

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 1869 of 2021

Laxmidhar Majhi

....

Petitioner

-versus-

State of Odisha

....

Opposite Party

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

27.07.2022

Order No

08.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard Mr. S. Mallick, learned counsel for the Petitioner and Mr. YSP Babu, learned AGA appearing for the Opp. Party.
3. The Petitioner has filed the present writ Petition challenging the order dtd.08.01.2021 passed by the Govt. in the Department of Food Supplies and Consumer Welfare under Annexure-13 and for payment of his arrear salary w.e.f.28.02.2006 along with interest.
4. It is submitted that because of his implication in a Vigilance proceeding in Sambalpur Vigilance P.S. Case No. 12 of 2008 and two (2) nos. of departmental proceedings initiated vide memorandum No. 27194 dtd.30.10.2003 and memorandum No. 25458 dtd.11.11.2002, the Petitioner was not extended with the benefit of promotion though person Junior to him were given such promotion and the Petitioner's case was kept in a sealed cover.

5. It is submitted that in the proceeding initiated on 11.11.2002, the Petitioner was imposed with the following punishment:

“1. Recovery of Rs.64,285/-

2. Withholding of two annual increments with cumulative effect.

3. Withholding of promotion for further period of two years.”

6. Similarly in the proceeding initiated on 30.10.2002 the Petitioner was exonerated from the charges. It is also submitted that the order of punishment passed in the proceeding initiated on 11.11.2002 was challenged by the Petitioner before the learned Tribunal in O.A. No.727 of 2014 and learned Tribunal vide its order dtd.16.03.2016 held the same as not sustainable in the eye of law and quash the same by directing the Opp. Parties to grant all service and consequential financial benefits in favour of the Petitioner from the date those benefits have been held up due to pendency of the said proceeding.

7. It is further submitted that pursuant to the order passed by the learned Tribunal on 16.03.2016 the proceeding initiated against the Petitioner on 11.11.2002 was dropped.

8. Mr. Mallik submitted that in the meantime vide Judgment dtd. 16.01.2018 the Petitioner was also acquitted from the charges in Sambalpur Vigilance P.S. Case No. 12 of 2008 corresponding to CTR No. 07 of 2009. It is submitted that in spite of his acquittal in the Vigilance case and the closure of the two (2) disciplinary proceedings, the Petitioner was not extended with the benefit of promotion by opening the sealed cover, the Petitioner approached this Court in W.P.(C) No. 21172 of 2019. This Court vide order dtd.25.11.2019 disposed of the said writ Petition with a direction on

the Opp. Party No. 1 to open the sealed cover and to place the Petitioner at appropriate place with immediate effect. The observation of this Court contained in the said order dtd.25.11.2019 is quoted hereunder:-

“Be that as it may, this Court observes, pendency of the vigilance case since was not an impediment while keeping promotion aspect of the petitioner in sealed cover, there is absolutely no reason to withhold the promotion of the petitioner any further. Be that as it may, going through the judgment involving C.T.R. No.7 of 2009 being supplied by the counsel for the petitioner, this Court finds, in fact the petitioner has been acquitted from the vigilance case initiated against him vide C.T.R. No. 7 of 2009. It appears, there is absolutely no reason at present to withhold the promotion of the petitioner. In such view of the matter, this Court directs the opposite party No. 1 to open the Sealed Cover and place the petitioner at appropriate place with immediate effect.”

9. It is also submitted that the order passed by this Court on 25.11.2019 though was assailed by the State-Opp. Party before the Hon’ble Apex Court in Special Leave Petition (Civil Diary No. 15398 of 2020), but the said SLP was dismissed vide order dtd.16.12.2020.

10. It is submitted that after dismissal of the matter by the Hon’ble Apex Court the Petitioner vide the impugned order though was extended with the benefit of promotion w.e.f.28.02.2006 i.e. from the date from which his juniors were so promoted, but with regard to extension of the financial benefit, the Petitioner was held not entitled, as he has not actually worked in higher post of Assistant Civil Supply Officer.

11. Mr. Mallik submitted that in view of the order passed by the learned Tribunal in O.A. No. 727 of 2014 coupled with the Order passed by this Court in W.P.(C) No. 21172 of 2019, the Petitioner is eligible and entitled to get the financial benefit as due and admissible w.e.f.28.02.2006 till he attained the age of superannuation.

12. Mr. Mallik also relied on the memorandum issued by the General Administration Department on 18.02.1994 under Annexure-12, which stipulates the guidelines for promotion of Govt. servants against whom disciplinary/criminal proceedings are pending. Mr. Mallik brought to the notice of this Court the relevant Clause 6 of the order dtd.18.02.1994:-

“On the conclusion of the disciplinary case/criminal prosecution, the sealed cover or covers shall be opened. In case the Officer is completely exonerated, the due date of his promotion will be determined with reference to the findings of the Screening Committee kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such findings. The Government servant may be promoted, if necessary, by reverting the Junior-most employee who has been allowed officiating promotion. He may be promoted notionally with reference to the date of promotion of his junior.

In case of complete exoneration, the officer will also be paid arrears of salaries and allowances. In other cases, the question of arrears will be decided by the State Government by taking into consideration all the facts and circumstances of the disciplinary/criminal proceedings, but where the Government denies arrears of salary or a part of it, the reasons for doing so shall be recorded.”

13. Making all such submission, Mr. Mallik, learned counsel for the Petitioner submitted that in view of such exoneration in both criminal proceeding and departmental proceeding and the order passed by this Court as well as by the learned Tribunal as cited (supra), the Petitioner is entitled to get the financial benefit w.e.f.28.02.2006.

14. Mr. Y.S.P. Babu, learned AGA appearing for the Opp. Parties on the other hand submitted that since the Petitioner was not extended with the benefit of promotion because of his involvement in two (2) nos. of departmental proceeding and one vigilance proceeding, the Petitioner never worked in the promotional post and accordingly he is not entitled to get the financial benefit for the period claimed in the present writ Petition. Mr. Babu accordingly submitted that since the Petitioner has never worked in the promotional post, no illegality has been committed by the Authority while passing the impugned order under Annexure-13.

15. Heard learned counsel for the Parties. Perused the materials available on record. This Court after going through the same finds that the Petitioner was not only acquitted in the vigilance proceeding vide Judgment dtd.16.01.2018, but also he was exonerated in one disciplinary proceeding vide order dtd.15.03.2014 under Annexure-4. In the other proceeding when the Petitioner was imposed with such punishment under Annexure-5, the same was challenged before the learned Tribunal and learned Tribunal in its order under Annexure-6 while quashing the said order held the Petitioner entitled to get all service and financial benefits from the date those benefits were so held up due to pendency of the proceeding.

16. This Court also finds that the guideline issued by the G.A Department on 18.02.1994 under Annexure-12 is not only relied on by the Petitioner, but also by the Opp. Party.

17. Therefore, taking everything into account, this Court when proposed that the Petitioner will be entitled to get 50% of his arrear entitlement w.e.f.28.02.2006 till he attains the age of superannuation, learned counsels appearing for both the Parties gave their consent to the said view of this Court.

18. In view of such stand taken by learned counsel appearing for the Parties, this Court while interfering with the impugned order dtd.08.01.2021 under Annexure-13 held that the Petitioner is entitled to get 50% of the financial benefit for the period from 28.02.2006 till he attains the age of superannuation. Accordingly, this Court while holding so, directs the Opp. Parties to calculate the benefit and release the same in favour of the Petitioner within a period of three (3) months from the date of receipt of this order.

19. The writ Petition is disposed of with the aforesaid observation and directions.

(Biraja Prasanna Satapathy)
Judge

Sneha