

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 2768 of 2022

Bijay Kumar Malik

.....

Petitioner

Mr. A.K. Acharya, Advocate

-Versus-

State of Odisha & another

.....

Opposite Parties

State Counsel

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

28.01.2022

Order No.
02.

This matter is taken up through video conferencing mode.

2. Heard learned counsel for the parties.

3. The petitioner has filed this application seeking direction to the opposite parties to give him promotion to the post of Asst. Conservator of Forests from 20.10.2017, i.e. the date from which his immediate juniors got such promotions, and to grant him all consequential service and financial benefits including further promotion within a stipulated time.

4. Moot question involves whether promotion of an employee can be withheld for indefinite period on the premises of pendency of vigilance proceeding and disciplinary proceedings over a period of times.

5. This Court considering such situation has already settled the position of law keeping the sealed cover promotion aspect in view of pendency of the Disciplinary Proceeding and/or Vigilance Proceeding for decades becomes bad.

6. Fact involving the case reveals that there is disciplinary/criminal proceeding pending against the petitioner. Pleading also further made clear that Disciplinary/criminal Proceeding pending against the petitioner is yet to be disposed of. In this background of case an allegation is made that promotion of the petitioner taking effect in the year 2012 has been kept in sealed cover only on the premises that a disciplinary/criminal proceeding

involving the petitioner is pending since 2012. For the settled position of law, this Court in disposal of the writ petition observes, petitioner cannot suffer for the long pendency of the disciplinary/criminal proceeding. It is also not known when the disciplinary Proceeding initiated in the year 2014/criminal proceeding in the year 2005 will come to end. It is keeping in this view, this Court in disposal of the writ petition directs the Principal Secretary to Govt. of Odisha, Forest and Environment Department, Bhubaneswar-O.P. No.1 and Principal Chief Conservator of Forests, Odisha, opposite party no.2 to give promotions to the petitioner to the rank of Asst. Conservator of Forests from 20.10.2017, i.e. from the date of his juniors and batch mates got such promotions. However the promotions of the petitioner as per direction of this Court shall be subject to the ultimate outcome in the Disciplinary Proceeding. Further it is also clarified that the promotions given to the petitioner to different ranks shall not confer equity in the event, he will ultimately lose the Disciplinary Proceeding. Entire exercise shall be completed within four weeks from the date of communication of this direction. It is also clarified that upon promotions, petitioner shall also be entitled to all consequential benefits.

7. Writ the above observation and directions, the writ petition thus stands disposed of.

8. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a print out of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed, vide Court's Notice No.4587 dated 25th March, 2020, as modified by Court's Notice No. 4798 dated 15th April, 2021 and Court's Office Order circulated vide Memo Nos. 514 and 515 dated 7th January, 2022.

