(2022) 02 OHC CK 0193

In the Orissa High Court

Case No : Writ Petition (Civil) No. 2005 Of 2011

Ramesh Chandra Mohanty APPELLANT

Vs

State Of Orissa & Other RESPONDENT

Date of Decision : 25-02-2022

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2022) 02 OHC CK 0193

Hon'ble Judges : Sashikanta Mishra, J

Bench : Single Bench

Advocate : B.P. Das, P.K. Panda, A. Ekka, H.K. Panigrahi

Final Decision : Disposed Of

Judgement

Sashikanta Mishra, J.

1. The petitioner has filed the present application seeking the following relief:

"I) The Hon'ble Court may graciously be pleased to quash the Annexure-6 & 7 as illegal and arbitrary for not consonance with the G.A. Department's Notification under Annexure-8.

II) Direct the Res. No. 4 to refund the amount recovered in excess from the applicant.

And pass such other order/orders as may be deemed fit and proper for the interest of justice"

2. The brief facts of the case are that the petitioner, who was working as Head Clerk (Stores) under Mechanical Division, Bhubaneswar under opposite party no.3, had availed Government accommodation, being a Type-IV quarter. He was transferred to Rourkela Division on 11.06.2009. Though the petitioner was relieved on 12.06.2009, yet he joined at his new place of posting on 31.12.2009. The petitioner claims to have submitted a representation on 01.02.2020, enclosed as Annexure-3, to the opposite party no.2 for grant of permission to

retain the quarter at Bhubaneswar till the date of his retirement, i.e. 31.01.2011 on payment of usual rent. By order dated 12.03.2010, enclosed as Annexure-4, the opposite party no.3 held the petitioner's occupation of the Government quarter at Bhubaneswar as unauthorized and he was asked to vacate the quarters within seven days of receipt of the letter, failing which action as deemed fit would be initiated against him. On 18.03.2010, an office order was issued, enclosed as Annexure-5, canceling the allotment of quarter in favour of the petitioner with effect from 12.07.2009 and by declaring his occupation as unauthorized beyond permissible period and of charging penal rent as per rule. Subsequently, by order under Annexure-6, the total outstanding rent (licence fee) calculated up to 30.04.2010 was shown as Rs. 47,291/-, which was again revised by communication dated 03.11.2010 (Annexure-7) to Rs.49,881/- . In the said communication it was stated that the total outstanding amount up to 31.01.2011 was Rs.99,509/-, out of which the total amount received up to 31.10.2010 being Rs.32,222/-, a total amount of Rs.17,406/- was to be recovered from his salary and therefore, he was called upon to deposit the balance amount of Rs.49,881/-

3. A counter affidavit has been filed on behalf of opposite parties no. 1 to 3 denying the averments of the Original Application. It is stated in the counter that the occupation of the quarter by the petitioner was declared unauthorized w.e.f. 12.07.2009 by the competent authority. It is further stated that the licence fee (rent) was calculated as per Finance Department Resolution dated 04.01.1999 read with Resolution dated 18.09.1998 of G.A. Department, as modified by order dated 01.11.2008. It is also stated that by another resolution of the Finance Department issued on 15.12.2010, the standard rent was revised to four times of the flat licence fee. As such, it was stated that the petitioner is not entitled to any relief.

4. Heard Mr. B.P. Das, learned counsel for the petitioner and Mr. H.K. Panigrahi, learned Addl. Standing Counsel for the State.

5. It is argued by Mr. Das that the action of the authorities in recovering the purported outstanding rent from the salary as well as the retirement dues of the petitioner is completely illegal being contrary to the rules. It is further argued that the method of calculation of the outstanding dues is incorrect since the Finance Department Resolution dated 15.12.2010 has been applied retrospectively. Mr. Das also brought to the notice of the Court that the petitioner has, in the meantime retired and vacated the quarter on 31.07.2011. According to Mr. Das, at best the petitioner would be liable to pay as per Clause-10 of the GA Department Resolution dated 18.09.1998, enclosed as Annexure-8.

6. Per contra Mr. H.K. Pannigrahi, learned Addl. Standing Counsel for the State has submitted that the petitioner having admittedly been transferred w.e.f. 12.06.2009, cannot retain the quarter for such a long period in view of the specific provision under Rule 107-A of the Orissa Service Code. Having done so, the petitioner is liable to pay penal rent as per the extant Rules, Guidelines/

Circulars of the Government. According to Mr. Panigrahi, the relevant Rules have been rightly applied and therefore, no relief can be granted to the petitioner.

7. There is no dispute as regards the fact that the petitioner was transferred to Rourkela from Bhubaneswar and was relieved from 12.06.2009, but he joined in his new post on 31.12.2009. Without getting into the reason as to why the petitioner did not join immediately after being relieved from his former post, this Court would rather refer to the relevant rules governing the field. In this context, a reference to Rule –107A of the Orissa Service Code would be apposite. According to the petitioner, he had to retain the quarter as no Government quarter was available at the new station. In such circumstances, Clause-IV(b)(ii) of the Table appended to Rule-107A would be applicable, which provides that in such event the Government servant is permitted to retain the quarter for a period of two months from the date of making over charge if the transfer is within the State. However, as per Clause-10(i) of the GA Department Resolution the permissible period of retention is only one month. Obviously, the Resolution being in the nature of an Executive Instruction cannot override the statute.

8. The fact that the petitioner was transferred to Rourkela Division on 11.06.2009 and was relieved on 12.06.2009 and further that he joined in his transferred place on 31.12.2009 is not disputed. The fact that he retained his Government quarter till 31.07.2011 is also not disputed. Since the petitioner has already vacated the quarter, the only question that remains to be determined is whether the imposition of penal rent (License Fee) has been made as per the relevant rules. In this regard, it is contended by learned counsel for the petitioner that the authorities have deducted excess amount from him, while according to learned Addl. Standing Counsel, the amount deducted is strictly as per the rules. In this regard, a calculation sheet has been filed before this Court on 10.12.2021 by the petitioner stating that a sum of Rs.19,114/- only is liable to be paid by him, whereas a sum of Rs.56,588/- was recovered and thereby, he is entitled to refund of Rs.37,447/-. On the contrary, the opposite party no.3 has also furnished a calculation sheet enclosed as Annexure- C to the counter, whereby, a total sum of Rs.89,062/- is shown as the outstanding due, out of which Rs.49,628/- having already been recovered, a sum of Rs.39,434/- remains due. According to the petitioner, he is covered by the G.A. Department Resolution dated 18.09.1998 under Annexure-8, whereas according the Government the dues have been calculated for different periods as per the different circulars prevailing at the relevant time.

9. After hearing learned counsel at length, this Court finds that the bone of contention between the parties as indicated above is basically factual in nature. It goes without saying that prior to coming into force of the Finance Department Resolution dated 15.12.2010, the G.A. Department Resolution dated 18.09.1998 was in vogue. Since the period in question begins from 12.06.2009 and ends on 30.04.2011 (or 30.07.2011 as the case may be), it is evident that both the circulars are to be referred to for calculation of the outstanding dues.

The above being the position, calculation of the actual dues, which is basically a factual matter, needs to be worked out by the concerned authorities. Therefore, without expressing any opinion on the merits of the case, the writ petition is disposed of granting liberty to the petitioner to submit a fresh representation along with a detailed calculation sheet of the outstanding dues to the opposite party no.3 within a period of two weeks from the date of receipt of a copy of this order. If such representation is filed within the period stipulated, the opposite party no.3 shall dispose of the same in terms of the observation made in this order relating to the relevant circulars issued by the G.A. Department and Finance Department and Rule 107-A of the Odisha Service Code after giving opportunity of hearing to the petitioner. Such order shall be passed within a period of four weeks from the date the petitioner's representation is received in the office of the opposite party no.3.

10. The writ petition is disposed of accordingly.

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