

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 10829 of 2014

Abanindra Prasad Mohanty

.....

Petitioner

Mr. S.Behera, Advocate

Vs.

Government of Orissa & Others

.....

Opposite parties

Mr. B.P. Tripathy, A.G.A.

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

04.04.2022

Order No.

04.

This matter is taken up through hybrid mode.

2. Heard Mr. S. Behera, learned counsel for the petitioner and Mr. B.P. Tripathy, learned Additional Government Advocate for the State.

3. The petitioner has filed this writ petition challenging the order dated 15.05.2014 passed in O.A. No.4473(C) of 2011, by which the Orissa Administrative Tribunal, Cuttack Bench, Cuttack has denied the benefit of increment to the petitioner for temporarily promoted to officiate in the higher post.

4. Mr. S. Behera, learned counsel for the petitioner contended that the petitioner, having been allowed to continue to officiate temporarily in the higher post, is entitled to get the benefit as per the Rule 79 (C) of the Odisha Service Code. The same having not been considered by the tribunal in proper perspective, the petitioner has approached this Court by filing the present writ petition.

5. Mr. B.P. Tripathy, learned Additional Government Advocate appearing for the State contended that the petitioner was temporarily promoted to officiate in the higher post, but holding of a higher post does not entitle him to get benefit of increments, unless he gets regular promotion in the said post and, as such, the petitioner has not got

regular promotion in the said post, so as to entitle him to get the benefit, as claimed by him.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that the petitioner was working as an Upper Division Clerk (UDC) in the Department of Consolidation and the post of Upper Division Clerk was re-designated as Sr. Clerk with effect from 01.01.1981. While working as a Senior Clerk, the petitioner was promoted on regular basis to the post of Head Clerk on 05.06.1999 and his pay was fixed in the scale of pay of Rs.5000-8000/-. Prior to such regular promotion, the petitioner, while working as Senior Clerk, was promoted to officiate as Head Clerk in different temporary spells for the periods from 12.05.1986 to 16.06.1986, 12.05.1990 to 17.06.1990 and 15.07.1994 to 10.02.1994. During these short spells of officiating promotion, the petitioner was allowed to draw higher scale of pay as admissible to a Head Clerk. After his regular promotion in the year 1999, his initial pay was fixed at Rs.5550/- with effect from 05.06.1999 and he was granted one increment raising his basic pay to Rs.5300/- with effect from 24.08.1999 by advancing his date of increment taking into account the period of service rendered by him as officiating Head Clerk during the aforesaid three spells in accordance with Rule 79 (C) of the Odisha Service Code. Thereby, he earned his subsequent initial increments from the first day of August in all subsequent years.

7. The ORSP Rules, 2008, came into force with retrospective effect from 01.01.2006, pursuant to which the pay of the petitioner was required to be re-fixed at a higher level in accordance with the ORSP Rules, 2008. While the Board of Revenue was checking his pay fixation with effect from 01.01.2006 onwards in the revised scale of pay, he raised objections regarding grant of increments to him from first day of August in the year 1999 and in all subsequent years. The

Board of Revenue held that the periods, for which the petitioner officiated in the post of Head Clerk in the years 1986, 1990 and 1995, should not have been counted for increments, as it is not permissible under Rule 79 (C) of the Odisha Service Code. As such, according to the Board of Revenue, the normal date of increment of the petitioner should not have been advanced on the basis of such officiating periods. Before the matter could be finalized, the petitioner retired from service on 28.02.2009 and he was paid provisional pension and other retirement dues on the basis of his last pay, as it stood on the date of his retirement. In view of the objection raised by the Board of Revenue, the opposite party directed for recovery of Rs.15,595/- from the petitioner towards over payment as stated earlier. As Rule 79 (C) of the Odisha Service Code specifically provides for taking into consideration the period of officiating promotion, the petitioner's date of increment was rightly advanced to 24.08.1999, on the basis of fixation of his pay in the promotional scale with effect from 05.06.1999. Thereby, the claim made by the petitioner for fixing the date of increment in terms of Rule 79 (C) of the Odisha Service Code cannot have any justification. For just and proper adjudication of the case, Rule 79 (C) of the Odisha Service Code is extracted hereunder:

“Rule 79(C) lays down as follows:-

The following periods count for increment in the time scale of a post, permanent or temporary, in which a Government servant has been appointed to officiate, if he is reappointment to officiate in the same post or a post in the same time scale of pay;

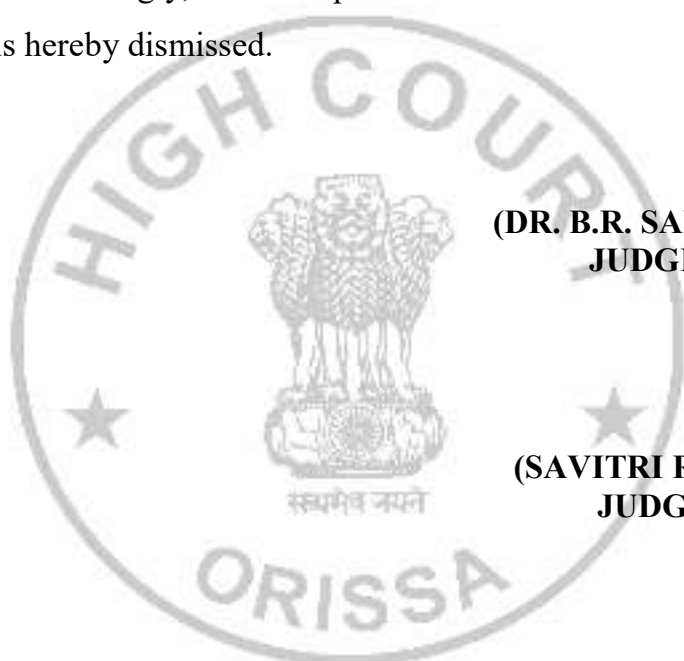
- (i) Officiating service in a higher post.*
- (ii) Service in a higher temporary post; and*
- (iii) Foreign service;”*

8. On perusal of the aforesaid provision, it is made clear that the petitioner is not entitled to the benefits for the temporarily officiating periods by adding them for the purpose of fixing his date of increment in the promotional post, after regular promotion. More so, Rule 87 of

the Odisha Service Code clarifies that a promotion may be granted on regular basis or officiating basis and an officiating promotion may be the prescribed method of granting promotion by the Rules or conditions of service at the first instance to be followed by confirmation. But, the same thing has not happened, even though the petitioner was holding the post and was paid higher salary as admissible to the said post. As such, the claim for increment for holding higher post on spell basis is not admissible to the petitioner. Therefore, the tribunal is well justified in passing the order impugned in rejecting the claim made by the petitioner with regard to granting the benefit of officiating increment for the period he was holding temporarily in the higher post.

7. Accordingly, the writ petition merits no consideration and the same is hereby dismissed.

Ashok/Sukanta



(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE