

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 22401 of 2013

State of Odisha and another

.....

Petitioner

Mr. S. Nayak, ASC

Vs.

Rasa Bihari Panda

.....

Opposite Parties

Mr. L.K. Mohanty, Adv.

CORAM:

DR. JUSTICE B.R. SARANGI

MR JUSTICE S.K. MISHRA

ORDER

28.06.2022

Order No.

25.

This matter is taken up by hybrid mode.

2. Heard Mr. S. Nayak, learned Addl. Standing Counsel for the Petitioners-State and Mr. L.K. Mohanty, learned counsel appearing for the Opposite Parties.

3. The State and its functionaries have filed this Writ Petition challenging the order dated 13.12.2012 passed in O.A. No. 3722 of 2001, by which Orissa Administrative Tribunal, Cuttack Bench, Cuttack has directed to extend the benefit as due and admissible to the deceased Opposite Party-Rasa Bihari Panda at par with the persons similarly situated and equally placed in the service within a period of three months.

4. Mr. S. Nayak, learned Addl. Standing Counsel for the Petitioners-State vehemently contended that the deceased Opposite Party is not entitled to get the benefit as directed by the Tribunal. Thereby, the order so passed by the Tribunal cannot sustain in the eye of law and the same is liable to be quashed.

5. Mr. L.K. Mohanty, learned counsel appearing for the Private-Opposite Parties contended that if similarly situated persons have already extended with the benefits, the Opposite Party cannot and could not have been discriminated and, as such,

the Tribunal is well justified in passing the order impugned, which does not require any interference of this Court at this stage. It is further contended that the deceased-Opposite Party is entitled to get the benefit of only four months and so far as material consideration is concerned, it may vary from Rs.50/- to Rs.100/- only each month and, as such, the same will not prejudice to the State in the event the order of the Tribunal is implemented.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that the deceased Opposite Party joined as an L.D.C. in a District Office of the Fisheries Department on 20.04.1971 and thereafter selected for service in the Directorate as an L.D. Assistant on 10.02.1975 and subsequently he was promoted as a Grade-II Assistant on 26.05.1979. The posts Grade-II Assistants and Grade-I Assistants were amalgamated as one cadre from 01.01.1981 and re-designated as Senior Assistant. The deceased-Opposite Party passed the final Accounts Examination on 07.09.1979 and was thus eligible for promotion to the next higher post. Though the deceased-Opposite Party was available for promotion, another person was promoted on 30.01.1980 to the higher post of Grade-I Assistant, though he had not cleared up the departmental examination. The deceased-Opposite Party represented for promotion against the said post and finally approached this Court in OJC No. 786 of 1986, which was transferred to the Tribunal as T.A. No. 613 of 1988. Pursuant to the order passed by the Tribunal, the Opposite Party was finally promoted to the rank of Grade-I Assistant on 30.01.1980, i.e., from the date when persons who had not passed the departmental examinations were

promoted. Though 12 posts of Section Officer, Level-II were available, ineligible persons who had not passed the departmental examinations, were promoted whereas the case of the petitioner was not considered. But subsequently he was finally promoted as Section Officer, Level-II on 05.06.2000. As per letter No.11229 dated 02.06.1992, it was decided to allow promotions from the date of passing the Final Accounts Examination and seniority of three such persons was ante-dated. Thereafter, basing on the instructions dated 07.07.1992, the seniority of several others was also antedated on the basis of their date of passing the Final Accounts Examination. Though the deceased-Opposite Party represented for such antedating his seniority from the date he passed the Final Accounts Examination, but the same was rejected by the State, vide letter dated 01.12.2001. Therefore, the deceased-Opposite Party approached the Tribunal by filing O.A. No. 3722 of 2001 with a prayer for antedating his seniority as Grade-I Assistant from 07.09.1979, as he had passed the Final Accounts Examination from that date, along with all consequential benefits. In reply to the claim made by the deceased-Opposite Party, State filed its counter affidavit before the Tribunal stating that no rules exist directing the Government to promote the deceased-Opposite Party from the date he cleared the Final Accounts Examination. Though as per the Orissa Fisheries Ministerial Service Rules, 1976 it is necessary for an employee to pass the Final Accounts Examination to be eligible for promotion to the rank of Grade-I Assistant, Head Assistant (now Section Officer) Level-II, an employee who had not passed the Final Accounts Examination was promoted as Grade-I Assistant on 30.01.1980. Therefore,

deceased-Opposite Party filed original application and in pursuance of the order passed by the Tribunal, the deceased-Opposite Party was promoted retrospectively from 30.01.1980, i.e., from the date when the other employees who had not passed the departmental Final Accounts Examination was promoted. The Opposite Party superseded 11 seniors, who had not passed the Final Accounts Examination. The vacant posts of Section Officer had been kept in abeyance, in view of the Government letter dated 02.10.1980 and due to pendency of OJC No. 629 of 1979, OJC No. 1630 of 1979 and OJC No. 1754 of 1979, which were disposed of on 25.10.1983, but were challenged before the apex Court in SLP No. 16801 of 1983, No.16803 of 1989 and No. 1993 of 1984, which were disposed of on 30.09.1991. The order of the Tribunal dated 07.03.2000 passed in O.A. No. 1371, 1714 and 1764 of 1992 have not been treated as precedent cases. But fact remains, deceased-Opposite Party passed the Final Accounts examination as a Grade-II Assistant and was promoted as Grade-I Assistant with retrospective effect from 30.01.1980, i.e., the date from which the Grade-II Assistant who had not passed the Final Accounts examination had been promoted. The contention raised in the counter affidavit was also controverted by the deceased-Opposite Party by filing rejoinder affidavit. The Tribunal taking into consideration the order passed by the apex Court in SLP Nos. 1680, 1989 and 1993 of 1984 stated that the date of promotion of the Opposite Party as Grade-I Assistant should be antedated to 07.09.1979, i.e., the date when the deceased-Opposite Party passed the Final Accounts Examination, as the seniority of some others had been antedated, and that the deceased-Opposite Party

has since retired from service and is only likely to be benefited marginally due to such change of date of promotion as Grade-I Assistant. Thereby, the Tribunal is well justified by stating that as per the gradation list, which deals with dates of joining, passing the examination and promotion, by the time the deceased-Opposite Party got promotion to the post of Section Officer, Level-II, he had also passed the Accounts Examination and was eligible to be promoted. Thereby, the Tribunal directed that the deceased-Opposite Party should be promoted by antedating his date of passing of Accounts Examination, otherwise it would be a discrimination between the two groups of persons who were similarly situated and equally placed in the service, and accordingly it was directed that the benefit should be granted from the date of acquisition of the qualification and antedate his promotion at par with similarly situated persons.

7. In such view of the matter, this Court does not find any illegality or irregularity on the face of the impugned order passed by the Tribunal so as to cause interference with the same.

8. Accordingly, the Writ Petition merits no consideration and the same is hereby dismissed.

(DR. B.R. SARANGI)
JUDGE

(S.K. MISHRA)
JUDGE

Ashok/PCD