

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.3716 of 2017

Sabita Maharana

..... Petitioner
Mr. K.K.Swain, Advocate

-versus-

State of Odisha & others

..... Opposite Parties
Mr.R.C.Patnaik, Standing Counsel for
School & Mass Education

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

10.11.2022

Order No.

03.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard Mr.K.K.Swain, learned counsel for the Petitioner and Mr.R.C.Patnaik, learned Standing Counsel for School & Mass Education Department.
3. Initially the Petitioner approached the Orissa Administrative Tribunal by filing O.A.No.3716(C) of 2017 with a prayer to quash the order dated 19.05.2017 under Annexure-7 passed by the District Education Officer, Koraput and further sought for a direction to the Opposite Parties to regularize the service of the Petitioner from 23.08.2015 to 07.11.2016 by treating the said period as on duty and monthly salary of the Petitioner also be paid to her within a stipulated period of time. During the pendency of the present proceeding the Orissa Administrative Tribunal got abolished and the matter has been transferred to this Court and renumbered as WPC(OAC) No.3716 of 2017.
4. It is submitted by the learned counsel for the Petitioner that

earlier the Petitioner approached the Tribunal by filing O.A.No.3098(C) of 2015 with a prayer to quash the order of transfer dated 18.08.2015 passed by the District Education Officer, Koraput thereby the Petitioner was relieved from Sirsiguda PPS to join at Nuagam PUPS under Kotpad Block. After hearing learned counsel for the parties learned Tribunal vide order dated 18.08.2015 came to a conclusion that the order of transfer violates Clause-3,4 & 7 of the guidelines dated 15.05.2012 and accordingly the order transferring the Petitioner, passed by the District Education Officer, was quashed and the matter was remitted back to the competent authority to take a fresh decision in accordance with law and the guidelines in force.

5. Learned counsel for the Petitioner further contended that during pendency of the previous original application bearing O.A.No.3098(C) of 2015 the Tribunal was pleased to pass an interim order dated 27.08.2015 thereby directing the Opposite Parties not to relieve the Petitioner, if not relieved in the meantime. It is further contended that although the Petitioner wanted to continue with the service and was interested in discharging her duty she was not allowed to perform her duty by the authority and relief order was passed allegedly in violation of the interim order passed by the learned Tribunal. As a result of which the Petitioner was not allowed to discharge her duty during the period from 23.08.2015 to 07.11.2016.

6. It is further contended by the learned counsel for the Petitioner that after disposal of the original application the Petitioner approached the competent authority to regularize the aforesaid period. However, the District Education Officer, Koraput who is the competent authority vide office order dated 09.05.2018 rejected the prayer of the Petitioner vide order dated 28.07.2018 and further

informed the Petitioner that he is at liberty to apply for leave as due and admissible to regularize the aforesaid back period from 23.08.2015 to 07.11.2016. Being aggrieved by the decision dated 19.05.2017 under Annexure-7 the Petitioner had again approached the Tribunal by filing the present application which was transferred to this Court.

7. Learned Standing Counsel for School & Mass Education department, on the contrary, submits that the District Education Officer, Koraput has not committed any illegality while passing the order under Annexure-7. It is further contended that by the time the order was passed by the learned Tribunal, the Petitioner was relieved from duty with effect from 20.08.2015 by the Block Education Officer, Koraput. Therefore, the relief order has been passed prior to the order passed by the learned Tribunal in the original application. He further submits that the claim for arrear salary is not tenable in view of the settled position of law that the Petitioner is not entitled to any pay since she has not worked for the break period. In such view of the matter, learned Standing Counsel submits that the writ application is devoid of merit and the same should be rejected.

8. Having heard learned counsel for the parties and upon perusal of the materials on record, this Court is of the considered view that the order of transfer which was initially challenged before the learned Tribunal is held to be in violation of transfer guidelines. Therefore, the same was set aside. In such view of the matter, the conduct of the Block Education Officer in passing the transfer order, which had prevented the Petitioner to discharge her duty, was not in conformity with law. Therefore, the same was illegal as has been held by the learned Tribunal. Further, once the Tribunal has declared that the order of transfer was illegal, no fault could be found with the

Petitioner and therefore, the authority should have considered the break period as the period on duty and accordingly necessary orders should have been passed. Further, this Court is of the considered view that since the Petitioner did not discharge her duty during break period applying the principle of “no work, no pay”, the Petitioner is not entitled to the salary for break period. Accordingly the impugned order under Annexure-7 is hereby quashed. Further, it is directed that the break period from 23.08.2015 to 07.11.2016 be treated as on duty and further the Petitioner shall not claim any salary for the said period. However, it is made clear that for all other purposes the break period shall be treated as on duty.

7. With the aforesaid observation the writ application is disposed of.
8. Issue urgent certified copy of this order as per Rules.

