

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 1948 of 2014

State of Odisha & Ors.

.....

Petitioner
Mr. B.P. Tripathy, AGA

Vs.

Gandharba Kandi

.....

Opposite Party

CORAM:

DR. JUSTICE B.R. SARANGI
MISS JUSTICE SAVITRI RATHO

ORDER
20.04.2022

Order No.

3.

This matter is taken up through hybrid mode.

2. Heard Mr. B.P. Tripathy, learned Additional Government Advocate appearing for the State-petitioners.

3. The State and its functionaries have filed this writ petition to set aside the order dated 24.07.2012 passed in O.A. No. 2953 (C) of 2001, by which the Odisha Administrative Tribunal, Cuttack Bench, Cuttack, while allowing the said O.A. has directed the petitioners to treat the date of birth of the opposite party as 11.10.1949 instead of 01.10.1943 and refix his last pay notionally by treating his date of retirement as 31.10.2007, as he has already retired from Government service, and further to recalculate his pension and other retiral benefits and to pay arrears to him within a period of six months from the date of receipt of the order. The tribunal has further held that the opposite party shall not be entitled to any salary for the period for which he has not discharged duties as a Government servant.

4. Mr. B.P. Tripathy, learned Additional Government Advocate contended that since the date of birth of the opposite party is disputed one, this Court has no jurisdiction to entertain

this writ petition. To substantiate his contention, he has relied upon the decisions of the apex Court rendered in the case of *Karnataka Rural Infrastructure Development Ltd. vrs. T.P. Nataraja and Others*, 2021 SCC Online SC 767; *Bharat Coking Coal Limited and Others vrs. Shyam Kishore Singh*, (2020) 3 SCC 411 and *Jigya Yadav (Minor) (through Guardian/Father Hari Singh) vrs. Central Board of Secondary Education and Others*, (2021) 7 SCC 535.

5. In view of the ratio decided by the apex Court in *Karnataka Rural Infrastructure Development Ltd., Bharat Coking Coal Limited* and *Jigya Yadav (Minor) (through Guardian/Father Hari Singh)* (supra), the order dated 24.07.2012 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 2953 (C) of 2001 is set aside and the writ petition is accordingly allowed. However, liberty is granted to the opposite party to approach the appropriate forum for declaration of his correct date of birth.

6. With above observation, the writ petition stands disposed of granting liberty as aforesaid.

Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE