

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.9999 of 2021

Nirupama Bal

....

Petitioner

Mr. S.K. Das, Advocate

-versus-

State of Odisha and others

.... ***Opposite Parties***

Mr. Karunakar Das, ASC

Mr. B.P. Pradhan, Advocate
(for opposite party no.5)

CORAM: JUSTICE S.K. PANIGRAHI

Order

15.02.2022

Order No.

3. 1. This matter is taken up through hybrid mode.
2. Heard Mr. S. Das, learned counsel for the petitioner, Mr. Karunakar Das, learned Addl. Standing Counsel and Mr. B.P. Pradhan, learned counsel for the opposite party No.5.
3. In this writ petition, the petitioner challenges the legality of the transfer order issued by the opposite party No.2, on the ground that opposite party No.2 did not have the jurisdiction to maintain such an order. The petitioner was an employee of Women's Higher Secondary School. Patamundai. The said college falls under the aegis of Director, Higher Secondary Education, Odisha, Bhubaneswar, thereby making him the competent authority to pass transfer orders against the petitioner. Learned counsel for the petitioner submits that the order dated 10.03.2021 issued by the

Department of Higher Secondary Education, Government of Odisha indicates the name of the petitioner at Sl No.14, Annexure-3. As per the notification dated 24.05.2016, the Government decided to bring Women's Higher Secondary School Patamundai under the administrative control of the School and Mass Education Department, Odisha from the academic session 2016-2017, by creating a separate Directorate of Higher Secondary Education. Accordingly, the Directorate of Higher Secondary Education is the competent authority to issue transfer order in favour of the petitioner. The present petitioner is an employee of Junior College.

4. Learned counsel for the petitioner submits that the case of the petitioner is squarely covered by an order dated 04.12.2018 passed by the Division Bench of this Court in W.A. No.183/2018 (**Binod Kumar Jena vs. State of Odisha and others**), which is not disputed by the learned counsel for the State.

5. Learned counsel for the opposite party No.5 draws attention of the Court to the corrigendum dated 21.01.2019 in Annexure-8 issued by the Department of School and Mass Education, Odisha, Bhubaneswar, which reads as follows:

“After careful consideration Government have been pleased to modify the Para-4 of Notification No.20419 dated 06.10.2016 of S & ME Department where in the Director, Higher Secondary Education has been declared as the Cadre Controlling authority of all staff of Higher Secondary Schools and substitute in para-4 of the following words-

“ The Director, Higher Secondary will be the cadre controlling authority in respect of the post Graduate Teachers (PGT) and all Non-teaching Staff to be recruited by the School and Mass Education Department and be posted in Higher Secondary Schools. The Director Higher Education will continue as the Cadre Controlling Authority of all Teaching and Non-teaching staff who are working on deployment basis in Higher Secondary Schools under S & ME Department. The Higher Secondary Schools under the S & ME Department. The Education Department/Director, Higher Education will look after all Service matters like Transfer and Posting, Promotion, Pension, Pay Fixation, Court Cases, arrear payment etc. in respect of all deployed teaching and Non-Teaching staff working under deployment from the Higher Education Department”.

Order- Order that this Notification be published in an extra ordinary issue of Orissa Gazette.

6. Learned counsel for the petitioner brought to the attention of the Court to the corrigendum issued by the Department of Higher Education, Odisha on 22.04.2017, which reads as follows:

“ All the teaching staff appointed under Orissa Education Service in State’s Scale Pay (Method of Recruitment and Conditions of Service) Rules, 2009 and Orissa Education Service (College Branch) Rules, 1990, presently working in Government Junior Colleges shall be deemed to be on deployment to School and Mass Education Department for a period of year initially. Simultaneously School and Mass Education Department shall create a number of PGT posts against the current sanctioned strength of 1,023 Junior Lecturers take steps for their recruitment within a year. Upon the joining of new recruits after recruitment process, the Junior/Degree

Lecturers working on deployment to School Mass Education Department shall get reverted to Higher Education Department to against the existing vacancies in Degree Colleges.”

All other conditions as mentioned in the above Department Notification No.12493 dtd. 24.05.2016 remains unaltered.”

7. Learned counsel for the petitioner further places reliance the Notification dated 06.10.2016 issued by the Department of School and Mass Education pertaining to the creation of Directorate of Higher Secondary Education to manage higher secondary schools including +2 colleges.

8. So, in view of the Notification and corrigendum referred to, it is clear that the Directorate, Higher Secondary Education is the cadre controlling authority with respect to transfer of the present petitioner. In view of such facts, he further invited this Court’s attention to Rule 6, Chapter-II of the Odisha Aided Educational Institutions Employees’s Common Cadre and Inter-transferability Rules, 1979, which reads as follows:

“6. Power to transfer- (1) The Director shall have the power to transfer employees of the common cadre in the case of Colleges. The Inspector in the case of High Schools and the District Inspector in respect of Middle English Schools shall have the power to transfer employee in the common cadre from the institution to another within the jurisdiction.

(2) The Director shall have the power to transfer employees in the common cadre from one

educational circle to another in respect of employees serving in High Schools and the Inspector, one educational district to other within his circle in case of employees serving of Middle English Schools.

(3) No employee who has not completed five years of the service in a particular institution shall be ordinarily transferred:

[(4) The authorities empowered to make transfer under Sub-rules (1)(2) shall be the disciplinary authorities in respective cases during the period intervening the date of relief and date of joining].”

9. In view of the facts and submissions, the Director shall have the power to transfer employees in the common cadre reiterating the same sentiment of notification of the above corrigendum. The Director, Higher Education is the controlling authority to transfer of service matters in view of Annexure-8.

10. The stand of the opposite party Nos. 1 to 3 is that while separating the Junior Colleges (+2 wing) (now called as Higher Secondary Schools) from Degree Colleges (+3 wing) and bring them under the administrative control of School and Mass Education Department a Notification bearing No.12493/HE, dtd. 24.05.2016, the following stipulations were made :

“All the teaching staff including Junior and Degree Lecturers presently working in Junior Colleges shall be deemed to be on deployment to School and Mass education Department for a period of one year initially. Simultaneously School and Mass

Education Department shall create equal number PGT posts against current sanctioned strength of 1023 Junior Lecturers and take steps for their Recruitment within a year. Upon the joining of new recruits after due recruitment process, the Junior/ Degree Lecturers working on deployment to School and Mass Education Department shall get reverted to Higher Education Department to work against the existing vacancies in Degree Colleges."

11. Furthermore, according to the corrigendum bearing No. 1583/SME, dtd. 1.01.2019 , issued by School and Mass Education Department it was indicated that the Director, Higher Education will continue as the cadre controlling authority of all teaching and non teaching staff who are working on deployment basis in Higher Secondary Schools under School and Mass Education Department. Further, it has been clarified therein that the Higher Education Department/ Director, Higher Education will look after all service matters like transfer and posting, promotion, pension pay fixation in respect of all deployed teaching and non-teaching staff working under deployment in School and Mass Education Department from Higher Education Department.

12. Mr. B.P. Pradhan, learned counsel for the opposite party No.5 submits that the Director, Higher Secondary Education is the cadre controlling authority of all teaching and non-teaching staff who are working on deployment basis in Higher Secondary Schools under S and M.E. Department and the petitioner should have challenged the corrigendum issued in Annexure-8 for which the relief sought by the petitioner cannot be heeded to.

13. In view of the aforesaid discussion, it is clear that the Director, Higher Education is the cadre controlling authority. Hence, he has the power to transfer the petitioner.

14. In view of such facts, this Court sets aside the transfer order dated 10.03.2021 under Annexure-3 so far it relates to the present petitioner.

15. The writ petition is accordingly disposed of.

Urgent certified copy of this order be granted as per rules.

