
(2017) 12 OHC CK 0047

In the Orissa High Court

Case No : 18245 of 2017

Tuni Gouda

APPELLANT

Vs

State of Odisha & others

RESPONDENT

Date of Decision : 04-12-2017

Acts Referred:

Citation : (2017) 12 OHC CK 0047

Hon'ble Judges : Biswajit Mohanty

Bench : SINGLE BENCH

Advocate : Sameer Ku. Das, S.K. Mishra, P.K. Behera, Samal, Abhijit Das, S.K.Baral

Judgement

1. In this writ application, a Gana Sikshyaka questions the order of her transfer dated 20.7.2017 under Annexure-3 mainly on the ground that as per the decision of this Court in Hemanta Kumar Ghadei v. State of Odisha and others reported in 2016 (Suppl-I) OLR-1051 a Gana Sikshyaka cannot/should not be transferred. She has further prayed that the opposite parties be directed to allow her to continue in her original place of posting.

2. The case of the petitioner is that she was engaged as Gana Sikshyaka pursuant to the order dated 11.6.2008 passed by the opposite party no.2 vide Annexure-1. Accordingly, she joined the services on 13.6.2008 vide Annexure-2. While so working, pursuant to the order no.7935 dated 20.7.2017 of the District Education Officer, Dhenkanal she was transferred from Aluajharana Sevashrama to Sidhashram Primary School by the Block Education Officer, Kamakyanagar under Annexure-3. Pursuant to such transfer order she was relieved on 22.7.2017 to join at Sidhashram Primary School. As indicated earlier, she has filed the present writ application challenging the said order of transfer relying on Hemanta Kumar Ghadei's case (supra).

3. Counter affidavit has been filed by opposite party no.4 stating that such transfer has been done as per the rationalization guidelines of the Government

contained in Government of Odisha, Department of School and Mass Education Department order No. 10825/SME. Dt.17.6.2017 SME-EL1-Case2-0007-2017 issued by the Additional Secretary to Government, which forms part of Annexure-C/4 series. Relying on the said document, the Collector, Dhenkanal-cum-Chairman, D.L.T.C. has taken a decision under Annexure-A/4 series on 20.7.2017 to transfer the petitioner along with host of others and accordingly relying on such order of the Collector, Dhenkanal-cum-Chairman, D.L.T.C., the Block Education Officer, Kamakyanagar (opposite party no.4) has issued the impugned transfer order. Pursuant to such order, the petitioner has already joined Sidhashrama Primary School on 24.7.2017. Further, it is stated that since the process of regularization of Gana Sikshyaks as regular primary school teachers is at the final stage and since they would be regularized very soon with retrospective effect; therefore, the present status of the petitioner be taken to be regular teacher. In such background, it is contended in the counter that the impugned order of transfer does not suffer from any illegality. However, the counter does not contain any reply to the legal contention raised by the petitioner with regard to such transfer being illegal in the background of judgment of this Court rendered in Hemanta Kumar Ghadei's case (supra).

4. The learned counsel for the petitioner has filed a rejoinder stating therein that she has not suppressed anything but has disclosed in Paragraph-7 of the writ application that she has already been relieved and being a low paid employee and under the threat of termination of service, she has reported for duty without prejudice to her claim against the illegal transfer order. Further according to her, an order, which is bad from its inception is a nullity. Therefore, such transfer order is illegal.

5. Heard Mr. Sameer Kumar Das, learned counsel for the petitioner, Mr. Samal, learned Standing Counsel for School and Mass Education Department for opposite party nos.1 to 4 and Mr. Abhijit Das, learned counsel for opposite party no.5.

6. Mr. Das, learned counsel for the petitioner argued that the impugned order of transfer is legally vulnerable as this Court in Hemanta Kumar Ghadei's case (supra) on 29.3.2016 relying on Clause-3 of the Circular dated 18.5.2013 of the Government of Odisha in School and Mass Education Department addressed to all Collectors-cum-CEOs, Zilla Parishads with regard to Rationalization of Elementary Teachers/Zilla Parishad Teachers/Shikshya Sahayaks/Gana Sikshyaks has clearly held that transfer of Gana Shikshyak is impermissible. He submitted that the Clause-3 of the above circular makes it clear that though in few districts Gana Sikhyakas/Sikhya Sahayakas have been transferred, however transfer of these category of teachers is highly objectionable. He further submitted that in the entire counter affidavit there exists no reply vis-avis the legal contention raised by the petitioner at Para-6 of the writ application relying on Hemanta Kumar Ghadei's case (supra).

7. Mr. Samal, learned Standing Counsel for School and Mass Education

Department on the other hand contended that since the process of the regularization of Gana Sikhyaks as regular primary school teachers is at the final stage and since they would be regularized very soon as Primacy School Teachers, the status of the petitioner may be considered as a regular teacher and accordingly, relying on the Government of Odisha, Department of School and Mass Education order No. 10825/SME. Dt.17.6.2017 SME-EL1-Case2-0007-2017 submitted that the impugned order has been correctly passed. He also submitted that the petitioner should not be given any relief as she has suppressed the fact of her joining the school to which she was transferred on 24.7.2017.

8. Mr. Das, learned counsel for opposite party no.5 reiterated the submissions made by Mr. Samal, learned Standing Counsel for School and Mass Education Department.

9. Mr. S.K. Das, learned counsel for the petitioner in his reply submitted that the petitioner has clearly mentioned in the writ application that pursuant to the order of transfer dated 20.7.2017 under Annexure-3, she was relieved by the authorities and the factum of such relieve has been indicated by the petitioner at Paras-4 and 7 of the writ application. With regard to the submission of the learned counsel for the opposite parties that the petitioner has suppressed the factum of her joining prior to filing of the writ application, Mr. Das submitted that the petitioner was forced to join under the threat of termination of service and accordingly she has joined without prejudice to her claim vis-a-vis the illegal transfer order, which clearly runs contrary to the decision rendered by this Court in Hemanta Kumar Ghadei's case (supra).

10. In this case admittedly the petitioner has been working as a Gana Sikhyak since 2008 and also admittedly she has not yet been made a regular Elementary Teacher. In such background, the latest guidelines for Rationalization of the posting of Elementary Teachers as contained in Government of Odisha, Department of School and Mass Education Letter No. 10825/SME. Dt.17.6.2017 SME-EL1-Case2-0007-2017 dealing with rationalization of Elementary Teachers have no application to Gana Sikhyaks, who are yet to be regularized as Elementary Teachers. The very fact that a plea has been taken in the counter that though not yet regularized as Primary School Teacher, however since the process of regularization of Gana Sikhyas as primary school teachers is on and since they would be regularized with retrospective effect and therefore, the petitioner should be treated as regular teacher only shows desperation of the officials to somehow defend the order of transfer. This itself shows that the opposite parties knew petty well that unless made regular, a Gana Sikhyak cannot be transferred. Here admittedly, the petitioner is yet to be made a regular teacher. A perusal of office order dated 20.7.2017 issued as per order of the Collector, Dhenkanal-cum-Chairman, D.L.T.C. under Annexure-A/4 series shows that the transfer order of the petitioner has been issued pursuant to the above noted guidelines as contained in letter dated 17.6.2017 of the Government of Odisha, Department of School and Mass Education. Since the above noted

guidelines as indicated earlier are not applicable to Gana Sikhyaks, who are not Elementary Teachers yet, the office order dated 20.7.2017 passed by the Collector, Dhenkna-cum- Chairman, D.L.T.C. relying on the same is clearly a result of mala fide exercise of power. Since the order of transfer under Annexure-3 flows from such order of the Collector dated 20.7.2017, accordingly, the same also becomes legally vulnerable. It is important to note here that even in the engagement order under Annexure-1 at Sl.No.10, it has been clearly mentioned that the engagement of petitioner at Aluajharana Sevashrama is not transferable. Further, it may be noted here that the opposite parties have not disputed the applicability of the judgment of this Court in Hemanta Kumar Ghadei's case (supra) to the present case. For all these reasons, the impugned transfer order no doubt is legally vulnerable.

11. Now coming to the question of suppression of certain facts by the petitioner and their impact on the present case. It is true that the petitioner in her writ application has not disclosed the fact that she had joined the new place of posting on 24.7.2017. Further, in the rejoinder though she has stated that she reported for duty without prejudice to her claim vis-a-vis the illegal transfer order, however, a perusal of the joining report under Annexure-E/4 series does not reflect the same. Therefore, such statement is an incorrect one. But her statement in the rejoinder that she was forced to report for duty under the threat of termination of her service has remained undisputed. Besides there exists no prohibition to challenge the order of transfer even after joining the new place of posting. In the instant case as indicated earlier, there remains no doubt that transfer of Gana Sikhyaka was/is legally impermissible. In such background, taking a holistic and lenient view of the matter, while cautioning the petitioner for the above noted lapses, this Court allows the writ application and quashes the impugned order of transfer under Annexure-3 with a direction that she should be allowed to continue at Aluajharana Sevashrama as before.