

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No. 829 of 2018

Gouranga Charan Mallick

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Petitioner

Mr. B.B. Mohanty, Adv.

Vs.

State of Odisha & Ors.

.....

Opposite Parties

Mr. S. Jena, Standing Counsel, S&ME

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

19.12.2022

Order No.

03.

This matter is taken up through hybrid mode.

2. Heard Mr. B. Mohanty, learned counsel for the petitioner and Mr. S. Jena, learned Standing Counsel appearing for the School and Mass Education Department.

3. The petitioner has filed this writ petition seeking to quash the order dated 21.06.2017 passed by the Director, Secondary Education, Odisha under Annexure-16, by which the benefit for the period from 21.06.2014 to 02.02.2016, during which he was deprived to discharge his duties and responsibilities, has been denied on the ground of no work no pay.

4. Mr. B. Mohanty, learned counsel for the petitioner contended that the petitioner was working as a driver as per order dated 27.12.2004 in the office of the District Education Officer, Kendrapara and thereafter deployed to the office of the District Education Officer, Bolangir by order dated 07.06.2013 of the Director, Secondary Education, Odisha. After re-organization of the DEO Office, Bolangir, the petitioner was relieved on 19.06.2014. Thereafter, when the petitioner submitted his joining report on 21.06.2014, he was not allowed to discharge his duty by the District Education Officer, Kendrapara due to want of

executive instructions from the Director, Secondary Education, Odisha. Thereafter, the District Education Officer, Kendrapara wrote a letter to the Director on the matter vide letter dated 08.07.2014, and in the said letter it was intimated that the petitioner has never attended his office after 21.06.2014 and, as such, his whereabouts are not known to the DEO. Since the petitioner has not been allowed to join in the post to discharge his duty even though he made representation before the authority, he approached the tribunal by filing O.A. No. 490 of 2015, which was disposed of vide order dated 13.02.2015 directing the opposite party-authority to accept his joining. Thereafter, though the District Education Officer, Kendrapara, vide letter dated 15.05.2015 sought instructions from the Director, Secondary Education, Odisha for implementation of the order passed by the tribunal, but the Director, vide letter dated 28.01.2016 directed the District Education Officer, Kendrapara to allow the petitioner to join back and accordingly the petitioner joined in his duty in the office of the District Education Officer, Kendrapara on 03.02.2016. Thus, it is contended that for the period the petitioner was not allowed to join his duty and discharge the responsibility, for the laches on the part of the authority, the petitioner has not been paid his salary for the said period, i.e., from 21.06.2014 to 02.02.2016. Therefore, the petitioner once again approached the tribunal by filing O.A. No. 579 of 2017, which was disposed of vide order dated 10.03.2017 to consider his representation. On consideration of the same, the very same Director, vide order dated 21.06.2017, rejected the claim of the petitioner stating therein that the petitioner is not entitled to get the benefit on the

ground of “no work no pay”, which cannot sustain in the eye of law. To substantiate his contention, he has relied upon the judgment of this Court in the case of *Smt. Bishnupriya Devi v. State of Odisha and Ors.* (WPC (OAC) No. 1095 of 2011 disposed of on 13.10.2022).

5. Mr. S. Jena, learned Standing Counsel appearing for the School and Mass Education Department vehemently contended that even though the petitioner had joined on 21.06.2014, but due to want of executive instructions from the Director, Secondary Education, he was not allowed to discharge his duty. As such, the District Education Officer, Kendrapara sought instructions sought from the Director, vide letter dated 08.07.2014, and in the said letter it was intimated that the petitioner never attended his office after 21.06.2014 and his whereabouts are not known to the DEO. Thereafter, again the District Education Officer, Kendrapara, vide letter dated 15.05.2015, requested the Director for implementation of the order passed by the tribunal in O.A. No. 490 of 2015. It is contended that since the petitioner attended the office of the District Education Officer, Kendrapara for joining on 21.06.2014 and, thereafter, he never appeared before the District Education Officer, Kendrapara till his joining on 08.02.2016, he is not entitled to the claim, as has been prayed in the writ petition. Thereby, the Director is well justified in passing the order impugned which does not warrant interference of this Court.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that there is no dispute with regard to the fact that the petitioner joined in service on 21.06.2014 and he was not allowed to discharge his duty till

02.02.2016 because of the situation, as has been mentioned above by learned counsel for the petitioner. But fact remains, reasons for non-discharging of the duty by the petitioner for the period from 21.06.2014 to 02.02.2016 cannot be attributable to him because after he being relieved when he wanted to join in the post, he was not allowed to discharge his duties and responsibilities. Thereby, the District Education Officer, Kendrapara sought instructions from the Director in pursuance of the order passed by the tribunal and, as such, basing upon the direction given by the tribunal, he has been allowed to join in service with effect from 02.02.2016. Thereby, no fault can be attributable to the petitioner, by any means, so as to deprive him to get his legitimate claim with regard to the salary for the period he has not discharged his duties and responsibilities for the fault of the authority. Thereby, rejection of his claim by the Director, vide order impugned dated 21.06.2017, cannot sustain in the eye of law.

7. In **Smt. Bishnupriya Devi** (supra), this Court in paragraph-11 held as follows:-

“11. In the above view of the matter, this Court is of the considered view that if the petitioner was suffered for the mala fide action of the opposite parties and was deprived of discharging her duty and, as such, after due adjudication the tribunal, while setting as the order of transfer, directed the authorities for taking back the petitioner to her previous place, instead of treating the said period as leave due and admissible as well as leave not due, the opposite parties-authority should have granted the consequential service and financial benefits in favour of the petitioner, as due and admissible to her in accordance with law, for the said period. Hence, the order dated 29.03.2010 passed by the Joint Secretary to Government, School and Mass Education Department, Govt. of Odisha, under Annexure-14, by which it has been decided to regularize the service of the petitioner

for the period from 21.06.2005 to 16.07.2007 (for 957 days) by sanctioning of leave due and admissible as well as leave not due, and consequential communication made by the Deputy Director, Directorate of Secondary Education, Orissa to the Inspector of School, Koraput Circle, Koraput vide Annexure-15 dated 21.04.2010 to the same effect, cannot sustain in the eye of law and the same are liable to be quashed and are hereby quashed. Since the petitioner has retired from service, the opposite parties are directed to compute the entire period and grant the consequential benefits in favour of the petitioner, as expeditiously as possible, preferably within a period of four months from the date of production of certified copy of this judgment.”

8. In the above view of the matter, this Court is of the considered view that the ratio decided in the aforesaid case is fully applicable to the present case. As such, for no fault of the petitioner, if he has been deprived of to discharge his duties and responsibilities, he cannot be denied the benefit. Therefore, this Court is of the view that the order dated 21.06.2017 so passed by the Director, Secondary Education Odisha under Annexure-16 cannot sustain in the eye of law and the same is liable to be quashed and is hereby quashed. The opposite parties are directed to pay the salary to the petitioner for the period from 21.06.2014 to 02.02.2016 within a period of three months from the date of production of certified copy of this order.

9. The writ petition is accordingly disposed of.

Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

Ashok