IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.C(OAC) No.131 of 2010

Mamata Mohapatra .... ***Petitioner***

Miss B.K.Pattnaik,
Advocate

-versus-

State of Odisha & others .... ***Opposite Parties***

Mr. R.N.Acharya,
Addl. Standing Counsel, S&ME

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER
03.03.2022.

Order No.

03. 1. This matter is taken up through hybrid mode.

2. The Petitioner has filed the present application claiming the following relief(s):-

> "(i) To direct the respondents to release the house rent allowance of applicant withheld w.e.f. July, 2008.
>
> (ii) To quash the order dtd.30.9.2009 under Annexure-4.
>
> (iii) To direct the respondents not to any action in pursuant to order dtd.30.9.2009 under Annexure-4.

(iv) And pass such other order/orders as may be deemed fit and proper for the interest of justice.

3. The facts of the case are that the Petitioner was appointed as an Asst. Teacher on 22nd February, 1991. On 8th September, 2008 she was asked to show cause by the B.D.O., Odapada as to why disciplinary action shall not be taken against her on the ground that she and her husband were drawing house rent allowance despite staying in the same Headquarter within 8 kms radius. The said order is enclosed as Annexure-1 to the Writ Petition. The Petitioner submitted a reply under Annexure-2 specifically denying the allegation on the ground that while she was working in the Artasantara Kateni Primary School, her husband was working as an Asst Teacher at Nuabangursingh Primary School under Bangursingh Grama Panchayat. It was, therefore, claimed that the Headquarters of both the husband and wife are different, for which the allegation was not correct. Since the D.I. of Schools, Dhenkanal directed the B.D.O. to again submit compliance report as regards the steps taken in the matter and on being called upon by the B.D.O. to file her show cause as to why the amount drawn towards house rent shall not be recovered from her, the Petitioner again submitted her reply on 5th January, 2009, enclosed as Annexure-3. In the said reply, it was specifically stated that the drawal of house rent allowance by the Petitioner is in consonance with the Finance Department Office Memorandum dated 20th April, 1988. It was further stated that the Headquarter of both the husband

and wife are different. Without considering the representation of the Petitioner, the D.I. of Schools, Dhenkanal by order dated 30th September, 2009 which is enclosed as Annexure-4 to the Writ Petition directed the B.D.O., Odapada to ask the Petitioner to deposit the exact amount that needs recovery within a fortnight or to recover the same in instalments not exceeding 20 instalments from her salary. The Petitioner again submitted a representation against such action, enclosed as Annexure-5 to the Writ Petition. Since no action was taken, the Petitioner approached the Tribunal by filing an O.A. which has since been transferred to this Court as the instant Writ Petition.

4. Counter affidavit has been filed by the District Inspector of Schools, Dhenkanal (Opposite Party No.2) disputing the averments made in the Writ Petition. It is specifically stated that at the relevant time i.e. from 25th July, 2006 to 18th June, 2010, the Petitioner worked in Upper Baghalunda Primary School and her husband at Nuabangurusingh Primary School. Both the Schools are situated within 8 kms distance and are within the administrative control of the B.E.O., Odapada as well as District Education Officer. It was, therefore, stated that the Petitioner is not entitled to receive house rent allowance for the relevant period.

5. Heard Miss B.K.Pattnaik, learned counsel for the Petitioner and Mr. R.NAcharya, learned Standing Counsel for the School and Mass Education Department.

6. It is contended by Miss Pattnaik that the relevant Finance Department Memorandum, which is enclosed as Annexure-6 to the Writ Petition clearly provides that if both the husband and wife are Government servants and are posted at same Headquarters, house rent allowance will be payable to only one of them. In the instant case, the Petitioner and her husband were admittedly working in different Schools under different Grama Panchayats. According to Miss Pattnaik, the fact that both the Schools are situated within 8 kms distance from each other, cannot mean that the Headquarter of both is the same.

7. Per contra Mr. R.N.Acharya would argue that as per Government norms if a Government servant resides at a place which is within 8 kms from the Headquarters, it shall be treated as the same Headquarter. Since both the husband and wife were residing at one place they are not entitled to any house rent allowance.

8. Before adverting to the rival contentions as above, it would be profitable to refer to the definition of Headquarters of a Government servant as per the Orissa Service Code. Rule-19 reads as under:-

> "The Headquarters of a Government Servant means the station where the records of his office are kept or such other place as the State Government may by order prescribe."

9. Admittedly, the Petitioner was working as an Asst. Teacher in Upper Baghalunda Primary School under Nadhera Grama Panchayat and was deployed to Artasantara Kateni Primary School. Her husband Hrudananda Dwibedi was working as an Asst. Teacher of Nuabangurusingha Primary School under Bangursinga Grama Panchayat. Obviously, the records of the Office of both the Primary Schools referred above would be kept in the respective Schools i.e., at Upper Baghalunda Artasantara Kateni Primary School and Nuabangurusingh Primary School. In the Finance Department Clarification No.24395-F dated 28th April, 1986 it is mentioned that a Government employee staying in a hired accommodation/living in his own house within 8 kms from his Headquarter shall be eligible to allowance as admissible under the Rule. Further, in the Finance Department Clarification No.35992/F dated 3rd July, 1986, it is provided that if both the husband and wife are Government servants and are posted at same Headquarters, house rent allowance will be payable to only one of them.

10. In the instant case, there is no doubt that the Headquarters of the Petitioner and her husband were different, but then, the same per se cannot be a ground to allow house rent allowance

to both of them, particularly in the absence of any specific pleading to the effect that they were staying separately. On the contrary, in the notice vide Annexure-1, which is incidentally addressed to both the Petitioner as well as her husband, it is specifically stated that both of them are drawing house rent allowance staying in the same Headquarters. The above fact has not been controverted by the Petitioner in her pleadings. In fact, nothing has been stated as regards their place of residence. It can, therefore, be safely held that both were drawing house rent allowance despite staying in the same place. Obviously, the Petitioner has tried to take advantage of the language used in the Finance Department Circular and particularly the expression, "posted at the same Headquarters" to lay her claim. Since the rules allow payment of house rent allowance to only one of them and there is material to show that her husband was also drawing house rent allowance and both of them were residing at the same place, the Petitioner's claim for such allowance is not permissible in the eye of law.

11. For the foregoing reasons therefore, this Court finds no merit in the Writ Petition, which is therefore dismissed.

12. Urgent certified copy of this order be granted on proper application.

(Sashikanta Mishra)
Judge

AKB