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IN THE HIGH COURT OF ORISSA, CUTTACK

W.P.(C) No.7793 of 2016

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Mahemmed Samsuddin Petitioner

-Versus-

State of Odisha & others Opp. Parties

For Petitioner : Mrs. D. Sahoo, Advocate

For Opp. Party Nos.1 to 4: Mr. G. Rout, A.S.C.

For Opp. Party No.5 : None

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CORAM: JUSTICE SANJAY KUMAR MISHRA

JUDGMENT

14.12.2022

S.K. MISHRA,J.

1. The Petitioner, who was engaged as Stenographer through the Opposite Party No.5-Agency (M/s. J.S.R. Engineers, Bhubaneswar) on outsourcing basis and working as such in the Office of the Chief District Medical Officer,

Nayagarh (Opposite Party No.3) has filed the Writ Petition with a prayer to quash the letter dated 29.03.2016, as at Annexure-9 issued by the Opposite Party No.3 addressed to the Opposite Party No.5 by which, a request was made to disengage him from the post of Stenographer with immediate effect. A further prayer has been made to allow him to continue in the said post and direct the Opposite Parties to disburse his legitimate unpaid remuneration.

2. The factual matrix of the case at hand is that pursuant to Finance Department Circular dated 29.11.2010, the Opposite Party No.1 issued instruction to fill up posts in different districts. Accordingly, the Opposite Party No.3 floated Tender Call Notice dated 02.10.2013 inviting the Manpower Agencies/Service Providers for engagement of Jr. Stenographer and other posts on daily wage basis for a period of one year. Pursuant to such Tender Call Notice, the Opposite Party No.5-M/s. J.S.R. Engineers, Bhubaneswar was selected as the successful Service Provider Agency. Thereafter, the Opposite Party No.5, following the due process, selected the Petitioner for the post of Jr. Stenographer. Accordingly, engagement letter dated

03.02.2014 was issued by Opposite Party No.5. On the basis of the said engagement letter, the Petitioner joined as Jr. Stenographer in the Office of the Chief District Medical Officer, Nayagarh on 06.02.2014. Though the Petitioner was working in the said post continuously however, his legitimate remuneration was not paid to him. Thereafter the petitioner gave representations as at Annexure-10 series, before Opposite Party No.3 for payment of his remuneration. It is further case of the petitioner that though the Opposite Party No.3 sent a letter dated 04.08.2014, as at Annexure-6, to the Director of Health Services, Odisha, Bhubaneswar (Opposite Party No.2) for placement of funds for payment of dues of the petitioner, but it was not paid to him.

3. Ultimately, the Opposite Party No.3 issued a letter dated 29.03.2016, as at Annexure-9 to the Opposite Party No.5 (Service Provider) to disengage the petitioner from his post.

4. Being aggrieved by the said communication, so also because of non-payment of his remuneration, the Petitioner has approached this Court with the prayer as detailed above.

5. Being noticed, the Opposite Party No.3 has filed the Counter Affidavit indicating therein that the Petitioner is not a contractual appointee i.e. Jr. Stenographer, in the Office of the Chief District Medical Officer, Nayagarh and it has no nexus with his engagement as he was engaged through an outsourcing agency (Service Provider) namely M/s. J.S.R Engineers, Bhubaneswar. It has further been averred in the Counter Affidavit that the Opposite Party No.3 is no way related with the selection, assignment of work, execution of agreement and engagement of the personnel provided by the Manpower Agency/Service Provider and the payment of remuneration and disengagement of the Petitioner is the sole responsibility and within the domain of the Service Provider, who had provided service to the Office of the Opposite Party No.3. It has further been stated that there is no employer-employee relationship between the Opposite Party No.3 and the Petitioner. Further, it has been averred in the Counter Affidavit that the Petitioner never worked against any contractual post and as such, the Contractual Appointment Rules, 2013, introduced by the Finance Department of the Government of Odisha, is not applicable to him so also

similarly situated persons, those who are engaged thorough Service Provider Agencies. So far as the unpaid remuneration is concerned, it has been stated that the Opposite Party No.3 has nothing to do with regard to the issue regarding non-payment of salary/wages to the Petitioner as he was never engaged by the Opposite Party No.3 at any point of time.

6. During hearing of the present case on 09.09.2022, in view of the documents appended to the Additional Affidavit filed by the Petitioner, learned Counsel for the State prayed for time to take instruction as to whether the Opposite Party No.5-M/s. J.S.R Engineers has been paid all the dues for the contractual services provided by it for the relevant period, including the unpaid salary of the Petitioner for engaging him as “Junior Stenographer” in the Office of the C.D.M.O., Nayagarh in terms of the said recommendation made by the authority concerned. Pursuant to the order dated 09.09.2022, learned Counsel for the State has produced before this Court the photo copies of the letter dated 18.10.2022 of the Chief District Medical & Public Health Officer, Nayagarh addressed to the learned Advocate General, Odisha, Cuttack, so also letter dated 16.09.2022 addressed to the Director Health

Services, Odisha, Bhubaneswar. On the basis of the said documents, this Court passed an Order on 26.10.2022 for payment of unpaid monthly remuneration to the Petitioner, the relevant paragraphs of which, are extracted below:

“3. It is well revealed from the said communications produced before this Court that the Petitioner, who was engaged by M/s JSR Engineers, Bhubaneswar, to work as “Junior Stenographer”, has not been paid his monthly remuneration from the date of his joining i.e. 06.02.2014, till the date of his disengagement i.e. 29.06.2016, and the Chief District Medical & Public Health Officer, Nayagarh, has made a request to the Director Health Services, Odisha, Bhubaneswar, vide his letter dated 16.09.2022 to make necessary fund provision towards payment to M/s JSR Engineers towards monthly remuneration of Junior Stenographer for the said period a sum of Rs.1,97,876/-.

4. Learned Counsel for the State prays for two weeks time to expedite the said process and ensure payment of unpaid monthly remuneration to the Petitioner in terms of the letter dated 16.09.2022 of the Chief District Medical & Public Health Officer, Nayagarh, addressed to the Director Health Services, Odisha, Bhubaneswar, which is allowed.

5. Needless to mention here that if the learned Counsel for the State fails to ensure payment of unpaid salary to the Petitioner in terms of the communications

made by the Chief District Medical and Public Health officer, Nayagarh, vide letters dated 18.10.2022 and dated 16.09.2022 and file compliance Affidavit to the said effect, the Director Health Services, Odisha, Bhubaneswar will remain present personally before this Court on the next date of listing to explain the reasons for non-disbursement of the said unpaid salary to the Petitioner in terms of the communications made by the Chief District Medical & Public Health Officer, Nayagarh.

6. Matter be listed on 28.11.2022.

7. A free copy of this Order be handed over to Mr. G. Rout, learned Addl. Standing Counsel, for compliance.”

7. Though this matter was listed on 28.11.2022, due to want to time, the same could not be taken up. However, today learned Counsel for the Petitioner fairly submits before this Court that in terms of the Order passed by this Court on 26.10.2022, the Petitioner has already been paid all his unpaid dues for the period from 06.02.2014 till 29.06.2016.

8. Heard Ms. D. Sahoo, learned Counsel for the Petitioner, so also Mr. G. Rout, learned Additional Standing Counsel for the State. None appears for Opposite Party No.5.

9. Learned Counsel for the State further submits that the Petitioner was engaged as Stenographer in a vacant post

as stop gap arrangement for a short period through the Service Provider and in the meantime, the said post has already been filled up by way of regular recruitment on permanent basis.

10. In view of such submissions made by the learned Counsel for the parties, since the prayer made in the Writ Petition with regard to unpaid salary has already been complied with by the authority concerned and the said post of Stenographer has been filled up in the meantime, this Court is of the view that the impugned communication dated 29.03.2016, as at Annexure-9, vide which request was made by the Chief District Medical Officer, Nayagarh (Opposite Party No.3) to the Opposite Party No.5-Service Provider to disengage the Petitioner needs no interference.

11. With regard to the non-payment of wages/salary of the Petitioner, it was paid to the Petitioner recently in view of the order passed by this Court on 26.10.2022. It is pertinent to mention here that the Opposite Party No.3 falls under the definition of “principal employer” as defined under Section 2(g) of the Contract Labour (Regulation and Abolition) Act, 1970 (in short “CLRA Act, 1970”) and the Opposite Party

No.5-establishment comes under the definition of “contractor” as defined under Section 2(c) of the said Act, 1970, which are extracted below:

“2. (c) “contractor”, in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods of articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor;

*(g) “principal employer” means— (i) **in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the Government or the local authority, as the case may be, may specify in this behalf,***

XXX XXX XXX”

(emphasis supplied)

Similarly, Section 21 of the said Act deals with the responsibility of payment of wages and more particularly, Sub-Section (4) in the said Section 21 prescribes that in case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so

paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor. For ready reference, Section 21 is extracted below:

“21. Responsibility for payment of wages.—(1) *A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.*

(2) *Every principal employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.*

(3) *It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorised representative of the principal employer.*

(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.”

(emphasis supplied)

12. Similarly Sub-Section-vi of Section 2 of the Payment of Wages Act, 1936 defines “wages” which is extracted below.

“(vi) “wages” means all remuneration (whether by way of salary, allowances, or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes-

(a) any remuneration payable under any award or settlement between the parties or order of a Court;

(b) any remuneration to which the person employed is entitled in respect of overtime work of holidays or any leave period;

(c) and additional remuneration payable under the terms of employment (whether called a bonus or by any other name);

(d) Any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within the payment is to be made;

(e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force,

but does not include-

(1) any bonus (whether under a scheme of profit-sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court;

(2) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of [the appropriate Government];

(3) any contribution paid to the employer to any pension or provident fund, and the interest which may have accrued thereon;

(4) any travelling allowance or the value of any travelling concession;

(5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or

(6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d)”

Section-3 of the Payment of Wages Act, 1936 prescribes the responsibility for payment of wages which reads as follows.

“3. Responsibility for payment of wages-(1)

Every employer shall be responsible for the payment of

all wages required to be paid under this Act to persons employed by him and in case of persons employed,-

(a) in factories, if a person has been named as the manager of the factory under clause (f) of sub-section (1) of section 7 of the factories Act, 1948 (63 of 1948);

(b) in industrial or other establishment, if there is a person responsible to the employer for the supervision and control of the industrial or other establishment;

(c) upon railways (other than in factories), if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned;

(d) in the case of contractor, a person designated by such contractor who is directly under his charge; and

(e) in any other case, a person designated by the employer as a person responsible for complying with the provisions of the Act, the person so named, the person responsible to the employer, the person so nominated or the person so designated, as the case may be, shall be responsible for such payment.

(2) Notwithstanding anything contained in sub-section (1), it shall be the responsibility of the employer to make payment of all wages required to be made under this Act in case the contractor or the person designated by the employer fails to make such payment."

(emphasis supplied)

13. It is amply clear from the aforesaid provisions enshrined under the CLRA Act, 1970, so also Payment of Wages Act, 1936 as quoted above, it was obligatory on the part

of the Opposite Party No.3 to ensure payment of wages to the Petitioner by the Opposite Party No.5 and ask for indemnification of said amount from the bill of the contractor in terms of Sub-Section (4) of Section 21 of the CLRA Act, 1970. However, in the present case, letter filed by the Opposite Party No.2 dated 14.11.2022, annexed to the compliance affidavit filed on 24.11.2022 as annexure-A/2, so also other documents annexed to the Additional Affidavit filed by the petitioner on 05.12.2022 well demonstrate that the wages payable to the Petitioner was never disbursed in favour of Opposite Party No.5, who was the immediate employer (contractor) of the Petitioner for which, the Opposite Party No.5 could not disburse the salary/wage of the Petitioner in time and the Petitioner was being compelled to approach this Court in form of present Writ Petition for realization of his unpaid salary, so also for other reliefs as detailed in the Writ Petition. Hence, to mitigate the hardship caused to the Petitioner because of non-payment of his salary for the period from 06.02.2014 till 29.06.2016, so also because of the pecuniary loss caused to him for such delayed payment, which was recently paid to the Petitioner in view of Order

dated 26.10.2022 passed by this Court, it being obligatory on the part of the Opposite Party No.3 to ensure payment of salary to the Petitioner by the Opposite Party No.5 in terms of Section 21(4) of the Contract Labour (Regulation and Abolition) Act, 1970, so also in terms of Section 3(2) of the Payment of Wages Act, 1936, the Opposite Party No.3 is directed to pay interest @10% per annum on the said unpaid salary of Rs.1,97,876/- for the period from 29.06.2016 till the date of actual payment made to the Petitioner within a period of two months from the date of communication of the certified copy of this Judgment.

14. Accordingly, the Writ Petition stands disposed of.
No order as to costs.



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S.K. MISHRA, J.

Orissa High Court, Cuttack

The 14th December, 2022 /Prasant