

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No. 18 of 2012

Trilochana Padhy

....

Petitioner

Mr. S.N. Sharma, Advocate

-Versus -

State of Odisha and others

....

Opp. Parties

Standing Counsel S&ME

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

21.02.2022

Order No.

01

This matter is taken up through hybrid mode.

2. The petitioner, who was working as a Trained Graduate Teacher in Municipal Girls High School, Aska Road, Berhampur has been brought over under the control of School and Mass Education Department pursuant to the resolution dated 28.02.2004 and retired from service on attaining the age of superannuation on 31.03.2007, has filed this writ petition seeking direction to the opposite parties to release the leave salary for the balance period within a stipulated time.

3. Mr. S.N. Sharma, learned counsel for the petitioner contended that though the leave salary is due and admissible to the petitioner for 189 days, the same should be extended in his favour, as his service has been placed from urban department to School and Mass Education Department. It is contended that as per clause-3-(iii) of the resolution under Annexure-1, the benefit is applicable to the teaching and non-teaching staff of the School and Mass Education

Department and, therefore, the same has to be extended in favour of the petitioner. It is contended that the petitioner having been paid only 40 days leave salary, he is entitled to get the balance period of leave salary from out of 189 days, as he has retired from service w.e.f. 31.03.2007. It is further contended that the reliance placed by the opposite parties in Annexure-A/3 and B/3 dated 16.01.2009 and 13.11.2009 have no application to the case of the petitioner.

4. Mr. B. Mohanty, learned Standing Counsel for School and Mass Education Department contended that admittedly the petitioner was working under the urban local bodies at Berhampur Municipality and pursuant to the resolution dated on 28.02.2004 under Annexure-1, his service has been placed under the control of School and Mass Education Department and, therefore, from the date the petitioner brought under the control of School and Mass Education Department, the service of the petitioner would be regulated as per the rules and regulations framed by the School and Mass Education Department. Therefore, the period from which date the petitioner brought over under the control of School and Mass Education Department till his retirement, the same has been calculated and, as such, the benefit of 40 days leave salary has been extended in his favour. Therefore, no illegality or irregularity has been committed by the authority.

5. Having heard learned counsel for the parties and after going through the records, as it appears, for transfer of the left out primary of six urban local bodies, lower secondary and secondary schools of urban local bodies to the school and mass education department and declaring the teaching and non-teaching staff of these schools as government service, resolution has been passed by the Government vide Annexure-1 dated 28.02.2004. Clause-3(iii) of the resolution provides as under :-

“(3) (iii) Other service condition- Other service condition such as pension, leave salary, other retiral benefits, G.P.F., H.R.A., Promotion, Transfer and age of superannuation etc. will be applicable to the teaching and non-teaching staff of the above mentioned schools, as applicable to the teaching and non-teaching staff of School and Mass Education Department.”

6. In view of the aforesaid provisions, it appears that for other service conditions, such as, leave salary will be applicable to the teaching and non-teaching staff of the above mentioned schools, as applicable to the teaching and non-teaching staff of School and Mass Education Department. But as it appears, though 189 days leave salary has been accrued in favour of the petitioner as per calculation provided under Annexure-2, the petitioner has only been granted leave salary for a period of 40 days, which is contrary to the provisions of law.

7. In the above view of the matter, this writ petition stands disposed of directing the authorities to consider the case of the petitioner in the light of clause-3(iii) of the resolution dated 28.02.2004 under Annexure-1, as subsequent resolution passed by the Government in Annexure-A/3 and B/3 dated 16.01.2009 and 13.11.2009 are not applicable to the petitioner, particularly when the petitioner has already retired w.e.f. 31.03.2007 before commencement of aforementioned rules framed by the Government, and pass appropriate order in accordance with law, within a period of three months from the date of production of certified copy of this order.

8. Issue urgent certified copy as per rules.

(Dr. B.R. Sarangi)
Judge

Ashok