

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) (OAC) No.1737 of 2012

Smt. Tilottama Mohanty

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

COROM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

20.10.2022

Order No

- 2.** 1. This matter is taken up through Hybrid Mode.
2. Heard Mr. P.K.Rout, learned counsel appearing on behalf of Mr. D.R.Pattanayak, learned counsel for the Petitioner and Mr. Ch. S.Mishra, learned Addl. Government Advocate for the State-Opposite Parties.
3. The present Writ Petition has been filed by the Petitioner challenging the order dated 15.05.2012 passed by the Opposite Party No.2 under Annexure-4.
4. It is submitted that vide the said order the study leave earlier sanctioned in favour of the Petitioner vide order dated 05.01.2011 under Annexure-3 was cancelled.
5. Mr. Rout, learned counsel for the Petitioner submitted that the said study leave was sanctioned in favour of the Petitioner basing on the letter issued by the Government in the Health and Family Welfare Department on 11.08.2010 and in terms of the provision contained under Rule-179 to 181 of the Orissa Service Code read with Finance Department office Memorandum dated 29.07.1980.

6. It is further submitted that after allowing the said benefits, the impugned order was passed on 15.05.2012 by cancelling the same.

7. Learned counsel for the Petitioner submitted that prior to such cancellation of the benefit, the Petitioner was never show caused nor any opportunity of hearing was given.

8. It is also submitted that no reason has been assigned by the Opposite Party No.2 while taking such step in cancelling the leave vide the impugned order. Accordingly, it is submitted that the said order is liable for interference of this Court.

9. Even though notice of the writ petition was issued with passing of an interim order on 22.06.2012, but no counter affidavit has been filed by the State-Opposite Parties till date. This Court while dealing with the matter on 22.02.2022 had passed the following order:-

“Since the matter is of the year 2012, three weeks time is allowed for filing of the counter affidavit, failing which the matter will be decided on its own merit”.

Today when the matter was taken up, it is also found that no counter affidavit has been filed in terms of the order passed by this Court on 22.02.2022.

10. Heard learned counsel for the Parties. Perused the materials available on record, this Court after going through the same finds that the impugned order so far as it relates to the Petitioner has been passed without giving any opportunity of hearing to the Petitioner without issuing any show cause to her. This Court further finds that no reason has been assigned by the Opposite Party No.2 while cancelling the benefit.

11. In view of such material irregularity in the impugned order, the said order so far as it relates to the Petitioner is hereby quashed. Since it is submitted that the Petitioner in the meantime has retired from his service on attaining age of

superannuation, the Opposite Party No.2 is directed to take a fresh decision on the same by giving a personal hearing to the Petitioner. It is however, observed that while taking such a decision, the resolution issued by the Health and Family Welfare Department and the provision contained in the Orissa Service Code reflected in Annexure-3 shall be taken into consideration by the Opposite Party No.2.

12. With the aforesaid observation and direction, the Writ Petition stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Subrat

