

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.C. No.27250 of 2021**

(In the matter of an application under Articles 226 and 227 of the Constitution of India, 1950).

*Prabhamai Nayak*

....

*Petitioner*

*-versus-*

*State of Odisha and Ors.*

....

*Opp. Parties*

***Advocates appeared in the case:***

*For Petitioner*

:

*Mr. Santosh Kumar Swain, Adv.*

*-versus-*

*For Opp. Parties*

:

*Mr. R.K. Samal, SC  
(for S & ME Deptt.)*

**CORAM:**

**DR. JUSTICE S.K. PANIGRAHI**

**DATE OF HEARING:-05.09.2022**

**DATE OF JUDGMENT:-13.09.2022**

**Dr. S.K. Panigrahi, J.**

1. In the present Writ Petition, the Petitioner has assailed the order dated 19.02.2021 with regard to recovery/refund of non-spent civil grant released for construction of 8<sup>th</sup> ACR Building of

the Bisinabar Project U.P. School under the Cuttack Municipal Corporation between the year 2011-2012.

2. The case, in a nutshell, the Petitioner was appointed as an Assistant Teacher in 1985 by the then District Inspector of Schools, Cuttack and was subsequently transferred to the Cuttack Municipality Corporation. In her long tenure as a teacher, spanning over 35 years, the petitioner was finally promoted to the post of Level III – Headmistress, from which post she retired on 30.06.2020 upon achieving the age of superannuation.
3. When the petitioner was posted as a Level IV – Headmistress, she was transferred to Bisinabar Project U.P. School under the Cuttack Municipal Corporation. During her tenure as a Headmistress in the said school, in 2011, the District Project Officer issued a letter directing the Headmistress and the School Managing Committee to construct the 8<sup>th</sup> ACR Building of the Bisinabar Project U.P. School. Accordingly, the said construction was discussed and approved by the School Managing Committee under the able guidance of a Senior Technical Consultant and a Technical Consultant. Work began and the present petitioner was instructed to submit all bills and vouchers to the Office of the Samagra Sikhya Abhijan, Cuttack. In consultation with the technical consultants, the petitioner completed the construction in due time.

4. From time to time, money was sanctioned and released through the Bank Account of the School and forwarded by the petitioner to the necessary vendors after approval of the School Managing Committee. Work was completed during the year 2011-2012 and a final completion certificate was submitted in the same year. It is pertinent to note that a total amount of Rs. 3,97,000/- was sanctioned, however, actual expenditure of Rs. 4,69,041.58/- was incurred which was explained in full details in the completion certificate of the construction alongwith the cause for such excess.
5. Subsequently, the Petitioner was promoted and transferred to various schools and finally retired as Level III- Headmistress at USBP Government U.P. School, Khannagar under the Cuttack Municipality Corporation on 30.6.2020 upon reaching the age of superannuation.
6. Mere months prior to her retirement, after a lapse of almost 8 years, the petitioner was issued a letter on 15.10.2019 seeking refund of Rs. 29,767/- of unspent civil grant released for construction of the 8<sup>th</sup> ACR Building of the Bisinabar Project U.P. School. The Petitioner replied to the same immediately on 23.10.2019 seeking a prayer for recalculation of the amount spent on the construction. Despite receiving such reply, the District Project Coordinator remained silent and the petitioner thereafter retired.

7. After retirement, when the petitioner approached the authorities for the no objection certificate which would enable her to avail her gratuity and retirement benefits, the same was kept from being issued to her.
8. On 19.02.2021, the petitioner received a letter seeking refund of Rs. 5,636/- of unspent civil grant released for construction of the 8<sup>th</sup>ACR Building of the Bisinabar Project U.P. School pending which the no-objection certificate and consequently, the gratuity amount would not be released to the petitioner.
9. Learned counsel for the Petitioner vehemently contends that there has been absolutely no discrepancy or wrongdoing on the part of the petitioner where the construction and submission of bills are concerned. The Petitioner was always acting under the expert guidance of the technical consultants and all expenditures were duly approved by the School Managing Committee. All extra expenditure was also therefore duly approved by the School Managing Committee to meet the exigency of the situation. The Petitioner was only tasked with meeting the expenditure recommended and authorized by the School Managing Committee and has submitted all bills and vouchers consistently throughout the process. The completion certificate, bills and vouchers were submitted to the District Project Coordinator immediately after the construction was completed and inspected. The

belated raising of such issues, the arbitrary change in recovery amount and the actions of the District Project Coordinator are an afterthought with the intention of harassing someone who has spent her entire adult life in the service of the State trying to impart quality education to the State's young citizens. The petitioner is being illegally, arbitrarily and unreasonably kept from receiving her gratuity which amounts for approximately Rs.10,00,000/-.

10. *Per contra*, Ld. Counsel for the Respondent State contends that the amount arrived at by the District Project Coordinator is after a thorough evaluation. Till the time such recovery is effected, a no-objection certificate cannot be issued to the petitioner.

11. Heard both parties and perused the materials available on record. On the outset, this Court deems it necessary to highlight certain relevant facts. The construction of the 8<sup>th</sup> ACR Building of the Bisinabar Project U.P. School was sanctioned against an estimated cost of Rs. 4,10,000/- as appears from the District Project Coordinator's own letter dated 15.10.2019. The District Project Coordinator claims in his letter dated 15.10.2019 that an amount of Rs. 3,97,000/- was released to the school's account for the said construction of which the value of work arrived at after the "thorough evaluation", almost 8 years later, is Rs. 3,67,233/- and therefore, allegedly an

unspent civil grant of Rs. 29,767/- is due to be recovered from the petitioner.

12. In the District Project Coordinator's subsequent letter dated 19.02.2021, the figures have been completely changed and now the value of work has been increased to Rs. 3,91,364/- and therefore an unspent civil grant of Rs. 5636/- is allegedly due to be recovered from the petitioner. In all this, the petitioner has annexed proof that she has, in fact, spent more than the estimated cost of Rs. 3,97,000/- due to the escalated prices of construction materials and a total of Rs. 4,69,041.58/- has been spent with prior approval of the technical consultants and the school management committee.

13. The Hon'ble Supreme Court in *State of Punjab v. Rafiq Masih*<sup>1</sup>, has very judiciously laid down that the right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.

---

<sup>1</sup>(2015) 4 SCC 334

14. In view of the established principles laid down by the constitutional mandate, equity and good conscience in the matter of livelihood of the people of this country has to be the basis of all governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law.
15. A recovery initiated after the lapse of 8 years is unsustainable in law and is in complete derogation to the cornerstones of justice, equity and good conscience which this Court should strive to abide by. Moreover, this court has perused the material on record and it is amply clear that there is also no allegation of fraud, misrepresentation or mischief attributed to the petitioner which could have maybe begun to justify the raising of such a recovery letter but would still not have justified the delay in doing so.
16. The lapse of time, the unexplained and unjustified change in amounts sought to be recovered, the sheer non-application of mind as to how any amount could in fact be “unspent” when

the Petitioner has in fact spent more than the released funds and has thoroughly justified the same, is baffling to this Court. In the absence of any explanation provided by the State authorities to prescribe reasons for its actions, this Court deems it fit to allow the aforesaid Writ Petition.

17. Accordingly, while allowing the aforesaid Writ Petition, this Court sets aside the impugned letter dated 19.02.2021 of the District Project Coordinator and directs the Opposite Parties to release the no-objection certificate within two weeks hence, if there are no other reasons to withhold the same apart from this recovery. In the interest of doing complete justice, it is also clarified that the previous letter dated 15.10.2019 of the District Project Coordinator is also set aside. The gratuity due to the Petitioner to be released within a period of six weeks thereafter with accrued interest, if any.

18. The Writ Petition is disposed of being allowed.

**( Dr. S.K. Panigrahi )**  
**Judge**

*Orissa High Court, Cuttack,  
Dated the 13th of September, 2022/B. Jhankar*