

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 7953 of 2020

Jyotirani Sarangi

....

Petitioner

Mr. R. Ray, Advocate

-Versus -

Secretary to Govt. of Odisha

....

Opposite Parties

Mr. P.K. Panda,
Standing Counsel for S & ME Department.

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER

27.07.2022

Order No.
06.

1. This matter is taken up through hybrid mode.
2. The petitioner, who was working as an Asst. Teacher under the administrative control of District Education Officer, Khordha (opposite party no.3) was involved in a criminal case being G.R. Case No. 2272(A) of 2013 of the court of learned S.D.J.M., Panposh, Rourkela corresponding to Raghunathpalli Police Station and was detained in judicial custody from 07.06.2016 to 18.06.2016. She was therefore placed under suspension vide order dated 22.06.2016 which was challenged in O.A. No. 549 of 2017 before the erstwhile Odisha Administrative Tribunal, Principal Bench, Bhubaneswar. As per order dated 18.04.2017, the learned Tribunal disposed of the O.A. by remitting the matter to Respondent No.2 to reconsider the case of the petitioner for her reinstatement in service as the criminal case had been stayed by this Court as per order passed in CRLMC No. 1928 of 2016. Pursuant to such order passed by the learned Tribunal, the petitioner was reinstated in service vide order dated 26.05.2017. The

petitioner's grievance is that even though she was paid her periodical increments till 2018 and her next increment was due on 01.06.2019, the same was not granted without assigning any reason. Challenging such inaction of the authorities in granting her periodical increment from the year 2019 onwards, the petitioner has approached this Court seeking the following relief:

"In view of the facts and circumstances the Hon'ble Court may be pleased to admit the writ petition, issue Rule-NISI, calling upon the opposite parties to show cause as to why the Opp.Parties shall not be directed to sanction and release the periodical increments due to the petitioner;

If the Opp.Parties fails to show cause or gives insufficient cause your Lordship's may be pleased to issue a writ of mandamus directing the Opp.Parties to release the periodical increment due to the petitioner for the year 2019"

3. A counter affidavit has been filed by the District Education Officer (opposite party no.2) wherein it is stated in paragraph-6 as follows:

"That with regard to the averments that sanction of increment, it is submitted that due to non-supply of information/documents relating to the criminal case pending against the petitioner, this Opp.Party is not in position to sanction yearly increment in favour of the petitioner. Rule-77 of the Orissa Service Code provides that the authority empowered to make a substantive appointment to the post which a Govt. servant holds, may if it is considers that the conduct of such Govt. servant has not been good, may withdraw an increment. In view of above, as the petitioner has been involved in criminal case, is not entitled to increment as has been prayed for in the aforesaid writ application. It is submitted that for involvement of petitioner in criminal case and D.P. bearing no.7750 dt.22.06.2016 is pending against the petitioner.

Besides the above due to involvement of petitioner in criminal case and for detention of the

petitioner in custody, a Departmental Proceeding bearing No.7750, dtd.22.06.2016 has been drawn against the petitioner and is pending for disposal. Apart from above, unless the period of detention in judicial custody from 07.06.2016 to 22.06.2016 so also the period of suspension is regularized, the petitioner is not entitled to the yearly increment as has been prayed for in the aforesaid writ application.”

4. Admittedly, no communication was made by the opposite party no.3 to the petitioner prior to filing of the counter affidavit. It is submitted by Mr. Ray, learned counsel for the petitioner that power to stop increment is conferred under Rule-77 of the Odisha Service Code, which reads as follows:

“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 such authority shall state the period for which it is withheld and whether the postponement shall have the effect of postponing future increments.”

5. In the instant case, the petitioner has involved in a criminal case, which has since been stayed by this Court. A D.P. was contemplated and has, in the meantime, been initiated against the petitioner as per letter No.7750 dated 22.06.2016, which is said to be pending. Mr. Ray has referred to a decision of the Apex Court in the case of ***P.S. Sawhney vs. R.K. Aggarwal and another***, reported in (1988) 1 SCC

353, wherein it has been held that the stoppage of increment merely because of pendency of disciplinary proceeding is not justified.

6. As has already been stated, no order specifically stopping the increments has yet been issued by the appropriate authority nor communicated to the petitioner. The contentions raised by the petitioner before this Court also do not appear to have been taken into consideration by the opposite party no.3.

7. This Court is of the view that a decision in this regard is required to be taken by the opposite party no.3 at the first instance. Therefore, the writ petition is disposed of granting liberty to the petitioner to submit a representation to opposite party no.3 within a period of two weeks ventilating her grievance and taking all such grounds as are available to her under law. If such a representation is submitted within the period as aforesaid, the opposite party no.3 shall consider the same and pass a lawful order within a period of two weeks thereafter granting an opportunity of hearing to the petitioner. It is needless to mention that if the petitioner is found to be entitled to her claim, the same shall be granted to her without any further delay.

8. Issue urgent certified copy as per rules.

(Sashikanta Mishra)
Judge