

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P(C) No.8457 of 2022

Ashalata Sahoo

....

Petitioner(s)

Smt. K. Patra,
Advocate

-versus-

***Secretary, Women and Child Welfare
Deptt., BBSR & Ors.***

....

Opposite Party(s)

Mr. R.P. Mohapatra,
Addl. Govt. Adv.

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
05.05.2022**

Order No.

02.

1. On consent of the parties this matter is taken up for final hearing. Heard the submissions of Smt. K. Patra, learned counsel for the Petitioner and Mr. R.P. Mohapatra, learned Additional Government Advocate.
2. The claim of the Petitioner in this writ petition is based on the development through the order at Annexure-2.
3. Background involved in this case is that the Petitioner had placed her vehicle for use of the C.D.P.O, Tigiria in ICDS programme w.e.f. 1.08.2013 on hiring basis by fixing the fuel consumption limit to 12K.Ms./per liter and also fixing the charges per month to a sum of Rs.14,500/- and the vehicle was accordingly used from 1.08.2013 to 31.03.2014 and on further reengagement the vehicle was retained from 10.10.2013 to 21.03.2015 on the same slab of hiring charges. It appears, there is some overlapping period. Copy of agreement is at

Annexure-1. It is on the basis of the agreement at Annexure-1 and after expiry of the period and use of the vehicle involved gets over, since the Petitioner was not paid with the decided amount even in terms of the agreement, the Petitioner was constrained to make a request to the competent authority for taking appropriate decision in the matter of release of appropriate amount. Finding no attention to the grievance of the Petitioner by the competent authority, the Petitioner was constrained to approach this Court through W.P.(C) No.4396 of 2016. This writ petition came to be disposed of on 18.04.2016 with a direction to the competent authority to take a final decision on the representation of the Petitioner-Smt. Ashalata Sahoo. As a consequence the matter was taken up by the competent authority and the competent authority by its order dated 27.05.2016 while coming to specifically observe that the Petitioner is entitled to the payment under the bill for the period from 6.08.2013 to 5.09.2013, however also observed that the amount under the bill for the period from 6.08.2013 to 5.09.2013 will be reimbursed from the funds available under the Mobility support head and so far as the bills for utilization of the vehicle from 10.10.2013 to 21.03.2014 are concerned, the authority has come to observe that the C.D.P.O, Tigiria is responsible for utilization of the vehicle for this period. It was further directed therein that the hiring charges as well as fuel consumption charges for the period from 10.10.2013 to 31.03.2014 shall be recovered from Smt. Mamata Mishra, Ex-C.D.P.O., Tigiria for the purpose of payment to the Petitioner. It is alleged that even though the substantial period was over, no proceeding was undertaken for realization of the amount involved from Smt. Mamata Mishra, Ex-C.D.P.O, Tigiria and as a consequence, no payment is made to the Petitioner.

It is, in the circumstance, Smt. Patra, learned counsel for the Petitioner claimed that once there is already determination of the entitlement of the Petitioner, there should not have been any single day delay in making over payment to the Petitioner and there is unnecessary detention of the payment of the Petitioner.

4. Mr. Mohapatra, learned State Counsel in his opposition reading through the observation of the competent authority submitted that though there is no dispute with regard to the entitlement of the Petitioner as observed by the public authority in the communication dated 27.08.2016 and there was no difficulty in making over the payment for the period from 6.08.2013 to 5.09.2013 in terms of the bill for there is scope of reimbursement from the funds available under the Mobility support head, but so far as the other entitlements are concerned being observed by the public authority, unless such amount is recovered from Smt. Mamata Mishra, Ex-C.D.P.O, Tigriria, there is no scope of payment. Mr. Mohapatra, learned State Counsel, therefore, opposed the whole claim of the Petitioner. Mr. Mohapatra, learned State Counsel is, however, unable to bring to the notice of this Court the aspect of recovery of the amount from Smt. Mamata Mishra, Ex-C.D.P.O, Tigriria.

5. Considering the rival contentions of the parties, this Court finds, undisputedly the Petitioner is approaching the High Court repeatedly. This is the second round of litigation by the Petitioner. There is serious allegation of non-discharging of responsibility by the public authority even after engaging the vehicle of the Petitioner for such a huge period under an agreement. This Court finds, the public authority in taking a decision on the grievance of the Petitioner and basing on disposal direction of this Court in W.P.(C) No.4396 of 2016, has come to observe in paragraph no.8 as follows:

“8. It is observed from the above that the submission of bill at a time for 8 months on 2.06.2014 by the owner is not justified. But so far as payment is concerned, it is the duty of the C.D.P.O. to release the funds within 15 days from the date of receipt of bills or basing on the availability of funds, as enumerated in Clause 8 of the agreement.

Taking all these aspects into consideration, it is clearly established that Smt. Mamata Mishra, Ex-C.D.P.O., Athgarh has engaged the vehicle on hire basis for mobility support to lady supervisors without obtaining approval of higher authorities as well as non-availability of funds under the above head. She has called for quotation, finalized the single quotation and again dis-engaged the same in the month of September, 2013 on the ground of non-availability of funds. The vehicle was further re-engaged on 10.10.2013, when there was also insufficient funds under the above head. It is seen from the above table that the vehicle was utilised only for minimum 4 days to maximum 14 days in a month. Keeping the vehicle for hiring on monthly basis, is nothing but the wastage of government money. However, the bill for the period from 6.8.2013 to 5.9.2013 will be reimbursed from the funds available under Mobility support head. Smt. Mishra, Ex-C.D.P.O., Tigriria has no authority to re-engage the vehicle without observing the prescribed formalities and without obtaining approval of the Chairman-cum-Sub-Collector, Athagarh. In the instant case Smt. Mishra has re-engaged the vehicle as per his sweet will as revealed from the log book. Hence, she is squarely responsible for the utilization of vehicle from 10.10.2013 to 21.03.2014. The hiring charges and the fuel consumption from 6.8.2013 to 5.9.2013 shall be paid by the C.D.P.O., Tigriria immediately from the funds available with her. Since Smt. Mamata Mishra has re-engaged the vehicle without following the procedure and without re-engagement order, the hiring charges as well as fuel consumption charges for the period from 10.10.2013 to 31.3.2014 shall be recovered from Smt. Mamata Mishra, Ex-C.D.P.O., Tigriria and payment be made to the vehicle owner.

The representation of Smt. Ashalata Sahoo is disposed off accordingly.”

6. This Court here finds, there is no dispute with regard to the entitlement of the Petitioner firstly for the period from 6.08.2013 to 5.09.2013 & secondly from 10.10.2013 to 21.03.2015 as clearly observed by the Public Officer in the order at Annexure-2. For the observation of the authority, this Court finds, payment of the Petitioner for the period from 6.08.2013 to 5.09.2013 has absolutely no obstruction and the amount involved was to be released from their own funds. Secondly payment from 10.10.2013 to 21.03.2015, if at all

made, is dependent on realization and the Department ought to have initiated appropriate proceeding involving the realization involved, which it has not undertaken. This Court further observes, once an entitlement is ascertained by the Public Authority with clear indication admitting entitlements of the Petitioner, the amount involved should have been made over to the Petitioner within a reasonable period. It is unfortunate to note here that the Petitioner finding no response even in spite of the observation of the Public Authority in this regard; is constrained to file writ petition seeking direction from this Court. This Court finds surprise as to no initiation of recovery proceeding against Smt. Mamata Mishra, Ex-C.D.P.O, Tigriria in spite of such clear recording by the Public Authority. Since the Petitioner is already held to be entitled with the dues for the aforesaid period, the admitted dues following the direction in the order at Annexure-2 dated 27.05.2016 shall be released in favour of the Petitioner within a period of three weeks from the date of communication of an authenticated copy of this order by the Petitioner. Since there is inordinate delay in making payment to the Petitioner in spite of determination of the same by the Public Authority, the Petitioner will also be entitled to interest at the rate of 5% per annum althrough. It is further directed that if the State Authorities find, there is loss to the State on account of interest and/or otherwise, it would be open to the State Authorities for proceeding to recover such amount form the salary of all such public Officers involved therein but after providing opportunity to the persons likely to be affected.

7. The writ petition stands disposed of with the above direction.

8. Free copy of this order be provided to Mr. R.P. Mohapatra, learned Additional Government Advocate.

(Biswanath Rath)
Judge

Ayaskanta Jena

