

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 3127 of 2022

Ambika Ballava Swain

.....

Petitioner

Mr. S.Swain, Advocate

-Versus-

State of Odisha & another

.....

Opposite Parties

State Counsel

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

04.02.2022

Order No.
01.

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 Assistant Executive Engineer (Civil), Level-12 of pay matrix under ORSP Rules, 2017 from 04.09.2021, 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 over a period of decades.
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 no disciplinary proceeding pending against the petitioner except the vigilance proceeding pending in the court of Special Judge, Vigilance, Balasore in T.R. Case No. 27 of 2011 arising out of Balasore Vigilance P.S. Case No. 25 of 2007. Involving the allegation against the petitioner, it appears the Vigilance Proceeding initiated in the year 2007, but charge-sheet involving the Vigilance case was submitted in the year 2011. However the said vigilance case is yet to be disposed of. Pleading also further made clear that no

Disciplinary Proceeding pending against the petitioner. For the settled position of law, this Court in disposal of the writ petition observes, petitioner cannot suffer for the long pendency of the vigilance proceeding. It is also not known when the Vigilance Proceeding initiated in the year 2007 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, General Administration and Public Grievances Department, Bhubaneswar-O.P. No.1 and Commissioner-cum-Secretary to Government, Works Department, Odisha, Bhubaneswar, opposite party no.2 to give promotion to the petitioner to the rank of Assistant Executive Engineer (Civil) from 04.09.2021, i.e. from the date of his juniors and batchmates got such promotions. However the promotions of the petitioner as per direction of this Court shall be subject to the ultimate outcome in the Vigilance Proceeding. Further it is also clarified that the promotion given to the petitioner shall not confer equity in the event, he will ultimately lose the Vigilance 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.

Ashok

(DR. B.R. SARANGI)
JUDGE