

(2023) 10 OHC CK 0015
In the Orissa High Court
Case No : Writ Petition (C) No. 16230 Of 2021

Shantilata Pradhan

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 06-10-2023

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Orissa Development Authorities Act, 1982 — Section 4

Citation : (2023) 10 OHC CK 0015

Hon'ble Judges : Sibor Sankar Mishra, J

Bench : Single Bench

Advocate : S. Das, S. Devi, H.M. Dhal, Dayananda Mohapatra

Final Decision : Dismissed

Judgement

Sibor Sankar Mishra, J

1. In the present Writ Petition, the Petitioner is assailing the office order dated 31.03.2021 passed by the Opposite Party No.3 thereby relieving her from Talcher-Angul-Meramandali Development Authority (TAMDA) with effect from 31.03.2021 and to join Paradeep Development Authority.

2. Heard Ms. S. Das, learned counsel for the petitioner and Mr. Dayananda Mohapatra, learned counsel for the Opposite Party Nos.2 and 3.

3. The factual conspectus of the present case germinating from the record indicates that the Petitioner had joined as an Architectural Assistant in the Office of the Special Planning Authority of Paradeep Development Authority. While she was posted there, an office order was issued on 20.12.2014 by the Additional Secretary to Government of Odisha, Housing and Urban Development Department transferring her from Paradeep Development Authority to Talcher-Angul-Meramandali Development Authority (for short 'TAMDA'). The said transfer appears to be in place of one Smt. Nilima Mohapatra, Architectural Assistant who was employed in TAMDA. The office order indicates that the petitioner and Smt.

Nilima Mohapatra were transferred in exchange between the two authorities.

4. After lapse of six years, the TAMDA authority by an office order dated 31.03.2021 relieved the petitioner from its office to rejoin as Architectural Assistant in M/s. Paradeep Development Authority.

5. Now the moot question raised in this writ petition is that whether the office order dated 20.12.2014 is a mere transfer on mutual basis or it is a transfer on deputation.

6. The provision operating in the field is Section 4 of the Odisha Development Authorities Act, 1982 which reads as under:

"4. Staff of the Authority – (1) Subject to such control and restrictions as may be prescribed by rules, the Authority may appoint a Secretary and such number of other officers and employees (including experts for technical work) as may be necessary for the efficient performance of its functions and may determine their designation and grades.

(2) The Secretary and other officers and employees of the Authority shall be entitled to receive from the funds of the Authority such salaries and such allowances, if any, and shall be governed by such conditions of service as may be determined by regulations made in this behalf.

[(3) Notwithstanding anything contained in this Act or in the rules or regulations made thereunder, for the purpose of smooth and efficient administration of the affairs of the Authorities, the State Government may, at the instance of any Authority or otherwise, direct any Authority for transfer of any officer or employee of such Authority, by way of deputation, to another Authority for such period not exceeding six years at a time and on such conditions, as may be specified in the direction.

(4) Whenever, any officer or employee belonging to an Authority is transferred under Sub-section (3), the Authority to which the officer or employee is so transferred shall be bound to accept the joining report forthwith, employ him in the service of the Authority and pay all amounts due to him on account of his pay, allowances and other dues from out of the fund of that Authority.]

[(5) Notwithstanding anything contained in this Act or Rules or Regulations made thereunder, the State Government may, at the instance of any Local Authority or Department of the State Government or any other Authority constituted or incorporated under the provisions of any State Act or otherwise, direct any Authority for transfer of any Officer or employee of such Authority, by way of deputation, to such Local Authority or Department of the State Government or any other Authority constituted or incorporated under the provisions of the State Act for such period not exceeding six years at a time and on such terms and conditions, as may be specified in the direction and the provision of sub-section (4), shall apply to such deputation mutatis mutandis.]"

7. Bare reading of Sub-Section (3) of Section 4 indicates that for the purpose of smooth and efficient administration of the affairs of the Authorities, the State Government at the instance of any Authority can depute any officer from other Authority for a period not exceeding six years. After the expiry of six years, the officer would be reverted back to his/her parent employer.

8. The office order dated 20.12.2014 indicates that the Housing and Urban Development Department of the State of Odisha has intervened and passed the said order transferring the petitioner from M/s. Paradeep Development Authority to TAMDA. The petitioner is trying to derive advantage from the expression 'transfer' used in the said letter. But in fact the word 'transfer' loosely used in the office order dated 20.12.2014, in place of the word 'deputation'. Because there was no occasion for the State Government to pass any order transferring an employee of one Authority to the other except on deputation under the command of sub-section (3) of Section 4. Therefore, the order dated 20.12.2014 is nothing but an order of transfer of the petitioner on deputation from her parent organization, i.e., M/s. Paradeep Development Authority to Talcher-Angul-Meramandali Development Authority. Since the period of deputation expires on 30.12.2020 after completion of six years, the TAMDA have issued the impugned office order dated 31.03.2021 repatriating the petitioner to its parent organization, i.e., Paradeep Development Authority. To that extent, no fault can be found on the issuance of such direction.

9. The Opposite Party Nos.2 and 3 have filed a counter affidavit stating therein that after completion of six years in the establishment by way of transfer on deputation under Section 4 of ODA Act, 1982 and Rules framed thereunder, the Opposite Party No.3 being the competent authority has issued the order dated 31.03.2021. However, in the rejoinder, the petitioner has controverted the said stand of the Opposite Parties and stated that the transfer order of the petitioner issued on 20.12.2014 cannot be termed as deputation. Therefore, her repatriation to the parent organization is not sustainable. The Opposite Party No.1, the State Government have also filed a counter affidavit and supported the contention of both the Opposite Party Nos.2 and 3 to say that the transfer of the petitioner indeed was deputation under Section 4(3) of the ODA Act, 1982. Therefore, after completion of six years on deputation, the petitioner was rightly repatriated to her parent organization.

10. The ancillary issue raised by the petitioner is regarding the non-payment of salary to the petitioner from 31.03.2021 onwards. When the situation was confronted with the counsel for the Opposite Party Nos.2 and 3, Ms. Das submits that the financial health of the Opposite Party No.2 is precarious. Apart from that, even after repatriation of the petitioner she has not joined back in her parent organisation and Smt. Nilima Mohapatra, Architectural Assistant is continuously working in the organization in the same post. Therefore, owing to the present financial position, the organisation cannot afford to make payment to two employees working in the same position.

11. I have perused the order sheet of this Hon'ble Court which indicates that while allowing an interim application being I.A. No.7126 of 2021 this Court on 07.05.2021 has been pleased to stay the operation of the impugned order dated 31.03.2021 as an interim measure. On the strength of the said interim order, the petitioner is continuing in the said post even after the repatriation. Therefore, even though I hold that the order dated 31.03.2021 is a valid order while rejecting the present Writ Petition, the petitioner is entitled to her salary during the interregnum period she worked on the strength of the interim order of this Court.

12. For the foregoing reasons, the Writ Petition is dismissed being devoid of merits and the Opposite Party No.2 is directed to relieve the petitioner forthwith by implementing the impugned order dated 31.03.2021.

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