ORISSA HIGH COURT: CUTTACK

W.P.(C) NO. 7438 OF 2007,
W.P.(C) NO. 7583 OF 2007,
W.P.(C) NO. 9502 OF 2007,
W.P.(C) NO. 2795 OF 2007,
W.P.(C) NO. 6026 OF 2008
AND
W.P.(C) NO. 7831 OF 2008

In the matter of applications under Articles 226 and 227 of the Constitution of India.

AFR ***W.P.(C) No. 7438 of 2007***

Sirish Chandra Mishra ..... Petitioner

-Versus-

State of Orissa and Others ..... Opp. Parties

For Petitioner : Mr. S.P. Mishra, Sr. Advocate
along with M/s. S. Mishra, S. Dash,
S.S. Satapathy and B.S. Panigrahi,
Advocates

For Opp. Parties : Mr. S. Rath,
Addl. Standing Counsel
[O.P. Nos. 1 to 3]

Mr. S.K. Das, Standing Counsel for
Accountant General (A&F), Orissa
[O.P. No.4]

W.P.(C) No. 7583 of 2007

Naba Kishore Rajguru Mohapatra ..... Petitioner

-Versus-

State of Orissa and Others ..... Opp. Parties

For Petitioner : Mr. S.P. Mishra, Sr. Advocate along with M/s. S. Mishra, S. Dash, S.S. Satapathy and B.S. Panigrahi, Advocates

For Opp. Parties : Mr. S. Rath, Addl. Standing Counsel [O.P. Nos. 1 to 3]

Mr. S.K. Das, Standing Counsel for Accountant General (A&F), Orissa [O.P. No.4]

W.P.(C) No. 9502 of 2007

Prafulla Kumar Mishra ..... Petitioner

-Versus-

State of Orissa and Others ..... Opp. Parties

For Petitioner : Mr. S.P. Mishra, Sr. Advocate along with M/s. S. Mishra, S. Dash, S.S. Satapathy and B.S. Panigrahi, Advocates

For Opp. Parties : Mr. S. Rath, Addl. Standing Counsel [O.P. Nos. 1 to 3]

Mr. S.K. Das, Standing Counsel for Accountant General (A&F), Orissa [O.P. No.4]

W.P.(C) No. 2795 of 2007

Snehalata Mishra ..... Petitioner

-Versus-

State of Orissa and Others ..... Opp. Parties

For Petitioner : Mr. S.K. Pattnaik, Sr. Advocate along with M/s U.C. Mohanty, D.Pattnaik, P.K. Pattnaik and S. Pattnaik, Advocates

For Opp. Parties : Mr. S. Rath, Addl. Standing Counsel [O.P. Nos. 1 to 3]

Mr. S.K. Das, Standing Counsel for Accountant General (A&F), Orissa [O.P. No.4]

W.P.(C) No. 6026 of 2008

Manoranjan Nanda ..... Petitioner

-Versus-

State of Orissa and Others ..... Opp. Parties

For Petitioner : Mr. S.P. Mishra, Sr. Advocate along with M/s S. Mishra, S. Nanda, S.S. Satapathy and A.K. Dash, Advocates

For Opp. Parties : Mr. S. Rath, Addl. Standing Counsel [O.P. Nos. 1 to 3]

Mr. S.K. Das, Standing Counsel for Accountant General (A&F), Orissa [O.P. No.4]

W.P.(C) No. 7831 of 2008

Ajoy Chandra Mohanty ..... Petitioner

-Versus-

State of Orissa and Others ..... Opp. Parties

For Petitioner : M/s B. Sahoo, S.S. Ray and B. Mohanty, Advocates

For Opp. Parties : Mr. S. Rath, Addl. Standing Counsel [O.P. Nos. 1 to 3]

Mr. S.K. Das, Standing Counsel for Accountant General (A&F), Orissa [O.P. No.4]

P R E S E N T:

THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
HONOURABLE MR. JUSTICE G. SATAPATHY

Date of hearing: 21.09.2022: Date of judgment: 27.09.2022

DR. B.R. SARANGI, J. The petitioners, including Late B.N. Mishra, who was the original petitioner in W.P.(C) No. 2795 of 2007 and stood substituted by his wife Smt. Snehalata Mishra, are retired District Judges and Members of the Superior Judicial Service (Senior Branch). They have filed these writ petitions seeking direction to the opposite parties to pay to each of them Death-cum-Retirement Gratuity (DCRG) at the revised/enhanced rate from Rs.2.5 lakhs to Rs.3.5 lakhs along with interest at the rate of 7% per annum on the differential amount of Gratuity of Rs.1.00 lakh from the respective date of their retirement.

2. Since the facts of all these writ petitions are similar and the issues involved therein are common, they were heard together and are disposed of by this common judgment.

3. For just and proper adjudication of all the writ petitions, the factual matrix of W.P.(C) No. 7438 of 2007 is referred to:-

3.1. The petitioner in W.P.(C) No. 7438 of 2007 joined in Orissa Judicial Service on 03.11.1971 and posted as a Probationary Munsif at Cuttack. He, having served in different capacities, was promoted as Addl. District Judge on 01.12.1987. Thereafter, he was appointed as District Judge on 19.06.1995. He retired, on attaining the age of superannuation, at 60 years as a Member of the Superior Judicial Service (Senior Branch), while drawing salary on suppertime scale of pay, on 30.06.2004. As such, by the date of superannuation, he had rendered 32 years 7 months and 27 days of qualifying service, thereby falling short of 4 months and 3 days for completing the full length of service of 33 years for the purpose of pension, gratuity and other service benefits.

3.2. A Government servant of the State of Orissa is entitled to full pension after rendering qualifying service of

33 years. Since the total period of qualifying service of the petitioner was falling short by 4 months and 3 days only to be entitled to full pension after retirement, considering the hardship to be caused to the petitioner, the Government in Home Department, vide office order no. 42345 dated 20.09.2003 allowed addition of 4 months and 3 days to the service of the petitioner for the purpose of superannuation pension in accordance with the provisions under Rule-32 of the Orissa Civil Service (Pension) Rules, 1992 read with Rule-36 of Orissa Pension Rules, 1977. Consequentially, the petitioner, who was drawing Rs.24,350/-, as his last pay, calculating his gratuity on the basis of formula provided under Rule-49 of the Rules, the amount of gratuity payable to the petitioner came to Rs.4,01,775/-. But the maximum gratuity payable as per Rule-49 of the Rules being Rs.2.5 lakhs, the Accountant General (A&E), Orissa, by its letter/memo no.468/98-99, sanctioned the amount of gratuity at Rs.2.5 lakhs, as applicable to the officers of the State of

Orissa. After deducting an amount of Rs.20,395/-, an amount of Rs.2,29,605/- was paid to the petitioner vide Gratuity Payment Order No.125925/Govt.10/04 dated 15.10.2004.

3.3. In ***M.L. Jain v. Union of India***, AIR 1985 SC 619 : (1985) 2 SCC 355, the apex Court in C.M.P. No. 18044 of 1988 directed that as per the decision of the Central Government in respect of the pensioners under the Central Government, the State Governments should adopt the revision of pension, gratuity etc. in respect of the servants of the State Government including the members of Higher Judicial Service, so that the Service Judges (High Court Judges coming from the cadre of District Judges) can be granted such higher benefit.

3.4. In office order dated 27.10.1997, the Govt. of India in Department of Pension and P.W. has already implemented the recommendations of the 5th Central Pay Commission and enhanced the maximum limit of DCRG payable to the Central Govt. employees to Rs.3.5 lakhs w.e.f. 01.01.1996. The Parliament has also raised the maximum ceiling of gratuity payable to the employees in the industrial sector to Rs.3.5 lakhs by amending Section-4(3) of the Payment of Gratuity Act, 1972 with effect from 24.09.1997.

3.5. In compliance of the direction given by the apex Court in the case of ***M.L. Jain*** (supra), the Central Government in the Ministry of Law and Justice (Department of Justice), vide Circular No.L-11016/12/97-JUS dated 18.02.1998, directed the Accountant Generals of all the State Governments to revise the pension of the members of Higher Judicial Service as per the decision of the Central Government under the circular dated 27.10.1997 applicable with effect from 01.01.1996. In the said circular, it was directed that if the State Governments have not adopted the provisions contained in the office memorandum dated 27.10.1997 or have not yet issued any independent orders for revising the pensionary benefits to the employees of that State including the members of the State service including State Higher Judicial Service, then the pensionary benefits to the Judges belonging to Part-III of that particular State will not be revised. Similar instructions were also given to the Accountant Generals of all States, vide Circular No.L-11016/13/97-JUS dated 02.04.1998, to implement the aforesaid judgment of the apex Court and adopt the revised pension, gratuity and family pension as applicable to the Central Government employees with effect from 01.01.1996 or from the date such benefits were made applicable to the State Government employees including the members of the Higher Judicial Service. In spite of the direction of the Central Government in Department of Justice, vide office memorandum dated 27.10.1997, Government of Orissa had not revised its Pension Rules nor it was paying the revised/enhanced gratuity in due compliance thereof to the members of the Superior Judicial Service (Senior Branch) and the Hon'ble Judges of the High Court, who were appointed from the Orissa

Superior Judicial Service (Senior Branch), whereas the State Government was paying the pension and gratuity to all its IAS, IPS and IFS officers serving in the State and officers in the all India Service Cadre up to the maximum ceiling of Rs.3.5 lakhs with effect from 01.01.1996.

3.6. Prasana Kumar Patra, who was also a member of the Orissa Superior Judicial Service (Senior Branch) and retired as a Judge of Orissa High Court, had challenged such unreasonable and discriminatory action of the State Government before this Court in W.P.(C) No. 12811 of 2003, which was disposed of vide order dated 13.01.2006, reported in (2006) 1 OLR 156. In the said writ petition, State had taken the plea of lack of financial resources to meet the additional burden of gratuity payable to the retired District Judges and had asserted that only in case the Government adopts the office memorandum dated 27.10.1997, the District Judges of Orissa Superior Judicial Service (Senior Branch) would be entitled to higher pension and gratuity as per the said memorandum. Pursuant to the direction given by this Court on 13.01.2006 in Prasana Kumar Patra's case, mentioned supra, the Government of Orissa in Finance Department passed a resolution on 06.09.2006 enhancing the maximum limit of gratuity from Rs.2.5 lakhs to Rs.3.5 lakhs in respect of the Judges of the Orissa High Court, who were elevated from Orissa Superior Judicial Service Cadre. Since the petitioner was paid Rs.2.5 lakhs as DCRG as per the old rate, he is also entitled to the revised/enhanced rate of DCRG of Rs.3.5 lakhs as per the decision of the apex Court as well as this Court. Since there was inaction on the part of the authority, though he filed representation before the authority but the same was rejected on 02.05.2007, the petitioner approached this Court by filing this writ petition.

4. Mr. S.P. Mishra, learned Senior Counsel appearing along with Mr. S. Mishra, learned counsel for the petitioner in WP(C) No. 7438 of 2007 contended that rejection of the claim of the petitioner to grant enhanced

gratuity amount from Rs.2.5 lakhs to Rs.3.5 lakhs is an outcome of non-application of mind and contrary to the provisions of law and, as such, rejection of representation of the petitioner, vide letter dated 02.05.2007, cannot sustain and is liable to be quashed. It is further contended that the claim of the petitioner has been denied on the plea that pensionary benefits to the IAS cadre officers being regulated by Central Civil Service (Pension) Rules, 1972, whereas the same in respect of the Orissa Superior Judicial Service (Senior Branch) employees is governed as per the Orissa Pension Rules and, thereby, the petitioner is not entitled to DCRG at par with IAS cadre officers, itself is erroneous and fallacious to the reasons assigned while disposing of the representation filed by the petitioner for extension of such benefits. It is further contended that pursuant to the direction given by the apex Court in ***M.L. Jain*** (supra) and also of this Court in the case of ***Prasana Kumar Patra*** (supra), though resolutions as well as circulars have already been issued implementing the said decisions, but the same have not been made universal application. Therefore, non-extension of such benefits to the petitioner and other similarly situated persons amounts to gross violation of Articles 14 and 16 of the Constitution of India. It is further contended that vide circular dated 18.02.1998 in Annexure-4, it has been observed that in the event the State Government decides to adopt the direction contained in the office memorandum dated 27.10.1997 regarding applicability of revised/enhanced rate of DCRG to its officers, the officers of Orissa Superior Judicial Service (Senior Branch) shall also be entitled to the revised/enhanced rate of DCRG. Since the State Government already allowed the revised/enhanced rate of DCRG in respect of Prasana Kumar Patra, as per the resolution dated 06.09.2006 vide Annexure-6, it is deemed that the office memorandum dated 27.10.1997 under Annexure-3 is applicable to the petitioner. Thereby, there is no valid and justifiable reason not to extend the benefits to the petitioner, who has retired from service as a member of Orissa Superior Judicial Service (Senior Branch). Thereby, the opposite parties have made discrimination between the same class of employees, which violates Articles 14 and 16 of the Constitution of India. It is further contended that in view of the resolution dated 27.10.1997, similar benefit has already been extended by some of the States, namely, Goa, Assam and Himachal Pradesh. Thereby, non-extension of such benefit to the petitioner is contrary to the office memorandum, as mentioned above.

To substantiate his contention, learned Senior Counsel appearing for the petitioner has placed reliance on the judgment of the apex Court in the case of ***M.L. Jain v. Union of India***, AIR 1985 SC 619 : (1985) 2 SCC 355 and of this Court in the case of ***Prasana Kumar Patra v. State of Orissa***, (2006) 1 OLR 156.

5. Per contra, Mr. S. Rath, learned Addl. Standing Counsel appearing for the State-Opposite parties

vehemently contended that the Central Government has issued memorandum dated 27.10.1997 enhancing the gratuity from Rs.2.5 lakhs to Rs.3.5 lakhs implementing the recommendation of 5th Central Pay Commission and also by amending Section 4(3) of the Payment of Gratuity Act, 1972 w.e.f. 24.09.1997. The State Government has to decide for adopting the same by issuing independent orders of DCRG from Rs.2.5 lakhs to Rs.3.5 lakhs in respect of its employees including the Orissa Superior Judicial Service (Senior Branch), but till date no such decision has been taken by the State Government. So far as the Orissa Superior Judicial Service (Senior Branch) is concerned, those who have been elevated as Judges of the Orissa High Court, for them it has been enhanced from Rs.2.5 lakhs to Rs.3.5 lakhs. Therefore, the enhancement of DCRG from Rs.2.5 lakhs to Rs.3.5 lakhs cannot be construed to be automatic one, unless the same is adopted by the State Government in compliance of the office memorandum dated 27.10.1997. It is further contended that as the pensionary benefit of the petitioners is governed under OCS (Pension) Rules, for which Rs.2.5 lakhs has been sanctioned and paid as per the provisions contained under Rule-49 of the Rules. Thereby, the claim of the petitioners cannot sustain in the eye of law. Consequentially, he seeks for dismissal of the writ petitions.

6. Mr. S.K. Das, learned Standing Counsel appearing for Accountant General (A&F), Orissa-opposite party no.4 contended that power of opposite party no.4 in the matter of settlement of DCRG of retired government employee is very limited, as the claim of the petitioners can only be considered by the Government. As such, authorization of DCRG amount at the enhanced rate by the opposite party no.4 depends on receipt of specific instructions to that effect from Government. As the same was not provided by the Government, the benefit claimed by the petitioners could not be acceded to.

7. This Court heard Mr. S.P. Mishra, learned Senior Counsel appearing along with Mr. S. Mishra, learned counsel for the petitioners in the respective writ petitions; as well as Mr. S.K. Pattnaik, learned Senior Counsel appearing along with Mr. P.K. Patnaik, learned counsel for the petitioner in WP(C) No. 2795 of 2007 and Mr. B. Sahoo, learned counsel appearing for the petitioner in WP(C) No. 7831 of 2008, who adopt the arguments advanced by Mr. S.P. Mishra, learned Senior Counsel; Mr. S. Rath, learned Addl. Standing Counsel appearing for the State-Opposite parties in all the writ petitions; and Mr. S.K. Das, learned Standing Counsel appearing for Accountant General (A&F), Orissa by virtual mode and perused the records. Pleadings having been exchanged between the parties, with the consent of learned counsel for the parties, these writ petitions are being disposed of finally at the stage of admission.

8. The undisputed facts, as borne out from the records, are that all the petitioners belonged to Orissa

Superior Judicial Service (Senior Branch). After their superannuation, they are claiming enhanced gratuity from Rs.2.5 to Rs.3.5 lakhs, in view of the office memorandum dated 27.10.1997 of the Government of India, Department of Pension and Pensioners Welfare. The said memorandum was issued by the Central Government for implementation of Government's decision on the recommendations of the 5th Central Pay Commission Revision of provisions regarding pension/commutation of pension. Clause-6 of the said memorandum reads as under:-

> ***"RETIREMENT GRATUITY/ DEATH GRATUITY***
> *6. The maximum limit of retirement /Death Gratuity shall be Rs. 3.5 lakhs. Accordingly first provison under Rule50 (1) (b) pension Rules shall stand modified to the effect that the amount of retirement gratuity or death gratuity payable under this Rule shall in no case exceed Rs. 3.5 lakhs."*

The aforementioned clause clearly indicates that maximum limit of retirement/death gratuity shall be Rs.3.5 lakhs and in no case it should exceed Rs.3.5 lakhs.

9. The Government of India, in Ministry of Law and Justice (Department of Justice) issued a circular on 18.02.1998 for grant of revised pension admissible under para-2 (a) of the Part-III of the first schedule/schedule to the Act of 1954/1958, computation of DCRG of Part-III and Part-I Judges with effect from 01.01.1996 onwards. Relevant portion of such circular is extracted hereunder:-

> *"I am directed to say that in pursuance of the recommendations of the Fifth Central pay commission, the Central Government has modified provision regulating pensionary benefits of its employees as per Department of Pension & P.W.'s O.M.No. 45/86/97-P&W (A) Part –I dated the 27th October, 1997 (copy enclosed). Accordingly, in case the concerned state Government adopts the said O.M., in respect of its employees including the Members of State Higher Judicial Services, then the pension of High/Supreme Court Judges retiring under Part-III of the first schedule/schedule to the High/ Supreme Court Judges(C/S) Act, 1954/1958. Would be entitled to the computation of their pension under para 2(a), from the date the concerned State Government adopts the aforesaid D.M., in respect of its employees including the Members of State Higher Judicial Service."*

From the above it is evident that the concerned State Government has to adopt the office memorandum dated

27.10.1997 in respect of its employees, including the Members of the State Higher Judicial Service, and from the date the concerned State Government adopts the aforesaid office memorandum in respect of its employees, including the Members of the State Higher Judicial Service, they would be entitled to computation of their pension in terms of the office memorandum dated 27.10.1997.

10. Paragraphs-3 and 4 of the aforesaid circular dated 18.02.1998 further read thus:-

> *"3. If the concerned State Government has not adopted the provisions contained in the Department of Pension & P.W.'s O.M. No.45/86/97- P&W (A)-Part-1 dated the 27.10.1997 or have not yet issued any independent orders for revising the pensionary benefits to the employees of that State including the members of the State service including State Higher Judicial Service, then the pensionary benefits to the Judges belonging to Part-III belonging that particular State will not be revised.*
>
> *4. The Death-cum-Retirement Gratuity in the case of Part-I Judges of High/Supreme Court , is calculated as per provisions of section 17-A(3)/16-A(2) of the High/Supreme Court Judges (C/S) Act, 1954/1958. i.e. as per the rules/orders/ notifications applicable to a*

> *member of the Central Civil (Group-A). Accordingly from 1.1.1996 onwards, the Death-cum-Retirement Gratuity/ Death Gratuity of Part –I Judges of the High/ Supreme Court, shall be calculated as per the instruction contained in Department of Pension & P.W.'s O.M. dated 27.10.1997."*

From the above quoted paragraphs, it further transpires that in case the concerned State Government does not adopt the office memorandum dated 27.10.1997 or issue any independent orders revising the pensionary benefits to the employees of that State including the members of the State Higher Judicial Service, then the pensionary benefits to such employees will not be revised. So far as the DCRG in case of Part-I Judges of High/Supreme Court is concerned, the same has been allowed from 01.01.1996 and shall be calculated as per the instructions issued in office memorandum dated 27.10.1997.

11. The Govt. of India, Ministry of Law and Justice (Department of Justice) issued letter dated 02.04.1998 for grant of revised pension under para-2(a) of part-II and part-III of the first schedule/schedule to the High/ Supreme Court Judges (C/S) Act, 1954/1958 and revised

family pension to the families of the Judges of High/Supreme Court, paragraphs-2 and 3.2 whereof are extracted hereunder:

> "*2. <u>Revision of pension of Part II Judges i.e those who were elevated from earlier Indian Civil Services to High/Supreme Court.</u>*
>
> *The pension of such Judges comprises of two parts i.e. pension under Para 2 (a) and 2(b) of part-II of the first schedule/schedule to the Act of 1954/1958. The pension under Para 2(a) was as per the ordinary rules of the Indian Civil Service. As the pension of former Members of Indian Civil Services has now been revised as per the Department of pension & P.W.'s O.M. dated the 27.10.1997, the pension under para 2 (a) of such Judges of High/Supreme Court. Elevated from Indian Civil Service may accordingly he revised in terms of the Department of Pension & P.W.'s O.M. dated the 27.10.1997.*
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> *xxx xxx xxx*
>
> *3.2 The Supreme Court of India had directed in C.M.P No.18044 of 1988, in the matter of Justice M.L Jain v. U.O.I, the state Government to adopt revised pension allowed to the Central Government Pensioners by the Department of Pension & P.W., w.e.f. 1.1.1986 in respect of the employees including Members of State Higher judicial Service, So that these revised pensions may also be granted to the part –III Judges under para 2(a). The said Judgment was circulated by this Department vide its circular letter No.27/20/88-Jus. , dated the 26.6.1989. Accordingly, the ordinary pension admissible to High Court/Supreme Court Judges. Under para 2(a) of part-III of the first*

> *schedule/schedule to the High/Supreme Court Judges (C/S) Act, 1954/1958, respectively, may be revised with effect from 1.1.1996, as in the case of the employees of the Central Govt. or from the date, respective state Government decide adopt these orders or an independent order issued by them, if any, to grant the benefit of increased pension on similar lines to their employees including Members of State Higher Judicial Service."*

A cumulative reading of the provisions, as mentioned above, would make it clear that in terms of the office memorandums dated 27.10.1997, 18.02.1998 and circular dated 02.04.1998 the members of State Higher Judicial Service shall be entitled to the benefit of revised pension and DCRG with a rider that the State Government has to adopt the office memorandum dated 27.10.1997. Admittedly, no such notification adopting such office memorandum has been issued by the State Government. But fact remains, Prasana Kumar Patra, who was in Orissa Superior Judicial Service (Senior Branch), claimed the benefit of higher enhanced gratuity. The same having not been extended, he approached this Court by filing W.P.(C) No. 12811 of 2003, which was disposed of directing the State Government to enhance the DCRG amount from Rs.2.5 lakhs to Rs.3.5 lakhs and pay the differential amount of Rs.1.00 lakh within a period of three months. In compliance thereof, by resolution dated 06.09.2006, Govt. of Orissa in Finance Department extended the benefits stating inter alia that the State Government have been pleased to decide that the maximum limit of the DCRG shall be raised from Rs.2.5 lakhs to Rs.3.5 lakhs in case of Judges of Orissa High Court those who are elevated from Orissa Senior Judicial Service Cadre. As a consequence thereof, the benefit was extended to Prasana Kumar Patra, whereas the petitioners have been discriminated.

12. In ***Bakshish Singh v. Darshan Engineering Works***, (1994) 1 SCC 251, the apex Court, while considering two characters of gratuity, held that it was initially considered as a reward for a long and meritorious service but later on it was recognized as a retiral benefit in consideration of the service rendered.

13. In ***Ahmadabad Pvt. P.T Assocn. V. Administrative Officer***, AIR 2004 SC 1426, the apex Court held that the expression 'gratuity' itself suggests that it is a gratuitous payment given to an employee on discharge, superannuation or death. It is an amount paid unconnected with any consideration and not resting upon it, and has to be considered as something given freely, voluntarily or without recompense. It is sort of financial assistance to tide over post retiral hardships and inconveniences.

14. In ***Delhi Transport Corporation Retired Employees Association v. Delhi Transport Corporation***, AIR 2001 SC 1997 :(2001) 6 SCC 61, the apex Court held that 'Gratuity' is essentially a retiring benefit payable to a workman which as per the Statue has been made payable on voluntary resignation as well. Gratuity is reward for good, efficient and faithful service rendered for a considerable period.

15. In ***Indian Hume Pipe Co. Ltd. v. Workmen***, AIR 1960 SC 251, the apex Court held that *"Gratuity"* is a kind of retirement benefit like the provident fund or pension gratuity paid to workmen is intended to help them after retirement whether the retirement is the result of the rules of superannuation or of physical disability.

16. The above being the meaning of gratuity in essence and, as such, by virtue of the office memorandum dated 27.10.1997, such benefit having been extended to the Central Government employees as well as to the All India Service Cadre even to the members of Orissa Superior Judicial Service (Senior Branch) elevated to the High Court, there is no valid and justifiable reason not to extend such benefit to similarly situated Superior Judicial Service (Senior Branch) Officers.

17. A plea has been taken by the State that since it has not adopted the office memorandum dated 27.10.1997 by issuing notification, the benefit is not admissible. But this contention is absolutely misconceived

one, in view of the fact that in the case of Prasana Kumar Patra, as mentioned supra, this Court considered the said issue and observed as follows :-

> *"Now the question that arises for consideration is that how far the stand taken by the opposite parties 1 and 2 is justifiable or not. As admitted by the learned counsel for both parties, number of retired Part-III Service Judges in the State shall not be more than 7 to 8 and all that the State has to pay is Rs.7 lakhs to 8 lakhs to the Service Judges who retired after 1.1.1996. If the stand of the State Government that it does not have financial resources to spare Rs.7 lakhs to Rs.8 lakhs for the Service Retired Judges who retired after 1.1.1996 it will be one of the most unfortunate statement. There is no denial that the officers in the All India Services have been granted benefit under the Office Memorandum dated 27.10.1997 and there is no reason as to why the State Government should raise an objection and take a stand that the financial resources do not permit enhancement of death-Cum-retirement gratuity from Rs.2.5 lakhs to Rs.3.5 lakhs, which as a matter of fact, involves an additional expenditure of Rs. 7 lakhs to 8 lakhs for the present. It has been the experience that hardly one or two Services Judges retire in a year and additional burden on the State Government will be only to the extent of Rupees one lakhs to two lakhs in a year and therefore it is difficult to accept the contention raised in the counter affidavit that the financial resources of the State Government do not permit payment of additional Rs.1 to Rs.2 lakhs per*

year to the Service Judges who are likely to retire in future."

Assigning the above reason, this Court directed to enhance the DCRG from Rs.2.5 lakhs to Rs.3.5 lakhs and to pay the differential amount of Rs.1.00 lakh within a period of three months and the same has been complied with by issuing resolution dated 06.09.2006 in Annexure-6. Therefore, if a Superior Judicial Service (Senior Branch) Officer, while continuing as District Judge, made a grievance for DCRG (even though in the meantime he was elevated as a Judge to this Court) and accordingly the benefit was extended to him, the petitioners, who stand on similar footing, being the members of Superior Judicial Service (Senior Branch) cadre, are entitled to get enhancement of gratuity from Rs.2.5 lakhs to Rs.3.5 lakhs and, as such, the differential amount of Rs.1.00 lakh is to be paid to them.

18. It is of relevance to mention that the State being a model employer cannot make any discrimination in the

matter of grant of financial benefit to it employees like the petitioners.

In ***State of Maharastra v. Pragati Vashi and others***, AIR 1996 SC 1, while considering Articles 21 and 39A of the Constitution of India, the apex Court held that the scope of right of free legal aid and speedy trial mandate under Articles 21 and 39A casts duty on State to afford grant in aid to recognized private law colleges, similar to other faculties, which qualify for receipt of grant, it cannot be denied either by pleading paucity of funds or otherwise.

19. Therefore, even if the State suffers with a financial crunch that itself cannot deny the benefit to the petitioners as they are otherwise eligible to get the same. As such, this plea has been advanced in the case of Prasana Kumar Patra (supra), which was turned down in the said judgment and consequentially direction was given for payment of differential amount. Therefore, once the benefit has been extended to a similarly situated person,

namely, Prasana Kumar Patra, the State cannot make a distinction to the petitioners, which amounts to violation of Articles 14 and 16 of the Constitution of India. More so, a handful of persons like the present petitioners, whose names can be counted in the fingertips, are only be entitled to such benefits and, as such, it would not cause much financial hardship to the Government in the event the differential amount of Rs.1.00 lakh is paid to each of the writ petitioners. As such, the same is onetime payment and, thereby, the State, being a model employer, should not deny the legitimate dues, as admissible to the petitioners, in view of office memorandum dated 27.10.1997 under Annexure-3.

20. The petitioner in WP(C) No.7438 of 2007 has specifically pleaded in paragraphs-11 and 16 to the following effect:-

> *"11. That after hearing both parties and taking into consideration the fact the employees retiring as Secretary of Various Departments of the State Govt. in the cadre of Indian Administrative Service are being*

paid with revised/enhanced DCRG, this Hon'ble Court was pleased to allow the said writ petition basing on the decision of the Hon'ble Apex Court reported in (1985) 3 SCR 608 = AIR 1985 SC 619 and directed the authorities to enhance the DCRG from Rs. 2.5 lakhs to Rs.3.5 lakhs and pay differential amount of Rs. 1 Lakh to the writ petitioner there in within a period of three months from the date of communication of the said order vide order Dt13.01.06 The aforesaid decision of this Hon'ble Court has also been reported in 2006 (1) OLR 156.

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16. That it is further respectfully submitted that the members of the Orissa Superior Judicial Service (Senior Branch) are, in no respect, less than the officers of the Indian Administrative Service holding the post of Secretaries of the various Govt. Departments. The members of Orissa Superior Judicial Service are also appointed as the Secretary of Law Department and there is no reason to discriminate between the Secretaries of different Department of Govt. of Orissa in the matter of pension and Gratuity etc. So denying similar benefits to the members of the Orissa Superior Judicial Service (Senior Branch) is not only unreasonable and unjustified but the same amounts to discriminatory treatment in blatent violation of Article 14 & 16 of the Constitution entailing interference in exercise of writ jurisdiction."

21. To the above pleadings of paragraphs-11 and 16 of the writ petition, in the counter affidavit, reply has been given in paragraphs-9 and 12 to the following effect:-

> *"9. That in reply to the averments made in paragraphs -11 and 12 of the writ petition, it is humbly submitted that the same have already been explained in preceding paragraphs.*
>
> *xxx xxx xxx*
>
> *12. That in reply to paragraph-16 of the writ petition, it is humbly submitted that the pensionary benefits of the Officers of Indian Administrative Service, holding the post of Secretaries in different Department under the state Government, are being governed by the C.C.S (Pension Rules, 1972 whereas, the pensioner benefits of Orissa Superior Judicial Service is being governed by OCS (Pension Rule, 1992). Since the aforesaid pension Rule of State Government has not yet been amended, the existing provisions are still in force and accordingly, the pensioner benefits have been sanctioned in favour of the petitioner as per the existing provisions. Therefore, the fundamental rights of the petitioner as provided under Article 14 & 16 of the Constitution of India have not been violated."*

In the aforementioned paragraphs, the only distinction has been made by stating that the IAS officers are getting pensionary benefits in terms of the CCS (Pension) Rules, 1972 whereas the Superior Judicial Service (Senior Branch) Officers are getting the pension under OCS (Pension) Rules, 1992. But the entitlement of the petitioners cannot be denied, in view of office memorandum issued on 27.10.1997 read with the ratio decided by this Court in the case of Prasana Kumar Patra (supra). As such, there was no denial of such benefits to the IAS officers. But fact remains, members of the Superior Judicial Service (Senior Branch), when posted as Secretary (Law) in the Secretariat, which is an equivalent post at par with the IAS Officers, cannot be denied the benefit which the IAS Officers of other departments are getting. In view of the pleadings made in the above mentioned paragraphs, it is made clear that the employee retiring as Secretary of various departments of the State Government in the cadre of Indian Administrative Service are being paid with revised/enhanced DCRG in terms of the office memorandum dated 27.10.1997, whereas the petitioner belonging to Orissa Superior Judicial Service (Senior Branch) are discriminated.

22. In view of the factual and legal analysis, as made above, opposite parties no.1 and 2 are directed to enhance the Death-cum-Retirement Gratuity from Rs.2.5 lakhs to Rs.3.5 lakhs in respect of the petitioners and pay the differential amount of Rs.1.00 lakh, along with interest @ 6% per annum, to each of the petitioners within a period of three months from the date of communication/ production of certified copy of this judgment.

23. In the result, the writ petitions are allowed. However, there shall be no order as to costs.

....
DR. B.R. SARANGI,
JUDGE

G. SATAPATHY, J. I agree.

....
G. SATAPATHY,
JUDGE

Orissa High Court, Cuttack
The 27th September, 2022, Ashok/GDS