Service working under a Municipal area to the service of any Municipal area.

4. The State Government shall have power to issue such general or special directions as they may think necessary for the purpose of given due effect to transfer made under Sub-section (3).

81A. Exercise of option by officers and servants Municipal area:

(1) Before the constitution of the Local Fund Service, the State Government or, if empowered in that behalf, the concerned Municipality shall furnish detailed information in respect of the conditions of service prescribed for such service to every officer or servant belonging to any class in respect of which such service is to be constituted with a notice requiring him to exercise his option, within such period, not being less than thirty days, as may be specified therein for not being absorbed in such service.

2. Any such officer or servant who fails to exercise his option within the aforesaid period shall be deemed to have opted for being absorbed In the service.

3. Where any such officer or servant exercise his option for not being absorbed in such service within the said period, his services shall stand terminated with effect from the date of constitution of the service.

81B. Municipality bound to employ and pay the dues of members of the Local Fund Service: Whenever any officer or servant belonging to the Local Fund

Service, is posted or transferred to any Municipal area, the concerned Municipalities shall be bound to employ him in its services and to pay all amounts due to such employee on account of his pay, allowances and other dues form out of the Municipal fund.

81C. Consequence of termination of service: (1) Where the service of any person have been terminated under Sub-section (3) of Section 81A, he shall, without prejudice to his claims to any leave, provident fund, gratuity or other benefits, if any, as an officer or servant of a Municipal area to which he may be entitled on his retirement or termination of service had the local Fund Service not been constituted, be paid by the Municipality under which he last served an amount determined in the following manner.

5. Vide notification SRO No. 588/75 dated 18th August, 1975 the State Government in exercise of powers conferred to it by Sub-section (2) of Section 81 of the Orissa Municipal Act made the Rules, namely, Orissa Local Fund Service Rules, 1975. These rules were implemented with effect form 19.8.1975, the date of publication in the Orissa Gazette. Sub-rule (2) of Rule 3 of the Rules provides that on the constitution of the service under Sub-rule (1), the posts of the equal time-scales having duties and degree of responsibilities of the same nature in Municipalities shall form one cadre. Sub-rule (3) thereof provides that a gradation list of persons in respect of each cadre shall be prepared by the Director of Municipal Administration as per such directions as the Government may issue form time to time. Sub-rule (1) of Rule 4 thereof provides that employees of the service shall get the time-scale of pay and allowances as are admissible to employees of similar cadre under the Government who have duties and responsibilities of equal nature. Provisions of Rules 3 and 4 of the Rules are quoted as under:

Constitution of Local Fund Service

3.(1) The Local Fund Service shall be constituted by the State Government as per the provision in Sub-section (1) of Section 81 of the Act, and shall include such of the posts of the Municipalities as specified by the Government form time to time by order in this behalf.

2. On the constitution of the service under Sub-rule (1), the posts of the equal time-scales having duties and degree of responsibilities of the same nature in Municipalities shall form one cadre.

3. A gradation list of persons in respect of each cadre shall be prepared by the Director of Municipal Administration as per such directions as the Government may issue form time to time.

4.(1) Employees of the service shall get the time-scale of pay and allowances as are admissible to employees of similar cadre under the Government who have duties and responsibilities of equal nature.

6. Therefore, a perusal of the above quoted provisions would show that the Local

Fund Services are centralized services meaning thereby that their recruitment etc. are not confined to the Municipalities concerned but they are directly under the control of the State Government and the incumbents appointed in the services are transferable from one Municipality to Anr. Municipality. A Member of the Local Fund Services Cadre is entitled to get the time scale of pay and allowances as are admissible to the employees of the similar cadre under the Government who have the duties and responsibilities of equal nature. Therefore, the plea taken by the State Government in their counter-affidavit that in case the employees of Local Fund Service Cadre, will be allowed to get time scales of pay and allowances as are admissible to the Government employees of similar cadre, it will create discrimination among the Municipal employees and also lead towards administrative difficulties, since the number of non-Local Fund Service Cadre Employees are much more than the Local Fund Service Cadre Employees, is not sustainable in the eye of law. Rule 4(1) of the Rules is binding upon the State Government and the State Government is duty bound to award employees of the service the time-scale of pay and allowances as are admissible to the employees of similar cadre under the Government who have duties and responsibilities of equal nature.

7. Therefore, it is also necessary to mention that the plea of the Petitioners that they are discharging the similar duties as are being discharged by the State Government employees in respect of elections or census work or cyclone and flood work, is also not sustainable as these duties are emergency duties and are performed by all the employees Irrespective of their posts, cadre and nature of duties attached to those posts. Therefore, no direction can be issued on this reason for grant of time-scale.

8. The Petitioners have nowhere mentioned in their pleadings that they are employees of the same cadre, having duties and responsibilities of equal nature. Therefore, at this stage, this Court is unable to give any direction to the Government to award the Petitioners particular time-scale.

9. In view of the facts and circumstances as stated above, we are not in a position to issue any direction to opposite parties 1 and 2 as has been prayed for by the Petitioners, more particularly in respect of the L.F.S. Employees of Cuttack Municipal Corporation alone. However, if the Petitioners are so advised, they along with other similarly placed employees working under different Urban Local Bodies, are at liberty to make a representation to opposite parties 1 and 2 highlighting all their grievances drawing the attention of the authorities concerned, to the fact that the employees of the similar cadre under the Government have the duties and responsibilities of equal nature to the duties and responsibilities of the members of Petitioner No. 2-Union and in case such a representation is made, the same shall be disposed of by opposite parties 1 and 2 on its own merit in accordance with law keeping in view the provisions of Rule 4(1) of the Rules as early as possible, preferably within a period of three months from the date of receipt of such representation. It is needless to say that in case

the decision goes in favour of the Petitioners, all the consequential benefits of such decision shall be extended in their favour within three months form the date of the decision.

The writ petition is accordingly disposed of with the above observation/direction. No order as to costs.

N. Prusty, J.

10. I agree.