

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) (OA) No.1843 of 2018

Pinubala Behera

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

COROM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

19.09.2022

Order No

- 1.** This matter is taken up through Hybrid Mode.
- 2.** Heard Mr. Pradhan, learned counsel for Petitioner and Mr. Y.S.P. Babu, learned Addl. Government Advocate for the State-Opposite Parties.
- 3.** The present Writ Petition has been filed with the following prayer:-

“(i) The Hon’ble Tribunal be pleased to admit & allow the Original Application;

(ii) The Hon’ble Tribunal be pleased to quash the impugned order dtd.27.07.2018 under Annexure-4 by further holding that the applicant is deemed to have been continuing as a Jr. Clerk on regular basis with regular scale of pay but not on contractual basis and also not liable to pay the alleged recovery amount as per Annexure-4 for the interest of justice.

(iii) The Hon’ble Tribunal may be pleased to pass any order (s)/ direction(s) as deems fit and proper for the interest of justice”.
- 4.** Learned counsel for the Petitioner submits that after the death of her father on 24.09.2011, the Petitioner was provided with the appointment under the Rehabilitation Assistance Scheme vide order dated 22.04.2015 under Annexure-3.

5. It is further submitted that pursuant to the said order, the Petitioner not only joined on 04.05.2015 but also she was allowed to draw the scale with all other benefits in terms of the said order dated 22.04.2015.

6. Mr. Pradhan, learned counsel for the Petitioner submitted that while so continuing, the impugned order was passed on 27.07.2018, wherein it was stated that the Petitioner instead of being appointed on contractual basis has been appointed on regular basis and accordingly she is not entitled to get the benefit of DA and other benefits. While holding so in the said order, the Petitioner was directed to refund a sum of Rs.4,29,000/- i.e. the amount he has received w.e.f. 4.5.2015 to 27.7.2018 towards such benefit.

7. Mr. Pradhan, learned counsel for the Petitioner submitted that since the Petitioner was appointed on regular basis with regular scale of pay as indicated in Annexure-3, the Petitioner should not have been directed to refund the amount while passing the impugned order by treating the appointment as a contractual appointment.

8. Mr. Y.S.P.Babu, learned Addl. Government Advocate for the State on the other hand made his submission basing on the counter filed by the Opposite Party Nos.1 to 3. In the said counter, it has been stated that in view of the provisions contained under Orissa Group-C & Group-D post (Contractual Appointment) Rules, 2013 and the notification issued on 31.12.2014 under Annexure-A to the counter, the Petitioner should have been appointed on contractual basis instead of being appointed on regular basis.

9. It is submitted that since the Petitioner was eligible and entitled for her appointment on contractual basis, the DA and other benefits received by her basing on the order at

Annexure-2 has been rightly corrected with issuance of the impugned order at Annexure-4.

10. Heard learned counsel for the Parties.

11. Perused the materials available on record. This Court after going through the same finds that the Petitioner was appointed on regular basis with regular scale of pay vide order dated 22.04.2015 under Annexure-3 and pursuant to said order not only she joined on 4.5.2015 but also she was allowed to draw the benefit in terms of the said order.

12. Therefore, the Petitioner has no fault with regard to extension of the benefit of regular scale of pay with other allowances and no order of recovery should have been made while modifying the order of appointment as contractual appointment vide order at Annexure-4. The direction to recover the excess amount is also contrary to the decision of the Hon'ble Apex Court in the case of **State of Punjab & Others vs. Rafiq Masih (White Washer) & Others** reported in **(2015) 4 SCC-334**.

13. In view of the same, this Court finds that the impugned order so far as it relates to recovery of Rs.4,29,000/- is not sustainable in the eye of law and while quashing the same allow the Writ Petition to that extent.

14. With the aforesaid observation and direction, the Writ Petition is disposed of.

(Biraja Prasanna Satapathy)
Judge