

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No.12106 of 2017

State of Odisha and another

Petitioners
Mr.A.K.Mishra, AGA

Vs.

Gayaram Marandi and another

Opposite Parties
Mr. N.Rath, Advocate
on behalf of Mr. S.N.Patnaik, Adv.
(O.P.1)

CORAM:

DR. JUSTICE B.R. SARANGI
MISS JUSTICE SAVITRI RATHO

ORDER

04.05.2022

Order No.
04.

This matter is taken up through hybrid mode.

2. Heard Mr. A.K.Mishra, learned Addl. Government Advocate for the State-petitioners and Mr. N.Rath, learned counsel appearing on behalf of Mr. S.N.Patnaik, learned counsel for the opp. party No.1.

3. The State-petitioners have filed this writ petition assailing the order dated 22.09.2016 passed by the Odisha Administrative Tribunal, Principal Bench, Bhubaneswar in O.A. No.956 of 2014, by which the Tribunal directed for stepping up of the pay of opp. party No.1 by antedating his increments vis-à-vis Jasay Hembram in accordance with Col-4 of Annexure-6 to the O.A. and to allow him the financial benefits with effect from 01.02.2006 along with the arrears accrued therefrom.

4. The brief fact of the case is that, opp. party No.1 joined as a Statistical Assistant in the year 1995 in the office of Statistical Officer, Bolangir and thereafter was promoted to the rank of Statistical Investigator and joined in the promotional post on

14.10.1999 in the office of Project Director, DRDA, Bolangir. One Jasay Hembram, who was junior to opp. party No.1, joined as Statistical Assistant on 22.02.1996 and later on was promoted to the rank of Statistical Investigator on 24.12.2002. As such, there was no dispute that opp. party No.1 was senior to Jasay Hembram. In the selection list, as it stood on 31.12.2005, the name of opp. party No.1 finds place at Sl. No.112, whereas the name of Jasay Hembram was at Sl. No.158. The pay of the opp. party No.1 as per ORSP Rules, 2008 was fixed at Rs.11,540/- as on 01.01.2006 in the time scale of pay of Rs.9,300/- + Grade Pay Rs.4,200/- . Similarly, the pay of Jasay Hembram, who was junior to opp. party No.1 was fixed in the same scale of pay and the next date of his periodical increment was fixed to 01.02.2006. By virtue of such, Jasay Hembram, who was junior to opp. party No.1 had drawn more pay than opp. party No.1 for the period from February to September of each year, as per the comparative pay fixation statement produced by opp. party No.1. Being aggrieved with the same, opp. party No.1 filed a representation to step up his pay to the level of his junior which was forwarded to petitioner No.2, but the same was rejected vide order dated 28.12.2013 on the ground that as per Rule (ii) & (iv) of Finance Department Resolution No.18409/F dated 8.4.2010, opp. party No.1 is not entitled to antedate/step up his pay with that of his junior, i.e., Jasay Hembram. Being aggrieved by the same, opposite party no.1 approached the tribunal in O.A. No.956 of 2014.

5. The tribunal took into consideration the Resolution dated 08.04.2010 issued by the Finance Department, wherein clarification was sought against column No.4 of the said resolution that whether an employee who was drawing more or equal pay in the pre-revised scale than that of his junior immediately before 1.1.2006 or as on

1.1.2006 and subsequently gets his pay fixed in the revised pay structure at a stage lower than that of his junior can step up his pay to the same stage in the revised pay structure with that of his junior. The said query was answered as 'Yes'- for example:- 'A' is an employee who is senior to 'B' in the same grade in the cadre was drawing equal pay or more than 'B' immediately before 1.1.2006. But in the revised pay structure, the pay of 'B' was fixed at a higher stage than the senior 'A'. In this case, the pay of the senior 'A' shall be stepped up in the revised pay structure as that of his junior.

6. Reliance was also placed by opp. party No.1 before the tribunal, by citing a decision of the apex Court in the case of ***Guru Charan Singh Agrawal and another v. Punjab State Electricity Board and others*** reported in ***(2009) 1 SCC (L & S) 578***, wherein the apex Court held as follows:-

“Something may be said with regard to Mr. Chhabra’s submissions about the difference in increment in the scales in which appellant 1 and Shri Shori are placed, but the same is still contrary to the settled principle of law that a senior cannot be paid a lesser salary than his junior. In such circumstances, even if there was a difference in the incremental benefits in the scale given to Appellant; and the scale given to Shri Shori, such anomaly should not have been allowed to continue and might to have been rectified so that the pay of Appellant 1 was also stepped up to that of Sri Shori, as appears to have been done in the case of Appellant No.2.”

7. So far as the Office Memorandum dated 21.10.2010 is concerned, the said memorandum had been issued with regard stepping up of Pay/antedation of pay of the senior Government Servant for the second time at par with his junior under ORSP Rules, 2008. Such memorandum has no application to the case of

opposite party no.1, as opposite party no.1 had never claimed for the stepping up of pay/antedation of pay, for the 2nd time, rather he had claimed for such stepping up of pay/antedation of pay, for the first time.

8. Taking into consideration the reasons assigned in Column-4 of Resolution of the Finance Department dated 08.04.2010 and the decision rendered by the apex Court in the case of ***Guru Charan Singh Agarwal (supra)***, the tribunal came to a conclusion that opp. party No.1 is entitled to get the financial benefits with effect from 1.2.2006 by stepping up of his pay by antedating his increments vis-à-vis Jasay Hembram.

9. In view of the above, this Court does not find any error apparent on the face of the order of the tribunal, so as to warrant any interference by this Court. Therefore, the writ petition merits no consideration and accordingly dismissed.

(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE

Arun/Bichi