

ORISSA HIGH COURT: CUTTACK

W.P(C) NO. 4819 of 2018

AND

W.P.(C) No.4486 of 2018

In the matter of applications under Articles 226 & 227 of the Constitution of India.

***AFR* In W.P.(C) No.4819 of 2018**

State of Odisha & Ors. Petitioners

-Versus-

Sujata Rani Sahu
& Anr. Opp. Parties

For Petitioners : Mr. B.P. Tripathy,
Addl. Govt. Advocate

For Opp. Parties : M/s. P.K. Mishra, S. Pattanaik,
S. Mishra & M. Pati, Advocates
(O.P.1)

In W.P.(C) No.4486 of 2018

State of Odisha & Ors. Petitioners

-Versus-

Sujata Rani Sahu
& Anr. Opp. Parties

For Petitioners : Mr. B.P. Tripathy,
Addl. Govt. Advocate

For Opp. Parties : M/s. P.K. Mishra, B.S. Tripathy,
S. Pattanaik & Mr. B.R. Kar,
Advocates
(O.P.1)

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HONOURABLE MISS JUSTICE SAVITRI RATHO**

DECIDED ON : 17.03.2022

DR. B.R. SARANGI, J. Both the writ petitions, having been filed impugning the common order dated 17.07.2017 passed by the Odisha Administrative Tribunal, Bhubaneswar in O.A. No.3039 of 2015 and O.A. No.416 of 2015 directing the State-petitioners to grant the corresponding scale of pay to opposite party no.1 in Pay Band-3 of Rs.15,600-39,100/- and fix up her pay accordingly with effect from 01.01.2013, as has been done in the case of Bidyut Kumar Sahoo, involve common questions of law and facts. Therefore, they are heard together and disposed of by this common judgment which will govern both the cases.

2. The petitioners and opposite parties in both writ petitions being same, for the sake of convenience as well as for just and proper adjudication, the factual

matrix of W.P.(C) No.4486 of 2018, as recorded by the tribunal in the impugned judgment, is referred to in a nutshell.

2.1 Opposite party no.1 was appointed as Sociologist in the office of Principal Chief Conservator of Forests, Aranya Bhawan, Chandrasekharapur, Odisha, Bhubaneswar on 05.09.1988. By the time she approached the tribunal, she had completed 26 years of service. As per the ORSP Rules, 1998, she was granted 1st TBA on completion of 15 years of service in the scale of Rs.8000-13500/-. Subsequently, under the ORSP Rules, 2008, her pay was revised w.e.f. 01.01.2006 in pay band-2 of Rs.9300-34800/- with grade pay of Rs.5400/-. As per G.A. Department order no.483/2014 dated 08.07.2013, opposite party no.1 came under Group-A and by that time RACP scheme had come into force w.e.f. 06.02.2013, which provided three financial upgradations counted from the direct entry grade on completion of 10, 20 and 30 years of service in a single cadre in absence of promotion. The post of Sociologist is

an isolated post and there is no promotional avenue and, as such, under the RACPs, an employee continuing in isolated post, without promotional hierarchy, is entitled to next higher grade pay as per the first schedule of ORSP Rules, 2008 with interpolations if any introduced subsequently. As opp. party no.1 was holding an isolated post, she was allowed second financial upgradation w.e.f. 01.01.2013 fixing her pay at Rs.24230/- with Grade Pay of Rs.6600/- in the scale of pay of Rs.9300-34800/- as per the order no.16759 dated 11.09.2014.

2.2 As per the stipulation made in para-10 of the RACP resolution dated 06.02.2013, the employees in isolated/ex-cadre post, having no promotional hierarchy, will have to get the next higher grade pay as per the first schedule of ORSP Rules, 2008 with the interpolations, if any introduced subsequently. In case the new grade pay corresponds to a different pay band, the employees will get the pay band corresponding to the revised grade pay. Even though opposite party no.1

was extended with the benefit of financial upgradation with grade pay of Rs.6600/-, she was not paid the corresponding pay scale of Rs.15,600/- to Rs.39,100/-. Claiming the scale of pay of the corresponding grade pay of Rs.6,600/-, she made several representations, but when no action was taken, she filed O.A. No. 416 of 2015 before the Odisha Administrative Tribunal, Bhubaneswar. When the matter was pending, the State-petitioners withdrew the grade pay of Rs.6600/- vide order no.20320 dated 19.11.2015, for which opposite party no.1 filed O.A. No. 3039 of 2015 seeking to quash the said order.

2.3 The tribunal heard both the O.As filed by opposite party no.1 together and disposed of the same vide a common order/judgment dated 17.07.2017, order portion of which is extracted hereunder:

“8. In view of the above discussion, the O.As are allowed. The order dtd.11.09.2015 vide annexure-8 is quashed and the order granting Grade pay of Rs.6,600/- vide order dtd. 11.04.2014 is restored. Consequently the respondents are directed to grant the corresponding scale of pay in Pay Band-3 of Rs.15,600-39,100/- and fix up her pay accordingly with effect from 01.01.2013, as has

been done in the case of Bidyut Kumar Sahoo, within a period of three months from the date of receipt of a copy of this order. The differential amount be calculated and paid to her within the said period."

2.4 Challenging the aforesaid common order/judgment dated 17.07.2017 passed in O.A. No. 416 of 2015 and O.A. No. 3039 of 2015, the State and its functionaries have filed the above noted two separate writ petitions before this Court.

3. Mr. B.P. Tripathy, learned Additional Government Advocate for the State-petitioners contended that the second financial upgradation was allowed to opp. party no.1 as per the Finance Department Resolution no.3560 dated 06.02.2013 read with 1st schedule of ORSP Rules, 2008. Accordingly, her pay was fixed at Rs.24,230/- with grade pay of Rs.6600/- w.e.f. 01.01.2013, vide order dated 11.09.2014. It is further contended that the claim of opposite party no.1 to fix her pay with the corresponding pay band of the higher grade pay, is not permissible in view of observation of the Government in Finance Department that as opposite party no.1 had

completed 20 years of service as on 01.01.2013, her pay may be fixed allowing 3% increment in the scale of pay of Rs.9300-34800/- in P.B.-2, instead of grade pay of Rs.6600/-. Thereby, the pay of opposite party no.1 was fixed at Rs.24,230/- in P.B-2 with grade pay Rs.5400/- w.e.f. 01.01.2013 and the order granting grade pay of Rs.6600/- was withdrawn. Therefore, no illegality or irregularity has been committed by the authority in passing such order, so as to warrant interference of this Court.

4. Mr. P.K. Mishra, learned counsel appearing for opp. Party no.1 vehemently contended that non-extension of benefit to the post of Sociologist, which is an isolated post, and withdrawal of grade pay of Rs.6600/- and fixing it to Rs.5400/- with a direction to recover the excess payment, is absolutely misconceived one, inasmuch as the State has acted arbitrarily and unreasonably while passing such order. Thereby, she approached the tribunal. When counter affidavit was filed by the State, opp. party no.1, being the petitioner,

also filed the rejoinder affidavit justifying her entitlement to get the grade pay of Rs.6600/- in the scale of pay Rs.15,600/- to Rs.39,100/- in PB-3 as per first financial upgradation on completion of 10 years of service and grade pay of Rs.7,600/- in the scale of pay of Rs.15600-39100 in PB-3 as 2nd financial upgradation on completion of 20 years of service. Thereby, ignoring the provisions of RACP, opposite party no.1 has been denied the actual benefits she is entitled to. It is further contended that one Bidyut Kumar Sahoo, working as Geologist, which is an isolated post, has been given financial upgradation allowing Grade Pay of Rs.6600/- in the corresponding pay band of Rs.15600-39100/-. Thereby, the claim of opposite party no.1 cannot be said to be illegal or irregular.

It is further contended that after filing of the rejoinder affidavit by the opposite party no.1 in the said original application before the tribunal, the State has not filed any objection refuting the contentions raised in the rejoinder affidavit. As such, the authority cannot

make any discrimination and deny the benefit admissible to opposite party no.1 in accordance with law. It is also further contended that the State Counsel was given sufficient opportunity before the tribunal to address with reference to the pleadings available on record and at no point of time the learned counsel appearing for the State gave any satisfactory explanation with regard to non-applicability of Bidyut Kumar Sahoo's case to opposite party no.1 nor any reply was filed to the rejoinder affidavit filed by opposite party no.1. Thereby, the facts pleaded on rejoinder affidavit have been admitted by the State. Now, the State cannot take a different stand before this Court assailing the order passed by the tribunal. More so, the learned counsel appearing for the State before the tribunal is not the same counsel before this Court in the present case. With the change of counsel stand cannot be varied before this Court at this stage.

5. This Court heard Mr. B.P. Tripathy, learned Additional Government Advocate for the State-

petitioners and Mr. P.K. Mishra, learned counsel for opposite party no.1 by hybrid mode. Pleadings having been exchanged between the parties, with the consent of learned counsel for the parties, both the writ petitions are disposed of finally at the stage of admission.

6. Having heard learned counsel for the parties and after going through the records, the only question to be decided by this Court is whether opposite party no.1, who is working in an isolated post, i.e., Sociologist, is entitled to get Grade Pay of Rs.6600/- in the corresponding pay band of Rs.15600-39100/- and if so whether the State-petitioners are justified in withdrawing such benefit?

7. As a matter of fact, opposite party no.1 was working as Sociologist, which is an isolated post. There being no promotional avenue, RACP is the only source for her to get the benefit of higher scale of pay, due to stagnation of her promotional benefits.

8. In **Col. B.J. Akkara (Regd.) v. Govt. of India**, (2006) 11 SCC 709, the apex Court held that a “pay scale” has basically three elements. The first is the minimum pay or initial pay in the pay scale. The second is the periodical increment. The third is the maximum pay in the pay scale. An employee starts with the initial pay in the pay scale and gets periodical increases (increments) and reaches the maximum or ceiling in the pay scale. Each stage in the pay scale starting from the initial pay and ending with the ceiling in the pay scale, when applied to an employee is referred to as “basic pay” of the employee. Whenever the Government revises the pay scales, a fitment exercise takes place as per the principle of fitment (formula) provided in the rules governing the revision of pay so that the “basic pay” in the old scale is converted into a “basic pay” in the revised pay scale.

9. In **Gurpal Tuli v. State of Punjab**, 1984 (Supp.) SCC 716 : AIR 1984 SC 1901, the apex Court held that to be entitled to draw a particular pay scale

the employee must fulfil the eligibility conditions whether by way of qualification or otherwise.

10. In **St. Stephen's College v. University of Delhi**, (1992) 1 SCC 558 : AIR 1992 SC 1630, the apex Court held that public services comprise different grades of employees. It is basically a hierarchical system. The pay scales are framed in a descending order viz., the highest scale is prescribed for the highest grade and thereafter followed by lower scales attached to the descending grades of service. This is consistent with Art.14 of the Constitution which mandates that unequals cannot be treated as equals.

11. In **State Bank of India v. K.P. Subbaifah**, (2003) 11 SCC 646 : AIR 2003 SC 3016, the apex Court has observed that since public service comprise different grades, different pay scales are provided for different grades and as such the pay of an employee is fixed with reference to a pay scale.

12. In **State of U.P. v. J.P. Chaurasia**, (1989) 1 SCC 121 : AIR 1989 SC 19, the apex Court held that the

fixation of pay scales is essentially an executive function. The answer to the question whether an officer or a group of officers is entitled to a particular scale depends upon several factors. It requires evaluation of duties and responsibilities of posts and should be determined by expert bodies like the Pay Commission.

The Pay Commission would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the Court should normally accept it.

13. In ***Delhi Veterinary Association v. Union of India***, (1984) 3 SCC 1 : AIR 1984 SC 1221, the apex Court held that although it is primarily the function of the Pay Commission to determine matters relating to pay structure and to apply such norms as are proper and relevant, certain “basic principles” are to be followed in fixing pay scales of various posts and cadres in the Government service.

The apex Court considered the matter both from the point of view of the employees and the employer. As far as the employees are concerned, the apex Court observed as follows:-

“The degree of skill, strain of work, experience involved, training required, responsibility undertaken, mental and physical requirements, disagreeableness of the task, hazard attendant on work and fatigue involved are, according to the Third Pay Commission, some of the relevant factors which should be taken into consideration in fixing pay scales. The method of recruitment, the level at which the initial recruitment is made in the hierarchy of service or cadre, minimum educational and technical qualifications prescribed for the post, the nature of dealings with the public, avenues of promotion available and horizontal and vertical relativity with other jobs in the same service or outside are also relevant factors.”

As far as the employers are concerned the apex Court said:-

“At the same time while fixing the pay scales, the paying capacity of the Government, the total financial burden which has to be borne by the general public, the disparity between the incomes of the Government employees and the incomes of those who are not in Government service and the net amount available for Government at the current taxation level, which appears to be very high when compared with other countries in the world, for developmental purposes after paying the salaries and

allowances to the Government servants have also to be borne in mind. These are, however, not exhaustive of the various matters which should be considered while fixing the pay scales. There may be many others including geographical considerations."

Then the apex Court referred to certain broad and general considerations which a Pay Commission ought to have in mind.

"In an egalitarian society based on planned economy it is imperative that there should be an evolution and implementation of a scientific national policy of incomes, wages and prices which would be applicable not merely to Government services but also to the other sectors of the national economy. As far as possible the needs of a family unit have to be borne in mind in fixing the wage scales. The 'needs' are not static. They include adequate nutrition, medical facilities, clothing, housing, education, cultural activities etc. Any provision made while fixing the pay scales for the development of a society of healthy and well educated children irrespective of the economic position of the parents is only an investment and not just an item of expenditure. In these days of galloping inflation, care should also be taken to see that what is fixed today as an adequate pay scale does not become inadequate within a short period by providing an automatic mechanism for the modification of the pay scale."

14. In **Secretary, Finance Department v.**

West Bengal Registration Service Association, 1993

Supp. (1) SCC 153 : AIR 1992 SC 1203, the apex Court held that ordinarily a pay structure is evolved keeping in mind several factors e.g. (i) method of recruitment, (ii) level at which recruitment is made, (iii) the hierarchy of service in a given cadre, (iv) minimum educational and technical qualifications required, (v) avenues of promotion, (vi) the nature of duties and responsibilities, (vii) the horizontal and vertical relativities with similar jobs, (viii) public dealings, (ix) satisfaction level, (x) employer's capability to pay, etc. Several factors have to be kept in view while evolving a pay structure and the horizontal and vertical relativities have to be carefully balanced keeping in mind the hierarchical arrangements, avenues for promotion, etc. Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and cause avoidable ripples in other cadres as well.

15. Therefore, taking into consideration the above aspects, if opposite party no.1 was granted with a particular scale of pay with grade pay and was allowed

to get such benefits, as there was no promotional avenue and RACP is the only source to get higher scale of pay, due to stagnation of promotional avenue, being holder of an isolated post, the benefit admissible to her cannot be denied.

16. Therefore, the tribunal, having considered the case of the opposite party no.1 in proper perspective, passed the impugned common order/judgment dated 17.07.2017 observing in paragraphs 6 and 7 to the following effect:-

“6. Considering the pleadings and the contention raised by learned counsel for the applicant and learned standing counsel, it is not disputed that the post of the applicant as ‘sociologist’ is an ex-cadre/isolated post. The fixation of pay as per the resolution dt. 6.2.2013 is governed under para 10 and 18 of the said resolution. For better appreciation, the relevant paras are quoted as follows:

10. Benefit of pay fixation available at the time of regular promotion shall also be allowed at the time of financial upgradation under the scheme, which means the pay shall be raised by 3% of the total of pay in the Pay Band and the Grade Pay drawn before such upgradation. The employees of the cadre having promotional hierarchy will get the Grade pay of the promotional post. The employees is isolated/ex-cadre posts not having any promotional hierarchy will get the next higher Grade pay as per the first schedule of ORSP Rules, 2008 with the interpolations, if any

introduced subsequently, in case the new Grade Pay corresponds to a different Pay Band, the employee will get the Pay Band corresponding to the revised Grade Pay. There shall, however, be no further fixation of pay at the time of regular promotion.

18. Assured Career Progress (ACP) availed under ORSP Rules, 2008 shall not be taken into account while considering the RACPS in favour of an employees. But no pay fixation shall be allowed by extending the benefit of 3% of the basic pay and Grade pay to the existing pay but only the Grade pay as applicable shall be allowed while giving RACPs.

7. From para-10, it is clear that an employee who is a holder of Ex-cadre/isolated post having no promotional avenue, will get the next higher grade pay as per the 1st schedule of ORSP Rules, 2008 and in case the new Grade pay correspondence to a different pay Band, an employee will get the pay Band corresponding to the revised Grade pay. In the clarification dtd. 20.01.2014, this position has been clarified. Learned counsel for the applicant referred to the case of one Bidyut Kumar Sahoo, Geologist under the Directorate of Ground Water Survey and Investigation, Orissa who has been given the benefit of the scale of the corresponding pay Band-3 of the Grade pay of Rs.6,600/-. The State respondents have not disputed the order passed in favour of Bidut Kumar sahuo which is consisted to the stipulated made in para-10 of RACP Scheme, 2013. The State respondents have rightly sanctioned the Grade Pay of Rs.6,600/- as per the order dtd. 11.09.2014 vide Annexure5. Basin on the observation of the finance Department, the said order was withdrawn. The observation of the Finance Department is not consistent with the ORSP Rules, 2008 and the RACPS Rules, 2013 and law is well settled that an office order cannot supersede the statutory rules. Accordingly, the grant of Grade pay of Rs.6,600/- vide Annexure-6 is to be restored and the applicant will be entitled to corresponding scale in pay Band-3 of Rs.15,600-39,100/-."

17. The reasons as assigned by the tribunal while granting relief to opposite party no.1 appear to be clear, cogent and convincing. In view of such position, this Court does not find any error in the impugned judgment and order dated 17.07.2017 passed by the tribunal in O.A. Nos.416 of 2015 & 3039 of 2015 so as to warrant interference of this Court, which is accordingly upheld.

18. In the result, both the writ petitions merit no consideration and the same are hereby dismissed. There shall be no order as to costs.

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DR. B.R. SARANGI,
JUDGE

SAVITRI RATHO, J. I agree.

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SAVITRI RATHO,
JUDGE

Orissa High Court, Cuttack
The 17th March, 2022, Alok/Sukant