

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 15511 of 2014

<i>State of Odisha and another</i>		<i>Petitioners</i>
		<i>Mr. B.P. Tripathy, AGA</i>
	Vs.	
<i>Sri Rajendra Swain and another</i>		<i>Opposite parties</i>
		<i>None</i>

CORAM:

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

**ORDER
12.05.2022**

Order No.
07

This matter is taken up through hybrid mode.

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

3. Pursuant to the notice issued by this Court, Mr. A.K. Mohanty-B, S.R. Mohapatra and T.K. Mohapatra, learned counsel entered their appearance by filing vakalatnama on 06.01.2015. Though their names appear in the cause list, none is there to conduct the case on behalf of opposite party no.1. Earlier when the matter was taken up on 07.04.2022, since none was there on behalf of opposite party no.1, this Court adjourned the matter in order to give an opportunity to opposite party no.1. In spite of such liberty given to opposite party no.1, today also none appears on behalf of opposite party no.1. Since this is year-old matter of 2014, this court is not inclined to adjourn this matter any further.

4. The State-petitioners have filed this writ petition challenging the order dated 15.07.2013 passed by the Odisha Administrative Tribunal, Bhubaneswar in O.A. No. 1590 of 2012,

wherein the tribunal quashed the order of rejection of the claim of the petitioner for stepping up his pay and directed the petitioners to notionally step up the pay of opposite party no.1 vis-à-vis Sri B.K. Pradhan.

5. Mr. B.P. Tripathy, learned Additional Government Advocate contended that the finding of the tribunal is absolutely erroneous one in view of the fact that it has not taken into consideration the contentions raised by the State-petitioners, which had been filed by way of counter affidavit before the tribunal. As such, the tribunal has lost sight of the fact that Shri B.K. Pradhan was never junior to opposite party no.1, so opposite party no.1 cannot be extended the stepping up of his pay at par with Shri B.K. Pradhan, and the claim of opposite party no.1 cannot sustain in the eye of law. Therefore, the tribunal has committed gross error in quashing the rejection order and as such, the order of the tribunal needs interference of this Court.

6. This Court heard Mr. B.P. Tripathy, learned Additional Government Advocate and perused the record. It appears that opposite party no.1 is not senior to Shri Bijaya Kumar Pradhan in the rank all through his service career. Rather Shri Pradhan was senior to opposite party no.1 in base level post of Inspector of Weight & Measures as the date of joining of Shri Pradhan is 01.02.1978 whereas the date of joining of opposite party no.1 is 18.06.1979. All along Shri B.K. Pradhan was drawing higher rate of pay than opposite party no.1 in the lower post of Senior Inspector of Legal Metrology. One of the criteria of giving benefit of stepping up pay to the seniors on promotion as envisaged in

F.D. Letter No. 19168/F dated 03.05.1985 is that the Junior Officer must not be drawing a higher rate of pay than the senior in the lowest post. Therefore, in terms of aforementioned circular of Finance Department, opposite party no.1 was not allowed to step up his pay with that of his junior Shri Pradhan in the higher post of Assistant Controller of Legal Metrology.

7. In view of the above, the tribunal has not taken into consideration those aspects while disposing of the original application and without application of mind quashed the order of rejection vide Annexure-8 to the original application.

8. In view of such position, the tribunal has committed error apparent on the face of the order itself. Therefore, the order impugned is hereby quashed and the writ petition is allowed.

(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE

Arun/Puspa