

ORISSA HIGH COURT: CUTTACK

W.P(C) NO. 12110 OF 2015

In the matter of an application under Article 227 of the Constitution of India.

AFR State of Odisha & Ors. Petitioners

-Versus-

Deepti Ranjan Mohanty &
Another Opp. Parties

For Petitioners : Mr. A.K. Mishra,
Addl. Govt. Advocate

For Opp. Parties : M/s. P.K. Mishra,
S. Pattnaik and B.R. Kar,
Advocates
[O.P.1]

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HONOURABLE MR. JUSTICE S. K. MISHRA**

DECIDED ON : 05.07.2022

DR. B.R. SARANGI, J. By means of this Writ Petition, filed at the instance of the State and its functionaries, prayer has been made to quash the Order dated 19.02.2015 passed in O.A. No.1415 of 2011, at Annexure-4, whereby the Odisha Administrative Tribunal, Bhubaneswar, has directed the State-Petitioners to

sanction normal annual increments of Opposite Party No.1 during the period of his suspension and accordingly revise his pay under Odisha Revised Scale of Pay Rules, 2008 (for short "ORSP Rules, 2008") and pay all his differential arrears within a period of four months from the date of receipt of a copy of the Order.

2. The factual matrix of the case, in brief, is that Opposite Party No.1, while working as Junior Clerk in the Sub-Treasury, Bisoi, in the District of Mayurbhanj, a Vigilance Case was initiated against him for taking illegal gratification as he was caught red handed. On the basis of communication made by the Vigilance Department, he was placed under suspension. As a consequence thereof, an Enquiry Officer was appointed to cause inquiry into the charges levelled against him on the allegation of misconduct and harassment to the pensioners for extracting illegal gratification. The Treasury Officer, District Treasury, Mayurbhanj, Baripada, was appointed as Enquiry Officer, vide Directorate of Treasuries and Inspection, Odisha, Bhubaneswar, Order No.9530 dated 23.06.2003, as

required under Rule-15(4) of OCS (C.C.A) Rules, 1962. After conducting inquiry, the Enquiry Officer submitted his Report before the Disciplinary Authority. On receipt of the Enquiry Report, Opposite Party No.1 was asked to furnish his reply to show cause, vide Directorate Letter No. 11221 dated 07.07.2011 and Letter No. 14924 dated 30.08.2011, as required under Rule-15(10)1(a) and Rule-15(10)1(b) of OCS (CCA) Rules, 1962. As the reply submitted by Opposite Party No.1 was not convincing and satisfactory, ultimately he was found guilty of the charges. As a consequence thereof, the proceeding was finalized on awarding punishment, as required under Rule-13 of OCS (CCA) Rules, 1962, which reads as follows:

“1. One increment is withheld without cumulative effect. In furtherance the period of suspension is treated as such and not to count towards qualifying service for calculation of pension as per provision of Rule-91 of O.S.C.”

2.1. Aggrieved thereby, Opposite Party No.1 approached the Odisha Administrative Tribunal, Bhubaneswar, by filing O.A. No. 1415 of 2011 seeking following relief(s):

“(i) The Hon’ble Tribunal may be pleased to direct the Petitioner to sanction increments which were due on 1.5.2003, 1.5.2004 and 1.5.2005 and subsequent increments which he entitled as rules.

(ii) Consequent upon sanction of increments, the Hon’ble Tribunal may be pleased to direct the Petitioner to refix the pay of the Opposite Party No.1 under O.R.S.P., Rules, 2008 accordingly and to disburse the arrears of pay accrued upon sanction of increments and refixation of pay within a time to be stipulated.

(iii) Allow the original petition with cost.

(iv) Grant any other relief(s) the Hon’ble Tribunal deems fit and proper in the end of justice.”

2.2 The Tribunal issued notice to the present Petitioners, who were Respondents in Original Application filed by Opposite Party No.1, pursuant to which they filed Counter Affidavit on 10.04.2012 wherein a specific stand was taken that the annual increments of Opposite Party No.1 falling due on 01.05.2003, 01.05.2004 and 01.05.2005 were not sanctioned, as he was under suspension for the period from 10.06.2002 to 07.06.2005. However, after joining in the post on 08.06.2005, following his reinstatement, the annual increment was sanctioned in his favour on

01.06.2006 in terms of Rule-79 of Orissa Service Code. Since he had not done any duty during his suspension period, the same was not counted for increment. As such, he is not entitled to get increment during that period.

2.3 The Tribunal, vide impugned order dated 19.02.2015 disposed of O.A. No.1415 of 2011, without taking into consideration the objection raised by the Petitioners, directing them to sanction the normal annual increments of Opposite Party No.1 during the period of his suspension and also directed to revise his pay under ORSP Rules, 2008 and pay all his differential arrears within a period of four months from the date of receipt of copy of the order. Hence, this Writ Petition.

3. Mr. A.K. Mishra, learned Additional Government Advocate appearing for the State Petitioners vehemently contended that Opposite Party No.1 is not entitled to the incremental benefits because of the fact that the period of which the person is on duty in a post on a time scale counts for increment in that time scale.

As Opposite Party No.1 was not in duty during his suspension period, the said period cannot be counted for sanction of increment, but the Tribunal has committed gross error apparent on the face of records directing to pay increment to Opposite Party No.1 for the period when he was under suspension. Therefore, he is not entitled to get the incremental benefit. It is also contended that in the Counter Affidavit filed before the Tribunal, the Petitioners had taken a specific stand that the increment has been granted as per Rule-79(a) of the Odisha Service Code, but the Tribunal has not taken into consideration the said provision while passing the order impugned. As a consequence thereof, the order dated 19.02.2015 passed by the Tribunal in O.A. No.1415 of 2011 cannot be sustained in the eye of law. It is further contended that the period of suspension has been treated as such by the order of punishment awarded, pursuant to a regular departmental inquiry. As the said order of punishment has not been challenged nor set aside by the Tribunal nor interfered by any Higher Authority, the same is binding on

Opposite Party No.1. Therefore, the suspension period, having been treated as such, Opposite Party No.1 was treated as not on duty during that period. As a consequence thereof, the suspension period cannot be counted for grant of annual increment. Therefore, direction given by the Tribunal, being contrary to the Rules, cannot be sustained in the eye of law. It is further contended that the Tribunal has laid emphasis on Rule-77 of Odisha Service Code, which stipulates that an increment shall ordinarily be drawn as a matter of course unless it is withheld, but the same should be conjointly read with Rule-79(a), which prescribes that all duty in a post on time-scale counts for increments in that time-scale. In view of such position, even though Rule-77 of Odisha Service Code provides for grant of increment as a matter of course, but if the period of suspension is treated as such and Opposite Party No.1 has not discharged his duty, he is not entitled to get such benefit in view of the stipulations made under Rule-79. Thereby, the Tribunal has committed gross

error apparent on the face of the records warranting interference of this Court.

4. Mr. P.K. Mishra, learned Counsel appearing for Opposite Party No.1 contended that the Tribunal is well justified in passing the order impugned dated 19.02.2015 in O.A. No.1415 of 2011, which does not require interference of this Court at this stage. He admitted that Opposite Party No.1 was imposed with punishment, which was not the subject-matter of challenge before the Tribunal in O.A. 1415 of 2011, but contended that the due date of increment was falling during the period of suspension, i.e., with effect from 01.5.2003, and on being reinstated in service, Opposite Party No.1 requested his Authority to sanction the periodical increments w.e.f. 01.05.2003. But the Increment Sanctioning Authority sanctioned the increment w.e.f. from 01.07.2006 ignoring the increments, which Opposite Party No.1 was entitled to on 01.05.2003, 01.05.2004 & 01.05.2005. As such, the periodical increments, which were falling due on 01.5.2003, 01.05.2004 & 01.05.2005, in the guise of

suspension and pendency of the proceeding, were not sanctioned to Opposite Party No.1. It is further contended that the increment is admissible to the employee as a matter of course as per Rule-77 of Odisha Service Code unless it is withheld. Therefore, it is contended that the Tribunal is well justified in passing the Order impugned. To substantiate his contention, he has relied upon **Mritunjai Singh v. State of U.P.**, AIR 1971 All 214; **Balvantray Ratilal Patel v. State of Maharashtra**, AIR 1968 SC 800 and **State of Odisha v. Ashok Kumar Panda** (W.P.C Nos. 15434 of 2015 & 24856 of 2013 disposed of on 27.06.2017).

5. This Court heard Mr. A.K. Mishra, learned Additional Government Advocate appearing for the State-Petitioners, and Mr. P.K. Mishra, learned counsel appearing for Opposite Party No.1, through hybrid mode. Pleadings have been exchanged between the parties and with the consent of learned counsel for the parties, the matter is being disposed of finally at the stage of admission.

6. On the conspectus of factual matrix, as narrated above, and rival contentions, as raised by learned counsels for the parties, the sole question that arises to be considered by this Court at this stage is-

“Whether Opposite Party No.1 is entitled to get incremental benefits during the period of his suspension, when such period of suspension has been treated as such by the order of punishment, which has remained unchallenged?”

7. For just and proper adjudication of the issue involved, relevant Rules of Odisha Service Code are quoted below:

“Rule-77: An increment shall ordinarily be drawn as a matter of course unless it is withheld.

An increment shall ordinarily be drawn as a matter of course unless it is withheld. The authority empowered to make a substantive appointment to the post which a Government servant holds, may, if it considers that the conduct of such Government servant has not been good or that his work has not been satisfactory, withhold an increment from him in the Police Department Superintendents are empowered to withhold increments of Sergeants and Sub-Inspectors. In ordering the withholding of an increment such authority shall state the period for which it is withheld and whether the postponement shall have the effect of postponing future increments.”

“Rule-79: Conditions on which service counts for increments in a time-scale.

(a) all duty in post on time-scale counts for increments in that time-scale:

Provided that for the purpose of arriving at the date of next increment in that time-scale, the total of all such period as do not count for increment in that time-scale shall be added to the normal date of increment.”

“Rule-91: Authority competent to order the reinstatement shall consider and make a specific order:

(1) When a Government servant who has been dismissed, removed, compulsorily retired or suspended is reinstated or would have been reinstated but for his retirement on superannuation while under suspension the authority competent to order the reinstatement shall consider and make a specific order:

(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty or for the period of suspension ending with the date of his retirement on superannuation, as the case may be, and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where such competent authority holds that the Government servant has been fully exonerated or in the case of suspension, that it was wholly unjustified, the Government servant shall be given the full pay to which he would have been entitled had he not been dismissed,

removed, compulsorily retired or suspended, as the case may be, together with any allowances of which he was in receipt to his dismissal, removal or suspension.

(3) (a) In the case of dismissal, removal and compulsory retirement when a Government servant who is not completely exonerated of the charges, is reinstated in service, it shall be open to the competent authority to decide not to allow any pay or allowances to him.

(b) In the case of suspension when a Government servant, not having been exonerated of the charges fully, is reinstated in service, he may be allowed subsistence allowance only for the period of suspension as admissible under Rule 90.

(4) In a case falling under Clause (2) the period of absence from duty shall be treated as a period spent on duty for all purposes.

(5) In a case falling under Clause (3) the period of absence from duty shall not be treated as a period spent on duty, unless such competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government servant so desires, such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government servant."

8. To recapitulate, following a disciplinary proceeding initiated against Opposite Party No.1, vide Order dated 21.11.2011, at Annexure-1, the Directorate

of Treasuries and Inspection, Odisha, Bhubaneswar, who is none other than the Disciplinary Authority, imposed penalty of withholding one increment without cumulative effect and in furtherance, it was ordered that the period of suspension is treated as such and not to be counted towards qualifying service for calculation of pension, as per provision of Rule-91 of Odisha Service Code.

9. Mr. P.K. Mishra, learned counsel appearing for Opposite Party No.1 fairly contended that looking at the reliefs sought before the Tribunal in O.A. No.1415 of 2011, as mentioned above, Opposite Party No.1 had not assailed the punishment imposed on him by the Disciplinary Authority, meaning thereby, the punishment, as imposed, was accepted by Opposite Party No.1 without any objection. To be more specific, the punishment of withholding one increment without cumulative effect, the Petitioner has been visited with. But the punishment, so far as it relates to the period of suspension is treated as such, has never been challenged in any forum and as such, the same has

remained as it is. Therefore, the punishment inflicted, i.e., the period of suspension is treated as such, having remained unchallenged, the claim for incremental benefit is not admissible to Opposite Party No.1.

10. In **Turburville v. West Ham Corpn.** (1950) 2 KB 208, it has been held that the word “increment” is a word of wide meaning. It does not import of itself the limitation that it is referable only to a payment that is annual. In order that it should in a particular case bear such a limited meaning a proper context must be provided.

11. Considering Rule-8(15)(a) of Karnataka Civil Services Rules, 1958, the Karnataka High Court in 1975 Lab IC 345 (Kant.) held that the term “increments” is generic and is wide enough to include not only increments in the time scale of pay but all other kinds of increments.

12. In **Black Law Dictionary 10th Edition**, the word “increment” has been explained as “a unit of increase in quantity or value”. This benefit can only be

admissible to a person, who discharges his duty assigned to him. During suspension period, the Opposite Party No.1 was kept away from duty assigned to him, meaning thereby, he was not allowed to discharge his duty. If the period of suspension was treated as such, by way of punishment, that itself indicates that Opposite Party No.1 was not allowed to discharge his duty during the period of suspension. Once he was kept away from discharging his duty, as a matter of punishment, as the period of suspension was treated as such, in that case there cannot be automatic application of Rule-77 of the Odisha Service Code.

13. In **Rajkot Municipal Corpn. V. Manjulben Jayantilal Nakem**, (1997) 9 SCC 552, the apex Court held that 'duty' is an obligation recognized by law to avoid conduct brought with unreasonable risk of damage to another.

14. In **V.V. Narayana Chetty v. Narrappareddigari Venkata Reddi**, AIR 1963 AP 452, the Court held that the word 'duty' will not be apt in the

context of a discretion to do the particular thing. That expression denotes that one cannot refuse to perform the act but is bound to do it. Therefore, 'Duty' is an act that is due by moral or legal obligation; that which one ought or is bound to do; official function.

15. The Provisions contained in Odisha Service Code, as mentioned above, is statutory one. Therefore, it is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent.

16. In ***Institute of Chartered Accountants of India Vs. Price Waterhouse***, (1997) 6 SCC 312 : AIR 1998 SC 74, the apex Court held that the Words and Phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the legislature enacting it. The intention of the legislature is primarily to be gathered from the language used, which means that attention

should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided.

17. In ***Stock v. Frank Jones (Tipton) Ltd.***, (1978) 1 All ER 948, it has been held that it is contrary to all Rules of construction to read words into an Act unless it is absolutely necessary to do so. Rules of interpretation do not permit Courts to do so unless the provision as it stands is meaningless or of doubtful meaning.

18. In ***CST v. Popular Trading Co.***, (2000) 5 SCC 511, the apex Court held that while interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary.

19. Much reliance has been placed by learned Counsel appearing for Opposite Party No.1 on the judgment in **Mritunjai Singh** (supra), Paragraph-14 whereof reads as follow:

“14. We now come to the last point, namely, whether the petitioner should be allowed to earn his increment due during the suspension. In that connection again my attention was drawn to the same authority of the Supreme Court which has already been referred to as the first authority, namely, that relating to the Management Hotel Imperial. It has been laid down therein that the suspension has the effect of temporarily suspending the relation of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay. Emphasis is laid down on the words 'master is not bound to pay' on behalf of the State and it is said that if the master is not bound to pay during the suspension how can the servant claim that he is entitled to earn his increment during the period of suspension. The matter, however, has been clarified in the later authority of Balvantrai Ratilal, AIR 1968 SC 800 where it is indicated that even if there is no express term of suspension in the contract of employment, the employer has power to suspend his employee and it amounts to the issuing of an order to the employee which, because such contract is subsisting, the employee must obey. This shows that the contract of service subsists during the period of suspension and if the contract subsists, even though there is suspension, the employee remains in service and if he remains in service, he is entitled to all benefits of service even though he is not

expected to work during the period of suspension ...”.

The ratio decided in the aforesaid judgment is not applicable to the present case, as the Petitioner in the said case was not visited with penalty of suspension treated as such. Thereby, the said judgment is distinguishable.

20. The case of **Balvantray Ratilal Patel** (supra) has been referred to in the aforementioned judgment of Allahabad High Court, wherein it has been held that when the contract is subsisting, the employee must obey but the same has nothing to do with the present case, both factually and legally. Therefore, the said judgment is not applicable to the present case.

21. So far as the case of **Ashok Kumar Panda** (supra) is concerned, factually also the said case is totally different from the present case.

22. Keeping in view the aforesaid propositions of law laid down by the apex Court and applying the same to the present case, it is made clear that Rule-77 of

Odisha Service Code envisages about increment, which shall ordinarily be drawn as a matter of course unless it is withheld. The use of the word “ordinarily” does not mandate that an employee automatically will get the incremental benefits even though he is otherwise entitled to get.

23. In **Narumal v. State of Bombay**, AIR 1960 SC 1329, while considering Section 177 of Cr.P.C., the apex Court held “Ordinarily” means except where otherwise provided in the Code.

24. In **Kailash Chandra v. Union of India**, AIR 1961 SC 1346, the apex Court held “Ordinarily” means in the large majority of cases but not invariably.

25. In **Union of India v. Vipinchandra Hiralal Shah**, (1996) 6 SCC 721, while considering Rule-5(1) of IAS (Appointment by Promotion) Regulations, 1955, the apex Court held the insertion of word ‘Ordinarily’ in Regulation 5(1) does not alter the intendment underlying the provision. It only means that unless there are good reasons for not doing so, the Selection

Committee shall meet every year for making the selection.

26. In ***Eicher Tractors Ltd. Haryana v. Commr. of Customs***, (2001) 1 SCC 315, while considering Section 14(1) of the Customs Act (52 of 1962), the apex Court held that the expression “Ordinarily” occurring in Section 14(1) of the Act does not include ‘extraordinary’ or ‘special’ circumstances.

27. In ***State of A.P. v. V. Sarma Rao***, (2007) 2 SCC 159, while considering Section 195 (41), the apex Court held the expression ‘Ordinarily’ may mean normally but it must be understood in the context in which it has been used. It never means primarily.

28. Therefore, Rule 77 of Odisha Service Code does not put a mandate to grant increment automatically, irrespective of fact that the employee visited with the punishment treating the suspension period as such.

29. Rule-79(a) provides that all duty in a post on time-scale counts for increments in that time-scale. Meaning thereby, if an employee discharges his duty in a post on time scale, then it counts for increments in that time-scale. In view of such position, if Opposite Party No.1 was visited with the penalty of treating the period of suspension as such, he was kept away from discharging his duty. As a consequence thereof, he was not allowed to discharge his duty as a matter of punishment for his misconduct or charges levelled against him. In the event increment is granted to the Opposite Party No.1 during the period of his suspension, which is treated as such, it may be bonus for him without doing the work. That is never the purpose of the provisions contained in Rule-77 read with Rule-79 of the Orissa Service Code. Therefore, the Tribunal has committed gross error apparent on the face of the record directing to pay incremental benefits as admissible to Opposite Party No.1, even during the period of his suspension, which has been treated as such and more particularly, Opposite Party No.1 has not

challenged the said order of punishment in any higher forum including the Tribunal. Thereby, he has accepted the punishment. As a consequence thereof, the Tribunal has failed to appreciate the inner instinct of the provisions of Rules-77 & 79 of Orissa Service Code. Therefore, the direction given by the Tribunal, for payment of annual increment during the period of suspension, is arbitrary, unreasonable and contrary to the provisions of law.

30. It is well settled principle laid down by the apex Court in **State of Orissa v. Sudhansu Sekhar Mishra**, AIR 1968 SC 647 that each case would be decided on the basis of its own facts and circumstances. Thereby, applying the said principle to the present case, the judgment cited by learned counsel appearing for Opposite Party No.1 has no application to the present case. As such, the Tribunal has committed grave error, by not taking into consideration the Rule-79 of the Odisha Service Code, in directing the Petitioners to extend the incremental benefit to Opposite Party No.1 during the period of his suspension, which having been

treated as such, is in the nature of a penalty. Thereby, this Court is of the considered view that the Tribunal has committed gross error apparent on the face of the record. As a consequence thereof, the Order dated 19.02.2018 passed by the Tribunal in O.A. No.1415 (C) of 2011 cannot be sustained in the eye of law and the same is liable to be quashed and is hereby quashed.

31. The Writ Petition is accordingly allowed. However, there shall be no order as to costs.

S. K. MISHRA, J. I agree.

(DR. B.R. SARANGI)
JUDGE

(S. K. MISHRA)
JUDGE

Orissa High Court, Cuttack
The 5th July, 2022, Alok/Ananta