ORISSA HIGH COURT: CUTTACK

WPC (OA) No.2047 OF 2014

(An application under Articles 226 and 227 of the Constitution of India)

Prasan Kumar Kanhor ..... Petitioner

-Versus-

State of Odisha & others ..... Opp. Parties

Advocate(s) appeared in this case:-

For Petitioner	:	M/s. R.K. Bisoi & B.K. Mohanty, Advocates
For Opp. Parties	:	Mr. H.K. Panigrahi, Additional Standing Counsel

CORAM
JUSTICE SASHIKANTA MISHRA

ORDER
12th April, 2022

SASHIKANTA MISHRA, J. The petitioner challenges the order dated 06.08.2014 issued by the Project Director, DRDA, Kandhamal (opposite party no.2) directing him to deposit a sum of Rs.60610/- towards penal licence fee.

2. The facts of the case are that the petitioner was appointed as Statistical Investigator with effect from 02.03.1998 and posted at District Statistical Office, Phulbani. While working as such, his services were placed at the disposal of Panchayati Raj Department vide order dated 13.02.2006 for being posted in DRDA on deputation basis. Pursuant to such order, he was posted in DRDA, Kandhamal against the existing vacancy. While working as such, he was allotted with a II R quarter by the opposite party no.2 vide order dated 11.04.2008, which he occupied and resided with his family. A sum of Rs. 145/- was deducted from his salary every month towards rent, as evident from some of the pay slips enclosed to the writ petition as Annexure-5 series. By order dated 12.06.2013 of the Director of Economics and Statistics, Odisha, the petitioner was reverted from Panchayati Raj Department and posted under opposite party no.3 and was relieved on 12.08.2013. He joined in his new post on 13.08.2013. Since then no Government Quarter was allotted. The opposite party no.2 vide order dated 02.05.2014 issued

notice to the petitioner to vacate the quarter of DRDA on the ground that the allotment had been cancelled. Further, the opposite party no.2 requested the Sub-Collector, Kandhamal to initiate eviction proceeding against the petitioner. Ultimately, the order dated 06.08.2014, which is enclosed as Annexure-9 to the writ petition, was issued as final notice to the petitioner to vacate the quarter and to deposit the penal rent amounting to Rs. 60,610/-. According to the petitioner, the calculation of such penal rent is contrary to the Government Resolution holding the field.

3. A counter has been filed by the opposite party no.2 justifying his action by relying upon the Government of Odisha, Finance Department Resolution No. 51758 /F dated 15.12.2010. It is stated that the penal dues have been calculated on the basis of such resolution and therefore, no illegality was committed.

4. Heard Mr. R.K. Bisoi, learned counsel for the petitioner and Mr. H.K. Panigrahi, learned Addl. Standing Counsel for the State.

5. Mr. Bisoi has referred to the resolution dated 15.12.2010 of Finance Department to submit that the flat rate of licence fee in respect of II R quarters is Rs.140/- and standard licence fee is Rs. 560/-. Further, referring to paragraph-10(i) of the said resolution, it is submitted by Mr. Bisoi that on transfer, it is permissible for a government servant to retain the government quarter for one month on payment of flat licence fee and for subsequent two months on payment of standard licence fee and for retention beyond three months, the allottee becomes liable to pay five times of standard licence fee. It is further argued that the opposite party no.2 has committed gross illegality in referring to the pay scale of the petitioner, whereas the type of the quarter should have been considered.

6. Per contra, Mr. H.K. Panigrahi, while supporting the impugned order has argued that admittedly the petitioner was a government employee in the pay scale of Rs.9300-34800/- with grade pay of Rs.4200/- and therefore, serial no.5 of the table mentioned in the

resolution dated 15.12.2010 applies to him. As such, the flat licence fee is Rs.290 and standard licence fee is Rs. 1160/- and on such basis the dues have been calculated.

7. Reference to the FD Resolution dated 15.12.2010 reveals that different rates have been fixed for different types of quarters towards flat rate licence fee and standard licence fee along with the approximate plinth area of different types of quarters and the allotable pay range for occupation by government servant of such quarters. As it appears, considering the pay range of the petitioner, the flat licence and standard licence fee have been calculated. But then, such rate is applicable to Type-IV, IVA, IVC, IVR, IVR-PF, IVB, 2RB, 2RB(F), E and equivalent quarters. There is no dispute that the petitioner was not occupying any of such quarters, rather, it is admitted that the petitioner had been allotted and was in occupation of a Type-II R quarter. Therefore, by no stretch of imagination the petitioner, being in occupation of a Type-II R quarter, can be asked to pay the licence fee meant for a bigger quarter. Therefore, the reasoning adopted by the opposite

party no.2 appears to be contrary to the FD Resolution dated 15.12.2010.

8. A reference to the impugned order under Annexure-9 further reveals that apart from fixing a higher flat licence fee, the petitioner has been saddled with the liability of paying the same for his occupation for two months beyond the permissible period at the rate of four times of such fee and five times of standard licence fee beyond such period for a total period of ten months. It would be apposite to refer to paragraph-10(i) of the FD Resolution dated 15.12.2010, which reads as follows;

> *"Any officer in occupation of Government quarters, if transferred from his Station can retain the Government quarters for one month from the date of relief on payment of Flat Licence Fee and subsequent two months on payment of Standard Licence Fee. For retention of quarters beyond 3(three) months of transfer the allottee shall pay 5(five) times of Standard Licence Fee."*

A bare reading of the above would clearly revel that the calculation of the dues as per Annexure-9 is entirely incorrect being contrary to the aforesaid provision and therefore, cannot be sustained in the eye of law. The opposite party no.2, therefore, needs to recalculate the dues strictly in accordance with the FD Resolution dated 15.12.2010 and that too, in respect of Type- II R quarter as indicated therein.

9. In the result, the writ petition succeeds and is therefore, allowed. The impugned order under Annexure-9 is hereby quashed. The opposite party no.2 is directed to recalculate the licence fee payable by the petitioner for occupation of the quarter in question for the relevant period strictly in terms of FD Resolution dated 15.12.2010 as applicable for Type II R quarter. Such exercise shall be completed within a period of one month from the date of receipt of a copy of this order or on production of certified copy thereof by the petitioner.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack
The 12th April, 2022/ A.K. Rana