

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 19619 of 2015

State of Orissa & Ors.

.....

Petitioners

Mr. S. Jena, SC, S&ME Deptt.

Vs.

Suresh Chandra Pradhan & Anr.

.....

Opposite Parties

*Mr. Satyajit Behera, Advocate
(O.P.1)*

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE S.K. MISHRA

ORDER

14.07.2022

Order No.

06

This matter is taken up through hybrid mode.

2. Heard Mr. S. Jena, learned Standing Counsel appearing for School and Mass Education Department and Mr. S. Behera, learned Counsel for Opposite Party No.1.

3. The State and its functionaries have filed this Writ Petition to quash the order dated 11.07.2013 passed in O.A. No.1672 (C) of 2011, by which Petitioners have been directed to consider the case of Opposite Party No.1 in an appropriate Screening Committee as per Rule 8(2) of the ORSP Rules, 1998 and Rule 14 of the ORSP Rules, 2008 for allowing TBA from the due date, i.e. after completion of 15 years of service in the same grade or post, as change in scale of pay, i.e. he is being allowed I.A. C.P.Ed. scale without change in grade or post shall be of no consequence and cannot debar him from being allowed TBA/ACP on completion of 15 years of service in the same grade or post.

4. Mr. S. Jena, learned Standing Counsel appearing for

School and Mass Education Department contended that pursuant to direction of the Tribunal, the District Education Officer, Dhenkanal passed Office Order dated 28.09.2013 stating therein that the claim of Opposite Party No.1 was thoroughly examined by the District Screening Committee as per the Finance Department Memorandum dated 29.01.2002, wherein it is specifically stated that after enforcement of ORSP Rules, 2008 w.e.f. 01.01.2006, the benefit under ORSP Rules, 1998 including TBA Scale of pay under the said rules has been ceased. The said Finance Department Office Memorandum dated 29.01.2002 clarified that if an incumbent after acquiring higher qualification has moved to a higher scale of pay even though holding the same designation 15 years for the purpose of TBA scale would be counted from the date on which the incumbent has moved to such higher scale of pay because of higher qualification. In the present case, Opposite Party No.1 has been allowed TBA scale of pay w.e.f. 01.11.2002, I.A. C.P.Ed. Scale of pay (Higher Scale) w.e.f. 21.12.1994, 1st ACP w.e.f. 21.12.2009 and as such not entitled to get TBA scale of pay taking into account his service w.e.f. 05.08.1987.

5. As it appears, Opposite Party No.1, having not satisfied with the Order dated 28.09.2013 passed by the District Education Officer, Dhenkanal, filed C.P. No.77(C) of 2014 before the Tribunal and vide order dated 10.11.2014, the Tribunal directed the State-Petitioners to comply with the order dated 11.07.2013 in O.A. No.1672 (C) of 2011 within a period of four weeks. The State also

filed Review petition bearing M.P. No.395 (C) of 2015 for review of the order passed by the Tribunal on 11.07.2013 in O.A. No.1672 (C) of 2011. After due adjudication, the Tribunal vide Order dated 30.04.2015 rejected M.P. No.395 (C) of 2015 and in C.P. No.77(C) of 2014 directed the State-Petitioners for compliance of the order passed in O.A. No.1672(C) of 2011. The said Order dated 30.04.2015 has not been challenged by the State in the present Writ Petition. Thereby, the Order dated 11.07.2013 passed by the Tribunal has attained finality. As a consequence thereof, it is incumbent upon the State to comply with the same after review application was rejected and contempt petition was disposed of by the Tribunal. Instead of doing so, the State-Petitioners have filed this Writ Petition to quash the original Order dated 11.07.2013 passed in O.A. No.1672(C) of 2011 in 2015, without challenging the order passed by the Tribunal on 30.04.2015. More so, the said order dated 30.04.2015 has not been complied with till date. As the order dated 11.07.2013 passed in O.A. No.1672(C) of 2011 has been challenged before this Court by filing this Writ Petition in 2015 ignoring the Order dated 30.04.2015, this Court is not inclined to entertain this Writ Petition. Needless to say, by Order dated 10.11.2014 passed by the Tribunal in C.P. No.77(C) of 2014 under Annexure-10, it was clarified as follows:-

“However, in view of the operative part of the Judgment of the O.A. that the case of the applicant is to be considered in a screening committee as per Rule-8(2) of the Orissa Revised Scale of Pay Rules, 1998 and Rule-14 of the Orissa Revised Scale of Pay Rules, 2008 “for allowing TBA from the due date i.e. after completion of 15 years of service in the same grade or post as change

in scale of pay i.e. he is being allowed I.ACPed scale without change in grade or post shall be of no consequence and cannot debar applicant from being allowed TBA/ACP on completion of 15 years of service in the same grade or post”.

Even if such clarification was made on 10.11.2014 in CP No.77(C) of 2015, the State-Petitioners have not challenged the same in the present application. Thereby, the direction given in the said order dated 10.11.2014 for compliance of the order of the Tribunal within four weeks having not been adhered to, this Court is not inclined to entertain this Writ petition. Accordingly, the Writ Petition merits no consideration and the same is hereby dismissed.

Alok/Ananta

(DR. B.R. SARANGI)
JUDGE

(S.K. MISHRA)
JUDGE

