

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.3345 of 2014

An application under Section 19 of the State Administrative Tribunal's Act, 1985.

.....

Tilottama Jena

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s. Mr. Rabinarayan Nayak,
N.K.Sen, A.K.Patra &
G.N.Rout.

For Opp. Parties : M/s. N.K.Praharaj, Standing
Counsel.

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

संघनिक नयने

Date of Hearing:02.05.2022 and Date of Order:09.05.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. R.N.Nayak, learned counsel for the Petitioner and Mr. Praharaj, learned counsel for the State- Opposite Parties.
3. The present Writ Petition has been filed with a prayer to quash the order of recovery passed by the Superintendent, SCB Medical College & Hospital, Cuttack on 16.10.2014 under Annexure-8.

4. It is submitted by Mr. Nayak, learned counsel for the Petitioner that the Petitioner while continuing as a Staff Nurse in SCB, Medical College & Hospital, Cuttack, she was allotted with a quarter i.e. Quarter No.2.RB-33 vide order of allotment dated 31.10.1998 under Annexure-1.

5. It is submitted that while so continuing in the said Quarter, when a notice was issued on 10.01.2011 under Annexure-2 with the allegation that the Petitioner is in unauthorized occupation of another Quarter i.e. Quarter No.29, the Petitioner made a reply on 25.01.2011 under Annexure-3 indicating therein that she is only in occupation of the allotted Quarter i.e. Quarter No.2.RB-33.

6. It is submitted that thereafter when another notice was issued by the said Opposite Party on 24.03.2011 with a direction on the Petitioner to hand over the key of the said Room No.29, the Petitioner once again apprise the said authority regarding her occupation of the allotted Quarter only.

7. It is submitted that without considering such prayer of the Petitioner and basing on some audit objection, when the Petitioner was issued with an order on 31.01.2012 directing therein for recovery of an amount of Rs.87,000/- towards penal rent, the Petitioner moved the Opposite Party on 25.02.2012. In the said representation dated 25.02.2012 under Annexure-6, the Petitioner took a specific stand that Room No.29 was allotted in favour of one Sabitri Kumari Pradhan and she vacated the Quarter on 01.11.2008 as reflected in Annexure-7.

8. Mr. Nayak, learned counsel for the Petitioner submitted that even though the Quarter in question i.e. Quarter No.29 was allotted in favour of one Sabitri Kumari Pradhan, which she vacated on 01.11.2008, but in the order under Annexure-5 the Petitioner was charged with penal rent for the period from 01.04.2006 to 31.03.2011.

9. It is submitted that without considering the prayer made by the Petitioner under Annexure-6 and the factum of possession of the said Quarter by one Sabitri Kumari Pradhan till 01.11.2008, the Opposite Party No.1 when issued the impugned order on 16.10.2014 under Annexure-8 by directing to recover penal rent of Rs.87,000/- @ Rs.3,000/- per month in 29 equal monthly installments, the present Writ Petition was filed challenging the said order.

10. It is submitted that learned Tribunal while issuing notice of the matter on 22.10.2014 stayed the operation of the order under Annexure-8 and accordingly no recovery could be effected. However, it is submitted that since the Petitioner was all through staying in her allotted quarter i.e. Quarter No.2.RB-33, the allegation made against her regarding occupation of another Quarter i.e. Quarter No.29 is not trustworthy.

11. It is also submitted that the said Quarter was in occupation of one Sabitri Kumari Pradhan and she vacated the quarter only on 01.11.2008. Therefore, on the face of such vacation letter issued by the allottee of Quarter No.29 under Annexure-7, the direction of the Opposite Parties to

pay penal rent from 01.04.2006 to 31.03.2011 amounting to Rs.87,000/- is not sustainable in the eye of law.

12. Mr.Nayak accordingly prayed for interference of this Court with the impugned order.

13. Per contra, Mr. Praharaj, learned counsel for the State-Opposite Parties made his submission basing on the stand taken in the counter. It is submitted by Mr. Praharaj, learned counsel for the State-Opposite Parties that since on verification it was found that the Petitioner in addition to her allotted Quarter is in unauthorized occupation in Quarter No.29, she has been rightly charged with the penal rent. Accordingly, it is submitted that the impugned order has been rightly passed by the Opposite Parties and no interference is called for by this Court.

14. Heard learned counsel for the Parties.

15. After perusing the materials available on record, this Court finds that the Petitioner was in fact allotted with the Quarter No.2.RB-33 vide order under Annexure-1. It is not the case of the Opposite Party that the Petitioner at any point of time left the said allotted quarter during her continuance as a staff nurse in the establishment of Opposite Party No.1. As further revealed from the materials available on record, the Petitioner was issued with the impugned notices with regard to unauthorized occupation of Quarter No.29 basing on some audit objection. Though vide Annexure-A/3, a committee constituted by the Opposite Party No.1 made a report on 22.12.2010 regarding

unauthorized occupation of the Quarter No.29 by the Petitioner, but the Petitioner was never given an opportunity to disprove the said report of the committee. Not only that the Opposite Party No.1 while issuing the impugned order at Annexure-8 has never considered the factum of occupation of the said Quarter by one Sabitri Kumari Pradhan and vacation of the said Quarter on 01.11.2008. Therefore, on the face of Annexure-7, the imposition of penal rent on the Petitioner for the period from 01.04.2006 to 31.03.2011 is illegal.

16. It is also submitted by Mr. Nayak that the Petitioner is an unmarried lady and there was no occasion on her part to occupy another Quarter in addition to allotted Quarter. Since this Court finds that the impugned order demanding penal rent of Rs.87,000/- on the Petitioner vide Annexure-8 has been issued basing on the objection raised by the AG audit, and that too without considering the report under Annexure-7 and without giving reasonable opportunity of hearing to the Petitioner, this Court while setting aside the said order at Annexure-8 remand the matter to the Opposite Party to take a fresh decision. While directing so, this Court further directs the Opposite Party to take a fresh decision taking into account the report submitted under Annexure-7 and by giving a personal hearing to the Petitioner.

17. With the aforesaid observations and directions, the WPC(OAC) stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 9th of May, 2022/Subrat