

(2024) 02 OHC CK 0244
In the Orissa High Court
Case No : Writ Petition (C) No.4302 Of 2024

Subhranta Kumar Jena

APPELLANT

Vs

State Of Odisha & Others

RESPONDENT

Date of Decision : 27-02-2024

Acts Referred:

Citation : (2024) 02 OHC CK 0244

Hon'ble Judges : A.K. Mohapatra, J

Bench : Single Bench

Advocate : S. Mallik, A.P. Das

Final Decision : Disposed Of

Judgement

A.K. Mohapatra, J

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioner as well as learned Additional Standing Counsel for the State-Opposite Parties. Perused the Writ Petition as well as the documents annexed thereto.
3. The Petitioner has filed the present writ application with the following prayer:
"Under the aforesaid facts and circumstance the petitioner humbly prays that this Hon'ble court may graciously be pleased to,
i) Quash the impugned transfer order No.211 dt.22.02.2024 as at Annexure-3.
(ii) Pass such other order(s)/direction(s) as may be deemed fit and proper in the bonafide interest of justice."
4. Being aggrieved by letter dated 22.02.2024 under Annexure-3 whereunder the Petitioner has been transferred from Police Commissionerate, Cuttack to Keonjhar, the Petitioner has approached this Court by filing the present writ application. Learned counsel for the petitioner at the outset submitted that the

Petitioner has joined in his present place of posting pursuant to order under Annexure-1 dated 22.09.2023 and he joined at his present place of posting on 02.10.2023. Before his present posting, he was posted at IIC, Tamando P.S. BBSR UPD. Further, referring to the impugned letter dated 22.02.2024, learned counsel for the Petitioner further submitted that two persons including the present Petitioner have been transferred by referring to the Election Commission of India letter dated 21.12.2023. He further contended that the instruction of the Election Commission of India vide letter dated 21.12.2023 under Annexure-4 is not applicable to the present petitioner. He also specifically referred to Clause-3 of the said letter under Annexure-4 which speaks up the Officers who have been posted with their home district or have completed three years at one place on or before 30th June, 2024 shall be allowed to continue in the present district (revenue district) of posting. In such view of the matter, learned counsel for the Petitioner submitted that the Petitioner was earlier working under the Khurdha revenue district till 01.10.2023 on 02.10.2023 he has been posted at Markatnagar P.S. under Cuttack revenue district. Moreover, the Cuttack revenue district is not the home district of the present Petitioner. Accordingly, it was submitted that both the restrictions contained under Annexure-4 is not applicable to the present Petitioner. In such view of the matter, it was submitted that the Opposite Parties have committed an illegality in passing the impugned transfer order dated 22.02.2024 under Annexure-3 so far as it relates to the present Petitioner.

5. Learned Additional Standing Counsel appearing for the State-Opposite Parties on the other hand contended that on a careful examination of the materials on record it appears that the authorities in obedience to the Election Commission of India the instruction vide letter dated 21.12.2023 and keeping in view the vacancy position and the administrative requirement have passed the order of transfer under Annexure-3. He further contended that the letter under Annexure-3 reveals that the decision has been taken by Police Establishment Board held on 22.02.2024 in accordance with Home Dept. letter dated 16.02.2016 and notification dated 09.02.2021. Moreover, it was argued that transfer is an incident of service & it confers no right of the Petitioner to choose a particular place of posting. In such view of the matter, learned Additional Standing Counsel submitted that the present writ application is devoid of merit and accordingly, the same should be dismissed.

6. Considering the submissions made by learned counsels appearing for the respective parties and on a careful examination of the background facts as well as materials on record, this Court observed that the fact with regard to the Petitioner's joining at present place of posting is not disputed by the parties. Further, on a perusal of the instruction of the Election Commission of India vide their letter dated 21.12.2023 under Annexure-4, this Court is also of the prima facie view that the restrictions contained in clause-3 are perhaps not applicable to the present petitioner in the facts and circumstances of the present case. In such view of the matter, this Court deems it proper to dispose of the writ

application with a direction to the D.G. & I.G. of Police Odisha, Opposite Party No.2 to consider the grievance of the Petitioner by taking into consideration the instruction of the Election Commission of India under Annexure-4 and if required the order dated 22.02.2024 under Annexure-3 so far as it relates to the present petitioner may be suitably varied/ modified in accordance with law. Till a decision is taken by the Opposite Parties as has been directed hereinabove within a period of three weeks. The Petitioner shall not be relieved from his present place of posting if he has not been relieved in the meantime. Any final decision to be taken by the Opposite Party No.2 shall be communicated to the Petitioner as expeditiously as possible preferably within a week from the date of taking such a decision.

7. With the aforesaid observations/ directions, the writ application stands disposed of.

8. Urgent certified copy of this order be granted on proper application in course of the day.

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