

(2021) 04 OHC CK 0022

In the Orissa High Court

Case No : Writ Petition (Civil) NO. 12584 Of 2019, 24671 Of 2020

Surya Narayan Mishra

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 20-04-2021

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 — Section 6(2)

OPEPA Service Rules And Regulations, 1996 — Rule 3(f), 12, 13, 24, 24(i)

Citation : (2021) 04 OHC CK 0022

Hon'ble Judges : Dr. B. R. Sarangi, J

Bench : Single Bench

Advocate : A.K. Pandey, P.K. Samal, D.N. Mishra, A. Pradhan, Pradipta Kumar Mohanty, P. Mohanty, P.K. Nayak, P.K. Pasayat,

Final Decision : Allowed

Judgement

DR. B.R. SARANGI, J

1. Surya Narayan Mishra, while working as Financial Consultant in the District Project Office (DPO), SS, Kendrapara on contractual basis with a consolidated remuneration of Rs.6,000/- per month, has filed W.P.(C) No.12584 of 2019 seeking to quash the order dated 17.07.2019 under Annexure-2, by which he has been

transferred to DPO, SS Bolangir on administrative ground.

Whereas Rajashree Pattanaik, who was working as Coordinator Pedagogy in the DPO, SS Khordha on contractual basis and has been transferred to DPO, SS, Rayagada

on administrative ground vide office order dated 17.07.2019 under Annexure-1, has filed W.P.(C) 24671 of 2020 challenging the order dated 23.09.2020 under Annexure-5,

by which opposite party no.2 has directed the petitioner to obey the office order dated 17.07.2019 and to join at DPO, SS, Rayagada as per OSEPA office order no. 5036

dated 17.07.2019 positively, failing which action shall be taken against her as per the Service Rules & Regulations, 1996.

2. Essentially, both the writ petitions have been filed by the contractual employees working under the Odisha Primary Education Programme Authority (OPEPA) in

different capacities seeking to quash the orders of transfer issued against them. Therefore, they have been heard together and are being disposed of by this common

judgment, which will govern in both the cases.

3. The factual matrix which has given rise to filing of W.P.(C) No. 12584 of 2019 is that the petitioner therein was engaged as Financial Consultant in the DPO,

SSA/DPEP, Malkangiri on contractual basis vide office order dated 17.08.2004 with remuneration of Rs.6,000/- per month. While he was so continuing, he was

disengaged and again re-engaged vide office order dated 10.11.2005 at DPO, Ganjam, While working as such, again he was re-engaged at DPO, SS, Kendrapara vide

office order dated 12.05.2008 and continuing as such till the impugned order of transfer was passed by the authority on 17.07.2019, by which he has been transferred from

DPO, SS, Kendrapara to DPO, SS Bolangir.

4. The factual matrix which led to filing of W.P.(C) No. 24671 of 2020 is that the petitioner therein was initially engaged as Coordinator Pedagogy in the DPO, Sambalpur

on contractual basis. Thereafter, she was transferred to DPC Office, Angul on 17.06.2010 and subsequently she was placed at DPC Office, Keonjhar on 10.08.2010.

Again, the authority deployed her in the Head Office of OPEPA and after cancellation of deputation period, the petitioner was again posted at DPC Office, Keonjhar.

Then, she was posted at DPC Office, Khurda, vide office order dated 23.08.2016, and while so continuing she has been transferred, vide office order dated 17.07.2019, to

DPO, SS, Rayagada on administrative ground as Financial Consultant. Against the order of transfer dated 17.07.2019 under Annexure-1, she filed W.P.(C) No.

2019, wherein as an interim measure this Court stayed operation of the said transfer order. Despite that, opposite party no.2, vide office order dated 23.09.2020, compelled

her to carry on the order of transfer dated 17.07.2019 by joining at DPO, SS, Rayagada, failing which action shall be taken against her as per OPEPA Service Rules and

Regulations, 1996.

5. Mr. A.K. Pandey, learned counsel appearing for the petitioners in both the writ petitions contended that to regulate the service conditions of the employees of the

OPEPA, under Clause-5(n) of the Memorandum of Association of the Orissa Primary Education Programme Authority read with Rule 36 of the Rules and Regulations

made thereunder, "The Orissa Primary Education Programme Authority Service Regulations, 1996" were framed. It is contended that in the said OPEPA Service

Rules & Regulations, 1996 there is no provision for transfer of OPEPA employees from one place to other, nor has any transfer policy been framed by the OPEPA till

2018. But, for the first time, on 17.12.2018 guidelines for transfer of contractual employees working at State Project Office, District Offices and Block Level Offices

under RTE-SSA, Odisha were framed, which also do not contemplate for transfer or deployment of employees working under SPO, DPO & Block Level Offices under

SSA. It is further contended that taking into consideration the merger of OPEPA with RMSA to form one society, namely, "Odisha School Education Programme

Authority" (OSEPA), Government was pleased to accord permission for formulation of the guidelines for inter-district and intra-district transfer/deployment, and

rationalization of employees working at SPO, DPOs and Block Level Offices under RTE-SSA. It is further contended that so far as the transfer in respect to contractual

employees is concerned, it is not permissible by the said guidelines, and, more so, the said guidelines cannot be given effect to as the same have been formulated by a

committee having lack of quorum. Therefore, he seeks for quashing of the impugned orders of transfer passed by the authority concerned.

6. Mr. P.K. Mohanty, learned Senior Counsel appearing along with Mr. P. Mohanty, learned counsel for opposite party no.2 vehemently contended that Rule-24 of the

OPEPA Service Rules and Regulations, 1996, which deals with travelling allowance, clearly envisages that the employees in case of their transfer from the State Project

Office to any DPO or from one DPO to another DPO shall be entitled to travelling allowance, daily allowance and transfer T.A.. Thereby, the posts held by the petitioners

are transferable and, as such, they are entitled to travelling allowances as per Rule 24 read with Appendix-B of the said Rules. It is further contended that Rule-12 under

Chapter-V deals with 'Cadre', which indicates that directly engaged employees in the State Project Office shall be in a common cadre. The staff in all the district

offices shall form a separate cadre. Thereby, the petitioners having been engaged in district offices, they form a separate cadre and as such they are liable for transfer.

Consequently, impugned orders of transfer have been given effect to and, thereby, no illegality or irregularity has been committed by transferring such employees. It is

contended that when the transfer has been made on administrative ground, as has been indicated in the impugned orders, even though the petitioners are contractual

employees, for smooth administration if the order of transfer has been effected, thereby, no illegality or irregularity has been committed by the authority concerned. It is

further contended, by referring to Rule-24, that transfer is applicable to contractual employees from the State Project office to District Project office and also from one

District Project office to another District Project office. The petitioners, having been engaged in a project on contractual basis, are not holding any civil post and, therefore,

the services of contractual employees are coterminous with the implementation of the project. It is further contended that as per Section-45 of the OPEPA Memorandum

of Association, the Executive Committee of OPEPA headed by the Chief Secretary as the Chairman and the Secretary of S & ME Department as Vice-chairman and

State Project Director as the Member Secretary are the competent authorities who have the power to frame and amend the regulations pertaining to service matter of

SPO/DPO including creation of post, qualification, selection procedure and emoluments, disciplinary controls as well as classification, control and appeal rules. Accordingly,

the transfer policy of contractual employees working under OPEPA/OSEPA has been framed as per the approval of the Chairman, EC, OPEPA in the 36th Executive

Committee, OPEPA and in such guideline dated 17.12.2018 the provision for transfer of contractual employees is there. Thereby, pursuant to such guideline, if the orders

of transfer have been passed, the same cannot be said to be illegal or subjected to judicial scrutiny in the writ jurisdiction of this Court. Thereby, it is contended that both

the writ petitions should be dismissed on the grounds mentioned above. To substantiate his contention, he has relied upon the judgment of this Court in *Prasanna Kumar*

Acharya v. State of Orissa, 2015 (Supp.-II) OLR 819.

7. Mr. A. Pradhan, learned Addl. Standing Counsel appearing for the State opposite parties contended that since it is a dispute between the petitioners and opposite party

no.2, the State has no role to play and, as such, the State did not choose to file any counter affidavit.

8. This Court heard Mr. A.K. Pandey, learned counsel appearing for the petitioners in both the writ petitions; Mr. P.K. Mohanty, learned Senior Counsel appearing along

with Mr. P. Mohanty, learned counsel for opposite party no.2; and Mr. A. Pradhan, learned Addl. Standing Counsel appearing for the State opposite parties through virtual

mode. Pleadings have been exchanged between the parties, with the consent of learned counsel for the parties, this writ petition is being disposed of finally at the stage of

admission.

9. It is admitted fact that both the petitioners had been engaged as contractual employees under the OPEPA/OSEPA and from the date of their engagement they have

been discharging their duty. Even in some places they had been disengaged and re-engaged and in some places with the closure of the project they had been directed to

discharge their duty in new places. But, by means of these two writ petitions, they seek to quash the orders of their transfer.

10. So far as transfer in general is concerned, the issue of transfer and posting has been considered time and again by the apex Court and law has been settled by catena

of decisions. It is entirely upon the competent authority to decide when, where and at what point of time a public servant is to be transferred from his present posting.

Transfer is not only an incident but an essential condition of service. It does not affect the conditions of service in any manner. The employee does not have any vested

right to be posted at a particular place. These principles have been decided in *B. Varadha Rao v. State of Karnataka*, AIR 1986 SC 1955 : (1986) 4 SCC 131; *S. Hilpi*

Bose v. State of Bihar, AIR 1991 SC 532 : (1991) SCC 659; *Union of India v. N.P. Thomas*, AIR 1993 SC 1605; *Union of India v. S.L. Abbas*, AIR 1993 SC 2444;

and the latest judgment in *Somesh Tiwari v. Union of India*, AIR 2009 SC 1399 : (2009) 2 SCC 592.

11. So far as scope of judicial review of transfer under Article 226 of the Constitution of India is concerned, it has been settled by the apex Court in *Rajendra Roy v.*

Union of India, AIR 1993 SC 1236; *National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan*, AIR 2001 SC 3309; and *State Bank of India v. Anjan*

Sanyal, AIR 2001 SC 1748.

Â

12. In *Sarvesh Kumar Awasthi v. U.P. Jal Nigam*, (2003) 11 SCC 740, the apex Court held as follows:-

“In our view, transfer of officers is required to be effected on the basis of set norms or guidelines. The power of transferring an officer cannot be wielded arbitrarily, mala fide or an

exercise against efficient and independent officer or at the instance of politicians whose work is not done by the officer concerned. For better administration, the officers concerned must

have freedom from fear of being harassed by repeated transfers or transfers ordered at the instance of someone who has nothing to do with the business of administration.”

13. Taking into consideration the law laid down by the apex Court, as discussed above, the legal proposition of the issue of transfer can be summarized as

under:-

(1) Transfer is a condition of service.

(2) It does not adversely affect the status or emoluments or seniority of the employee.

(3) The employee has no vested right to get a posting at a particular place or can choose to serve at a particular place for a particular tenure.

(4) It is within the exclusive domain of the employer to determine as to at what place and for how long the services of a particular employee are required.

(5) Transfer order should be passed in public interest or administrative exigency, and not arbitrarily or for extraneous consideration or for victimization of the employee nor it should

be passed under political pressure.

(6) There is a very little scope of judicial review by the Court/Tribunal against the transfer order and the same is restricted only if the transfer order is found to be in contravention of

the statutory Rules or mala fides is established.

(7) In case of mala fides, the employee has to make specific averments and should prove the same by adducing implacable evidence.

(8) The person against whom allegation of mala fide is alleged is to be impleaded as a party by name.

(9) Transfer policy or guidelines issued by the State or employer does not have any statutory force as it merely provides for guidelines for the understanding of the Departmental

personnel.

(10) The Court does not have a power to annul the transfer order only on the ground that it will cause personal inconvenience to the employee, his family members and children as

consideration of these issues fall within the exclusive domain of the employer.

(11) If the transfer order is made in mid-academic session of the children of the employee, the Court/Tribunal cannot interfere. It is for the employer to consider such a personal

grievance.â??

14. There is no dispute with regard to legal proposition, as discussed above. Such principles have to be considered on the touchstone of the reasonableness. Now, coming

to the facts of the case at hand, it is admitted case of the both the petitioners that they are employees of the opposite party no.2 and working under the OPEPA and their

service conditions have been

regulated by OPEPA Service Rules and Regulations, 1996. So far as transfer is concerned, there is no such provision available under the OPEPA Service Rules and

Regulations, 1996. Rule-12, deals with cadre, which means the directly engaged employees in the State Project office shall be in a common cadre. The staff in all the

district offices shall form a separate cadre. The seniority in each group and category in a cadre shall be fixed according to their date of joining. As such, on perusal of

OPEPA Service Rules, 1996, there is no provision prescribed for transfer.

15. Mr. P.K. Mohanty, learned Senior Counsel appearing for opposite party no.2 placed reliance on Rule-24 of OPEPA Service Rules & Regulations, 1996, which deals

with Travelling Allowance, reads as under:-

(i) The employees of the Authority shall be entitled to travelling allowance, daily allowance and transfer. T.A. in case of their transfer from the State Project Office to any D.P.O. or

from one D.P.O. to another at the rates as incorporated in the Appendix-B.

(ii) The class to which an officer shall be entitled for any journey shall be prescribed in Appendix-B.

(iii) Travelling allowance and daily allowance payable to non-official member attending meetings of any body or committee under authority shall be as per rate prescribed in

Appendix-B.

(iv) State Government officers attending meetings/Workshops convened by the authority shall draw their T.A. & D.A. from the Authority or from the Department they work as decided by

State Government. The rate in such cases shall be decided by State Government. The rate in such cases shall be the rate applicable to them under the State Government.

(v) In a particular case if no specific rule is there in this regulation the relevant rules of State government shall apply mutatis mutandis.

which they belong as mentioned below:-

- (i) First Grade- All officers in receipt of basic pay of Rs.2500/- and above.
- (ii) Second Grade- Officers getting pay above Rs.1300/- but below Rs.2500/- p.m.
- (iii) Third Grade -" All employees appointed on lump sum contract and classified as group-C in the service regulation.
- (iv) Fourth Grade- All employees classified in the group appointed on lump sum contract.

The grade of the reemployed officer shall be on basis of the pay last drawn before deduction of the pension. The retired officers appointed on contract on lump sum amount of pay shall

be classified on the basis of the basic contract amount excluding allowances of compensatory nature. The State Government officers working Ex-officio shall be classed into grade on

basis of the pay they draw in their post under the state government.â??

18. If such classification of the officers for the purpose of tour, as envisaged under clause-2 of the Appendix-B, is taken into consideration, it also does not speak about

â??the employee engaged on contractual basisâ?, rather sub-clauses-(iii) and (iv) of clause-(a) states about all employees appointed on lump sum contract. That by itself

cannot construe that the employees who have been engaged on contractual basis. Clause-3 of Appendix-B deals with entitlement of class of accommodation for travel.

Therefore, if a close scrutiny would be made to the provisions contained in Rule-3(f) read with clause-24(i) and Appendix-B, nowhere it has been specified with regard to

transfer of contractual employee engaged under OPEPA and OSEPA. The travelling allowance, which is admissible under Rule-24(i), is only applicable to the employees

indicated in definition 3(f) and, as such, the same does not include the â??contractual employeesâ? engaged under OPEPA and OSEPA. Thereby, OPEPA Service Rules

and Regulations, 1996, being silent about the transfer and implementation thereof, any transfer of contractual employees, if made, is in violation of such rules and the same

cannot sustain in the eye of law.

19. Mr. P.K. Mohanty, learned Senior Counsel appearing for opposite party no.2 relied upon the judgment of this Court in Prasanna Kumar Acharya mentioned supra. The

said judgment was decided on the principle of transfer, as already discussed, and while deciding the said case this Court also took similar view holding that the opposite

party, being the employer, has got every prerogative to transfer its employees. But fact remains, such transfer cannot be done arbitrarily, unreasonably and contrary to the

rules governing the field. Emphasis has been laid that due to administrative exigencies, the petitioners have been transferred by the opposite party no.2, but nothing has

been placed on record indicating the administrative exigencies. Therefore, merely writing the words "administrative exigencies" cannot create a field for transfer of

contractual employees for whom no service rules and guidelines have been framed. As such, the guidelines, which have been relied upon in the present case, cannot be

construed to be a guidelines as the same have been framed with lack of quorum. Thereby, the impugned orders of transfer so passed by the authority concerned are

without jurisdiction.

20. It is not disputed that OPEPA authority is a society registered under the Societies Registration Act, 1860. As per clause-(1) of Memorandum of Association, OPEPA

is an "Authority" whose affairs shall be administered, subject to the rules, regulations and orders of the Authority by an executive committee which will be constituted

as per clause-21 of such Memorandum of Association, which reads as under:-

"21. Executive Committee.

The affairs of the Authority shall be administered, subject to the Rule and Regulations and orders of the Authority by an Executive Committee which shall consist of the following.

(i) Secretary to Government, School & Mass Education Department of Orissa, Bhubaneswar. Chairman

(Ex-Officio)

(ii) Secretary to Government, Finance Department, Government of Orissa.

Member

(iii) Secretary to Government, Department of Panchayati Raj Government of Orissa.

Member

(iv) Director, Elementary Education

Member

(v) Director of Mass Education, Department of School & Mass Education, Government of Orissa.

Member

(vi) Director of T.E. and S.C.E.R.T., Orissa

Â (vii) Director, Women & Child Development, Government of Orissa

Member

Â (viii) Director, Tribal Welfare & Director, Harijan Welfare, Government of Orissa

(ix) Two District Project Coordinators, from amongst selected districts by rotation, to be nominated by the Chairman.

Members

(x) Two Heads of District Committees from amongst selected Districts by rotation, to be nominated by the Chairman.

Members

(xi) Three representatives of the Central Government Department of Education, Ministry of Human Resource Development, Govt. of India.

Members

(xii) Two Directors of State level Academic and Technical Resource Support Agencies.

(xiii) Two Educationists known for their experience and interests in basic education sector, one each to be nominated by the State Government, and Central Government.

(xiv) One serving teacher known for his/her meritorious service to the cadre of Basic

Education to represent teacher's organization concerned with basic education to be nominated by the State Government.

(xv) Two women with experience and interest in women's Development and Education, one each to be nominated by the Central and State Government.

Members

(xvi) Two persons from Voluntary Agencies who have distinguished themselves for their work in the area of Mass Education, one each to be nominated by the Central and State

Government.

Members

Â (xvii) Principal, Regional Institute of Education, Bhubaneswar

Member

(xv) State Project Director, O.P.E.P

Member Secretaryâ??

Clause-28, which deals with quorum at the meeting, reads as under:

â??Quorum at the Meeting:

One-third of the members of the Executive Committee present and in person shall constitute a quorum at any meeting of the Executive Committee provided that no quorum shall be

necessary in respect of an adjourned meeting.â??

21. On perusal of clause-28, it is made clear that one-third of the members of the Executive Committee present and in person shall constitute a quorum at any meeting of

the Executive Committee provided that no quorum shall be necessary in respect of an adjourned meeting. Clause-21 of the Memorandum of Association, which deals with

Executive Committee, stipulates the Executive Committee shall comprise of 30 members, as detailed in sub-clause-(i) to (xviii) thereof. That means, in order to constitute a

quorum of the Executive Committee, one-third of the members of the said Executive Committee, which comes to ten, are to remain present in person. Thereby, the

decision taken by an Executive Committee will only be valid and implemented, if the said Executive Committee constitutes a quorum.

22. In *Than Singh v. State of Madhya Pradesh*, AIR 2005 MP 170, while considering Section 6(2) of M.P. Panchayat Avam Gram Swaraj Adhiniyam, the Full Bench

of Madhya Pradesh High Court, dealt with the question of â??quorumâ?? and in paragraphs-36 to 40 observed as follows:-

36. In Halsbury's Laws of England, Third Edition, Volume 6, while dealing with the factum of regulation and management of companies 'quorum' has been described as under :

630. A quorum. A quorum means the minimum number of directors who are authorised to act as a board (b). Each director of the quorum must be qualified to act, and if by the

withdrawal of those directors who are disqualified from voting on the ground of interest or otherwise there would be no quorum, no business can be transacted (c). Where some of the

directors are interested in a contract and not by the articles permitted to vote, a reduction in the quorum for the purpose of authorities the contract is invalid (d), and where a

transaction is really one transaction, the necessary quorum cannot be obtained by dividing the transaction into two (e). The articles may provide that in the case of certain contracts or

arrangements a director may be permitted to vote and be included in the quorum present notwithstanding the fact that otherwise he would have been disqualified on grounds of interest

(f). Where no quorum is specified in the articles the number who usually act will constitute a quorum (g). Though one director cannot constitute a "meeting" (h). The articles may

permit one director to be a quorum (i). Unless so provide by the articles, there cannot be a quorum competent to act where the number of directors is not filled up to the minimum

number (k).

37. In Encyclopedia Britannica 'quorum' has been defined as under :

Quorum : in its general sense, a term denoting the number of members of any body of persons whose presence is requisite in order that business may be validly transacted by the body

or its acts be legal. The term is derived from the wording of the commission appointing justices of the peace which appoints them all, jointly and severally to keep the peace in the

country named. It also runs "We have also assigned you, and every two or more of you (of whom (quorum), any one of you the aforesaid A, B, C, D etc. we will shall be one) our justices

to inquire the truth more fully", whence the justices so named were usually called justices of the quorum. The term was afterwards applied to all justices, and subsequently, by

transference, to the number of members of a body necessary for the transaction of its business.

38. In *Corpus Juris Secundum*, Volume LXXIV 'quorum' has been described as under :

'Quorum : The word "quorum", now in common use, is from the Latin, and has come to signify such a number of the officers or members of any body as is competent by law or

constitution to transact business; such a number of an assembly as is competent to transact its business; such a number of the members of any body as is, when duly assembled, legally

competent to transact business; such a number of a body as is competent to transact business in the absence of the other member. The quorum of a body is an absolute majority of it

unless the authority by which the body was created fixes it at a different number. The idea of a 'quorum' is that when that required number of persons goes into a session as a body the

votes of a majority thereof are sufficient for binding action. Thus, the word "quorum" implies a meeting, and the action must be group action, not merely action of a particular number of

members as individuals.

39. In the case of the *Punjab University, Chandigarh v. Vijay Singh Lamba*, AIR 1976 SC 1441 the Apex Court has ruled thus :

'Quorum' denotes the minimum number of members of any body of persons whose presence is necessary in order to enable that body to transact its business validly so that its acts may

be lawful. The fixation of quorum for the meetings of a committee does not preclude all the members of the committee from attending the meetings. By the quorum, a minimum number of

members of the committee must be present in order that its proceedings may be lawful but that does not mean that more than the minimum are denied an opportunity to participate in the

deliberations

and the decisions of the committee. Whenever a committee is scheduled to meet, due notice of the meeting has to go to all the members of the committee and it is left to each individual

member whether or not to attend a particular meeting. Every member has thus the choice and the opportunity to attend every meeting of the committee. If any

member considers the

matter which is to be discussed or determined in a particular meeting as of such importance that he must make his voice heard and cast his vote, it is open to him and indeed he is

entitled to attend the meeting and make his presence felt.

Thus, the basic and fundamental principle inhered in the term 'quorum' is presence of minimum number of members to transact business with the avowed purpose to make it lawful.

40. In the instant case, the quorum has been differently prescribed. The effect and import of such enjoining has to be scrutinised in the backdrop of democracy albeit at the grassroot

level. By introduction of such a provision the control from the majority slowly but steadily in a different manner travels to the very small and thin body. The democracy is built on the

idea of the majority. All have a right to participate as permissible within the parameters of law. But to conceive of a situation that to empower certain weaker section they would be

allowed to have control in entirety the democracy at the grassroot level would itself be an anathema to the basic requirement of democracy. To have an idea that the protection of

weaker sections should percolate to the minuscule level in a minutest manner cannot but smack of unreasonableness and irrationality. It can be well imagined if in one of the three

categories as provided under Section 6(2) is absent the meeting of Gram Sabha cannot be held. We have been apprised at the Bar, that provision has become workable but it can never

be the test in a case of this nature. In the case at hand, we are testing the provision keeping in view the democratic polity, rationality of the provisions, the non-arbitrariness of it, and

when tested on the bedrock of the same we are of the opinion, the second part of the provision cannot stand the test of the Article 14 of the Constitution. The percolation to that extent, if

we say so, is not permissible in a beyond constitutional tolerance. The learned counsel for the State submitted that unless they are allowed to control 'Gram Sabha' would be controlled

by a different kind of majority and the entire Panchayat system would collapse. As has been stated above, number is the basic substratum of a quorum but, a significant and pregnant

one, the Legislature has further proceeded to provide how the quorum would be formed or to put it differently, who would constitute the quorum. It is interesting to note that no

alternative is provided what would happen in the absence of a quorum. The words used therein cast a mandate. Submission of the learned counsel for the State is that in a democratic

polity there has to be participation of the weaker sections of the society, moreso, in a country like India where Scheduled Castes, Scheduled Tribes and women who have suffered for

centuries. The aforesaid submission has its own significance and import and that has been met with by the Parliament while making provisions for reservation. Once the seats are

reserved there can be no trace of doubt that the affirmative steps have been taken for progress and upliftment of the weaker sections of the society. The litmus test that is to be applied to

the provision is whether a further controlling tool in the hands of a particular number of a particular caste or tribe as well as woman is affirmative or necessary. An argument has been

advanced that unless such a provision is engrafted into the marrows of the Statute the aforesaid three categories would not come to the meetings and the democracy at the grassroot

level would remain a myth. The aforesaid argument at a first flush may sound attractive but on a deeper probe, greater scrutiny, subtle analysis and pregnant penetration would make it

a submission which has to face the founder but cannot form the foundation.â??

23. Much reliance has been placed on the office order dated 17.12.2018, which shows about the guidelines of transfer of contractual employees working at State Project

Office, District Project Offices and Block Level Offices under RTE-SSA, Odisha. The very opening paragraph of the said office order reads as under:-

â??Presently there is no transfer/deployment policy for the employees working at SPO, DPO, Block level under SSA. A large number of representations for transfer received from

different categories of contractual employees working at SPO, DPO and Block Level are pending and cannot be disposed of, in absence of a clear cut guideline in this regard. In the

36th meeting of Executive Committee of OPEPA held on 21.03.2018 this issue was discussed at length and decision was taken at item no. 11(2) to formulate a

Transfer/Deployment

Policy for the contractual employees under SSA.â??

On perusal of the above mentioned paragraph, it is made clear that no transfer/deployment policy for the employees working at SPO, DPO, Block Level under SSA and a

large number of representations for transfer received from different categories of â??contractual employeesâ? working at SPO, DPO and Block Level are pending and

cannot be disposed of in absence of a clear cut guidelines in that regard. In the proceedings of the 36th meeting of the Executive Committee of the OPEPA held on

21.03.2018, the above issue was discussed at length and the same was taken in clause no.11.2 to formulate transfer/deployment policy of the OPEPA employee. The

proceedings of 36th Executive Committee of the OPEPA held on 21.03.2018 has been placed on record as Annexure-4 to W.P.(C) No. 24671 of 2020. Clause-11.2, which deals with transfer policy of OPEPA employees, reads as under:-

â??11.2 Transfer policy of OPEPA employees.

As per OPEPA Service Rules & Regulations 1996, Rule-13 the directly engaged employees in the State Project Office shall be in a common cadre. The staff in all the district offices shall

form a separate cadre. The seniority in each group and category in a cadre shall be fixed according to their date of joining. It is felt that so many representations/recommendations have

been received from different corners regarding transfer of district/block employees engaged under RTE/SSA on personal/Health/Spouse Grounds etc.

This matter was discussed and decided to frame a transfer policy of State/Dist/Block level staff by a committee to be formed at State Level under the Chairmanship of SPD, OPEPA,

which will be placed before Govt. in S & ME Deptt. for approval.â??

24. The guidelines for transfer of contractual employees have been framed vide office order dated 17.12.2018 under Annexure-3 to W.P.(C) No.12584 of 2019. If the

very same opening paragraph, as mentioned above, would be read with clause-11.2 of the 36th meeting of Executive Committee held on 21.03.2018, it would be evident

that nowhere it has said about the transfer policy of the contractual employees under SSA. Clause-11.2 of the proceedings of 36th Executive Committee of the OPEPA

held on 21.03.2018 also does not speak about transfer policy of the contractual employees working under the OPEPA. Thereby, no reliance can be placed on such clause

of the proceedings of 36th Executive Committee of the OPEPA held on 21.03.2018, so far as transfer of the contractual employees is concerned.

25. Apart from the above, the 36th Executive Committee meeting of the OPEPA held on 21.03.2018 does not satisfy the requirement of forming a quorum as required

under clause-28 of the Memorandum of Association. Further, the list of members present in the 36th Executive Committee meeting held on 21.03.2018, which has been

placed as Annexure-A at page-57 of W.P.(C) No.24671 of 2020, shows about presence of ten members. If a close scrutiny would be made, it would be apparent that the

Labour Commissioner of Odisha, Director, Panchayatiraj & Drinking Water, Odisha and Dr. B.B. Acharya, Technical Consultant, Labour and ESI Department are not the

members, as enumerated under clause-21 of the Memorandum of Association. Otherwise also, out of 30 members, if ten are not present in the Executive Meeting, the

same lacks quorum. Thereby, any decision taken in an Executive Meeting, which lacks quorum, cannot be said to be a valid decision so that the same can be given effect

to. Consequentially, the reliance placed on the proceedings of 36th Executive Committee meeting of the OPEPA held on 21.03.2018, having lacked the quorum, the

decision so taken as per clause-11.2 of the said meeting to formulate transfer/deployment policy for the employees is hardly of any assistance to opposite party no.2.

Thereby, it can be safely stated that in absence of any guidelines for transfer of contractual employees of the OPEPA, the impugned orders of transfer cannot sustain in

the eye of law.

26. If the issue involved herein is considered from other angle, in absence of any provision contained in OPEPA Service Rules and Regulations, 1996 for transfer of

contractual employees read with so called guidelines issued on 17.12.2018 as well as the proceedings of the 36th Executive Committee meeting of the OPEPA held on

21.03.2018, which lacked quorum, the impugned orders of transfer passed by the authority concerned is without jurisdiction.

27. Butterworths Words and Phrases Legally Defined, Vol.3, at page-113, states succinctly "by jurisdiction is meant the authority which a Court has to decide matters

that are litigated before it or to take cognizance of matters presented in a formal way for its decision."

28. In Smt. Ujjam Bai v. State of U.P., AIR 1962 SC 1621, the apex Court held that "jurisdiction" is the power to hear and determine, it does not depend upon the

regularity of the exercise of that power or upon correctness of the decision pronounced, for the power to decide necessarily carries with it the power to decide wrongly as

well as rightly.

29. In Official Trustee West Bengal v. Sachindranath Chatterjee, AIR 1969 SC 823, the apex Court held that "jurisdiction" means the legal authority to administer

justice according to the means which the law has provided and subject to the limitations imposed by that law upon the judicial authority.

30. In Raja Soap Factory v. S.P. Shantharaj, AIR 1965 SC 1449, the apex Court held that "Jurisdiction" is meant the extent of the power which is conferred upon the

Court by its Constitution to try a proceeding.

31. In Hari Prasad Mulshanker Trivedi v. V.B. Raju, AIR 1973 SC 2602, the apex Court held that the word "jurisdiction" is an expression which is used in a variety of

senses and takes its colour from its context. Whereas the "pure" theory of jurisdiction would reduce jurisdictional control, to a vanishing point, the adoption of a narrower

meaning might result in a more useful legal concept even though the formal structure of law may lose something of its logical symmetry.

32. In A.R. Antulay v. R.S. Nayak, AIR 1988 SC 1531, the apex Court held that jurisdiction is the authority or power of the Court to deal with a matter and make an order

carrying binding force in the facts.

33. In *Harpal Singh v. State of Punjab*, (2007) 13 SCC 387, the apex Court held that "jurisdiction" means the authority or power to entertain, hear and

decide a case and to do justice in the case and determine the controversy. In absence of jurisdiction the Court has no power to hear and decide the matter and the order

passed by it would be a nullity.

34. Taking into consideration the above meaning of the jurisdiction and applying the same to the present context, it is made clear that in absence of any provision contained

in OPEPA Service Rules and Regulations, 1996 read with the guidelines dated 17.12.2018 and the decision taken in 36th Meeting of the Executive Committee of OPEPA

held on 21.03.2018 with regard to formulation of transfer/deployment policy as per clause-11.2 thereof, the impugned orders passed by the authority transferring the

petitioners, who are contractual employees, are without jurisdiction. Thereby, the order of transfer dated 17.07.2019 under Annexure-2 to W.P.(C) No.12584 of 2019 and

that of dated 17.07.2019 under Annexure-1 to W.P.(C) No. 24671 of 2020, as well as letter dated 23.09.2020 and order dated 21.09.2020 under Annexures-5 and 6 to the

W.P.(C) No.24671 of 2020 cannot sustain in the eye of law and are liable to be quashed and hereby quashed.

As opposite party no.2 is the employer, keeping in view the settled proposition of law, as discussed above, it is left open to the said authority to frame suitable

policy/guidelines for transfer of contractual employees of OPEPA/OSEPA by following due procedure as provided under law.

35. In the result, the writ petitions are allowed. However, there shall be no order as to costs.