

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 7685 of 2017

State of Odisha and Others

.....

Petitioner

Mr. A.K. Mishra, AGA

Vs.

Bholanath Behera & Anr.

.....

Opposite Parties

*Mr. P. K. Mohapatra, Advocate
(O.P.1)*

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE S.K. MISHRA

ORDER

02.08.2022

Order No.

19.

This matter is taken up through hybrid mode.

2. Heard Mr. A. K. Mishra, learned Additional Government Advocate appearing for the State-Petitioners and Mr. P. K. Mohapatra, learned Counsel for Opposite Party No.1.

3. The State and its functionaries have filed this Writ Petition seeking to quash the Order dated 05.04.2016 under Annexure-3 passed in O.A. No. 1791 of 2015, by which the Odisha Administrative Tribunal, Bhubaneswar Bench, Bhubaneswar, while allowing the said O.A., has directed the State-Petitioners to grant grade pay of Rs.4200/- consequent upon the 3rd upgradation with effect from 01.05.2013 following the resolution dated 17.01.2015.

4. Mr. A. K. Mishra, learned Additional Government Advocate appearing for the State-Petitioners contended that the Order dated 05.04.2016 passed by the Tribunal suffers

from gross error apparent on the face of the record. It is contended that Opposite Party No.1, who was working as Chainman, filed O.A. No. 1791 of 2015 seeking direction to the State-Petitioners for grant of RACP and, the Tribunal, without application of its mind in proper perspective, granted the benefit of RACP, which cannot be sustained in the eye of law. It is further contended that the offer of promotion was granted to Opposite Party No.1, but he having not availed the same, he cannot claim the benefit of RACP. As a consequence thereof, the Tribunal has committed gross error by granting relief to Opposite Party No.1, which is not admissible to him.

5. Mr. P.K. Mohapatra, learned Counsel appearing for Opposite Party No.1, while refuting the contentions raised by learned Additional Government Advocate, contended that though Opposite Party No.1 was appointed as Chainman, but no promotional benefit was given to him within 10 years. Therefore, he is entitled to get the benefit of RACP, which has been extended to him. As such, the Tribunal has not committed any error so as to cause interference of this Court. It is contended that Opposite party No.1 was called upon for promotion to the post of Forest Guard, but he did not avail the same, as he was continuing as Chainman. On completion of ten years of service, he was eligible to get RACP benefit. As such, in compliance of the order dated 05.04.2016 passed by the Tribunal in O.A. No.1791 of 2015, the Divisional Forest Officer, Sundargarh Division, vide Office Order dated 17.08.2016, revised the Pay and Grade of Opposite Party

No.1 w.e.f. 01.05.2013 and also vide Office Order dated 20.08.2016 allowed him to draw his periodical increments. Thereafter, the Divisional Forest Officer, Sundargarh, vide Office Order dated 31.08.2017, kept the benefit which was granted to Opposite Party No.1 in abeyance till disposal of the Writ Petition. It is further contended that the benefit, which was already granted to Opposite Party No.1, is squarely covered by the ratio decided by this Court in ***State of Odisha v. Bihari Lal*** (W.P.(C) No.2831 of 2016 disposed of on 27.06.2016) and now the said Judgment has been confirmed by the apex Court. Therefore, the Office Order dated 31.08.2017 passed by the Divisional Forest Officer, Sundargarh Division should be set aside, as the benefit has been granted to Opposite Party No.1, in view of the order passed by the Tribunal.

6. Petitioner No.5 filed Counter Affidavit before the Tribunal stating that the post of Chainman of Forest Department is a 4th Grade Post having no promotional hierarchy. In the Divisional Cadre there is only one post of Chainman i.e. Group-D and one Post of Amin (Group-C). Opposite Party No. 1 joined on 13.12.1978 in the Rengali Dam Project Division and joined in Sundargarh Forest Division on 29.07.1983 on his transfer in the event of abolition of RDP Division. As regards his promotion, it is mentioned that a Departmental Promotion Committee for giving promotion from Group-D post to the Group-C post was fixed to be held on 29.12.2011. Accordingly, a notice was issued by the Member Secretary-cum-ACF, Sundargarh

Division, to Opposite Party No. 1 and 5 others to attend the physical test on 29.12.2011. The said notice was communicated vide Memo No. 1091 (6) dated 03.03.2012. But Opposite Party No. 1 expressed his un-willingness to avail promotion from Group-D post to the post of Group-C in writing, vide his application dated 11.03.2012. Therefore, he cannot claim RACP benefit admissible to him.

7. Having heard learned Counsel for the parties and after going through the records, it appears that there is no dispute with regard to joining of Opposite Party No. 1 as Chainman under the Divisional Forest Officer, Rengali Dam Project, Deogarh on 13.12.1978. Thereafter, he was transferred to Sundargarh Forest Division on 29.07.1983. In the Forest Department, the post of Chainman is a 4th Grade Post having no promotional hierarchy. In the Divisional Cadre, one post of Chainman i.e. Group-D and one Post of Amin (Group-C) were available. However, due to non-availability of vacancy he was not given promotion. But Petitioner No. 5 considered his promotion from Group-D post to Group-C post, which is not meant to the post of Amin, rather it is the post available to Forest Guard, which Opposite Party No. 1 declined to accept, because that is not the promotional hierarchy. In any case, once Opposite Party No. 1 has expressed his unwillingness not to avail the promotion and in the meantime he completed 10 years of service, he is entitled to get RACP benefit in accordance with law. That question has already been settled in *Bihari Lal* (supra), which has been confirmed by the apex Court.

8. The State-Petitioners placed reliance in of the case ***Secretary, Government (NCT of Delhi) vrs. Grade-I Dass Officers' Association and Others***, (2014) 13 SCC 296, wherein it has been held that grant of higher pay scale under the ACP Scheme shall be conditional to the fact that an employee, while accepting the said benefit, shall be deemed to have given his unqualified acceptance for regular promotion on occurrence of vacancy subsequently. In case he refuses to accept the higher post on regular promotion subsequently, he shall be subject to normal debarment for regular promotion as prescribed in the general instructions in this regard.... The said principle is in no way helpful to the State-Petitioners, rather it is helpful to Opposite Party No.1 to the extent that the post of Chainman is a single post, and there is no promotional avenue to the post of Amin on hierarchy basis. Therefore, Opposite Party No. 1 continued against the said post and the benefit of RACP cannot be denied to him, as he has not taken any promotion to the post of Amin.

9. In that view of the matter, this Court does not find any error in the Order dated 05.04.2016 passed by the Tribunal in O.A. No. 1791 of 2015 so as to warrant interference of this Court. Needless to say, the Office Order dated 31.08.2017 passed by the Authority cannot be sustained in the eye of law and the same is liable to be quashed and is hereby quashed. The Order passed by the Tribunal having implemented, vide Office Order dated 17.08.2016, and subsequent periodical increment sanctioned, vide Office

Order dated 20.08.2016, is allowed to continue, the State-Petitioners shall extend all other financial benefit, as due and admissible to Opposite Party No.1, in accordance with law.

10. Accordingly, the Writ Petition merits no consideration and the same is dismissed.

Alok/Ananta

(DR. B.R. SARANGI)
JUDGE

(S.K. MISHRA)
JUDGE

