

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.5646 of 2021

Ramesh Chandra Mishra **Petitioner**
Mr. N.C. Das, Advocate

-versus-

State of Odisha and others **Opposite Parties**
Mr. B.Pr. Tripathy, A.G.A.
Mr. S.K. Patra, Advocate for O.P. No.4

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

Order No.

Date of hearing :01.11.2022

Date of order: 25.11.2022

05. 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. Heard learned counsel for the Petitioner and learned counsel for the State.
3. The present writ petition has been filed by the petitioner with the following prayers :-

“Under the circumstance, it is therefore, humbly prayed that this Hon’ble Court may graciously be pleased to issue notices to the to the Oppo. Parties calling upon them to show cause as to why this writ application will be not allowed quashing the Gratuity Payment Order in respect of recovery and with held payment of the petitioner under Annexure-14 and 15 to this writ petition, if the Opp. Parties will fail to show cause or submit insufficient cause, the Hon’ble Court be pleased to quash the order dtd.17.11.2020 and 29.12.2020 of the Opp. Party No.3 under Annexure-14 and 15 to this writ application.

Further the Opp. Parties be directed to fix the last Scale of Pay drawn by the petitioner at the time of his retirement at Rs.68,000/- which has been sanctioned and approved by the Acting Chairman, the Highest Authority of the OAT and also fix the pension amount of the petitioner accordingly as Rs.34,000/- + TI.

Further the Opp. Parties No.2 and 3 to be directed to release the withholding amount of Rs.1,29,627/- only and final pension including the financial benefits as admissible to the petitioner within a stipulated period.

And any other further order as would deem fit and proper be also passed in order to give relief to the petitioner;”

4. It is submitted by learned counsel for the petitioner that benefit under the 3rd RACP Scheme was legally extended to the petitioner. In the aforesaid action, learned counsel for the petitioner placed reliance on the letter no.6013 dated 23.07.2019 of Deputy Registrar addressed to the under Secretary to Government, G.A. & P.G. Department, Bhubaneswar under Annexure-7. On perusal of the said letter, it appears that order passed by the Tribunal in O.A. No.81(C) of 2016 (***Pramod Kumar Panda vrs. State***) has been complied in pursuance to the letter No.7704 dated 12.04.2017 of G.A. and P.G. Department by allowing one increment on reaching the promotional post of Senior Assistant and on the same analogy Sri Ramesh Chandra Mishra and Sri Pravash Chandra Mishra have been granted one increment at the time of their promotion to the post of Section Officer because they got promotion after availing the entitled financial up-gradation under RACPS under letter dated 23.07.2019. It has been reiterated that the order passed in O.A. No.81(C) of 2016 has attained finality as the same has not been challenged any further. Further, by virtue of that order, the petitioner and the another person, namely, Sri Pravash Chandra Mishra have granted one increment each on

reaching the promotional post. After granting the same RACPS, with the judicial pronouncement, the same cannot be recovered. Although the aforesaid facts was communicated by the Deputy Registrar (Admn.) OAT, Bhubaneswar vide letter dated 23.07.2019, it appears that the same has been lost sight of by the concerned Administrative Department and vide Memo No.2965 dated 17.11.2020 issued by the Deputy Registrar (Administration), Odisha Administrative Tribunal to the Accountant General (A&E), Odisha, Bhubaneswar requesting him to recover a sum of Rs.1,29,627/- from the outstanding dues of the petitioner and 30% of the gratuity amount has been held up. The writ petition has been filed with a prayer that the amount may be released in favour of the petitioner. Further break up of Rs.10,09,275/- has been reflected in the following manner:-

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|-----|--|--|
| I. | Provisional amount has already been drawn of | Rs.8,79,648/- |
| II. | Amount to be recovered | <u>Rs.1,29,627/-</u>
Rs.10,09,275/- |

Finally, in the very same letter, the A.G. was requested to calculate 100% gratuity of the present petitioner and directed the Treasury, Khurda to draw the balance amount in favour of the petitioner after calculating the provisional amount of Rs.8,79,648 already drawn while in service and the amount sought to be recovered from the petitioner.

5. Learned counsel for the petitioner further submits that the petitioner has retired from service on attaining the age of superannuation on 30.09.2019. He further submits that as per the gratuity payment order a sum of Rs.1,29,627/- is to be recovered

from the petitioner.

6. Learned counsel for the petitioner further contends that the petitioner has been legally granted the RACP benefits as per Paragraph-10 of the Government Resolution dated 06.02.2013 as his pay has been fixed taking into consideration the aforesaid RACP Circular as well as ORSP Rules.

7. In such view of the matter, learned counsel for the petitioner submits that withholding / recovering a sum of Rs.1,29,627/- from the salary of the petitioner is illegal and arbitrary and he further submits that there is no basis to recover from the withheld gratuity amount. It is further submitted by learned counsel for the petitioner that no opportunity was given to the petitioner before taking the decision to recover the aforesaid gratuity amount of the petitioner. Therefore, decision of the authority to recover a sum of Rs.1,29,627/- from the gratuity of the petitioner is illegal and unsustainable in law.

8. Learned counsel for the State has not filed any counter affidavit in the matter.

9. Learned counsel for the Accountant General has filed a counter affidavit in the matter. Relying on the letter dated 29.12.2020 under Annexure-G/3 submits that the amount of Rs.1,29,627/- has been recovered from the retired Government servant as per the advice of the pension sanctioning authority, which is just and proper. Therefore, he submits that the blame cannot be put on the Accountant General, who was duty bound to carry out/implement the order of the Administrative Department. Therefore, the scope on their part is very limited to verify the records of concerned department of the

concerned State Government. Therefore, it is submitted that on merit decision has been taken by the concerned Administrative Department, which was later on conveyed to the Accountant General for compliance in accordance with the rules and regulations. Therefore, it is stated that the Accountant General on receipt of the intimation from the concerned Administrative Department, was duty bound to recover a sum of Rs.1,29,627/- from the petitioner and accordingly action has been taken.

10. Having heard learned counsels for the respective parties and upon careful consideration of documents placed before this Court, this Court is of the considered view that the letter under Annexure-14, which has been issued by the Deputy Registrar, Odisha Administrative Tribunal adversely affects the rights of the present petitioner. Further, it appears that before passing such order no opportunity whatsoever was given to the petitioner to explain his position. Furthermore, the letter under Annexure-14 is contrary to the letter dated 23.07.2019 of Deputy Registrar (Admn.) OAT under Annexure-7 which has been discussed earlier vide letter dated 23.07.2019 under Annexure-7 the Deputy Registrar has intimated the Under Secretary to the G.A. Department not to recover any amount from the petitioner whereas the intimation under Annexure-14 to the Accountant General, a request has been made to the Accountant General to recover a sum of Rs.1,29,627/-. This Court after careful scrutiny of the documents on record is unable to find justification for such recovery. Moreover, now recovery is on account of so-called erroneous grant of RACP benefit to the petitioner which is contrary to the Government Circular and as such an opportunity should have been provided to the petitioner before taking such a decision.

However, on perusal of the record it appears that no opportunity whatsoever was provided to the petitioner. In such view of the matter, this Court deems it proper to hold that an opportunity of hearing should have been provided to the petitioner before carrying out the orders under Annexures-14 and 15 and accordingly, the order under Annexures-14 and 15 are hereby set aside. The petitioner is now directed to appear before the Opposite Party No.1. The Opposite Party No.1 is directed to consider the case and decide the same by passing a speaking and reasoned order after taking into consideration the contentions and the grounds to be raised by the petitioner.

11. Accordingly, the petitioner is directed to approach the Opposite Party No.1 within a period of two weeks from today along with his grievance petition supported by documents. In the event, the petitioner approaches the Opposite Party No.1 within the aforesaid stipulated time period, the Opposite Party No.1 is directed to provide opportunity of hearing to the petitioner and after hearing the petitioner, necessary orders be passed in accordance with law within a period of four weeks from the date of production of documents by the petitioner. The decision so taken on the grievance petition shall be communicated to the petitioner within a period of two weeks thereafter.

12. With the aforesaid observation/direction, the writ petition is disposed of.

Urgent certified copy of this order be granted on proper application.