

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.8826 of 2021

Akshaya Kumar Mohanty

.... ***Petitioner***
Mr.K.C.Sahu, Advocate

-versus-

State of Odisha and others

.... ***Opp.Parties***
Mr. Y.S.P.Babu, A.G.A.
Mr.S.K.Patra, Advocate for OP No.4.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER
30.03.2022

Order No.

- 03.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. The present writ application has been filed by the Petitioner to quash the impugned order of rejection dated 30.12.2020 under Annexure-12 and further the Petitioner is seeking a direction to the Opposite party authorities to allow 3rd RACP benefit in favour of the Petitioner on completion of 30 years of service by fixing his basic pay appropriately in the time scale of Rs.9300/- to Rs.34,800/- with Grade Pay of Rs.4800/-with effect from 01.01.2013 in terms of Annexures-3 and 4 and further keeping in view the ratio decided by the Orissa Administrative Tribunal in O.A. No.1055 of 2015 and a batch of other matters under Annexure-7 and further considering the fact that the order passed by the Orissa Administrative Tribunal extending the benefit of 3rd RACP in favour of similarly placed Amin as per Annexures-8 & 9 series. The Petitioner has also prayed to consider the

grant of 3rd RACP benefit in the light of the judgment in the matter of Biharilal Barik-v.-State of Orissa and others with all consequential financial benefit including the revision of pay as per ORSP Rule, 2017 so also the pensionary benefit within a stipulated period of time.

3. The factual matrix of the present case, shorn of unnecessary details, is that the Petitioner was initially appointed as an Amin on 17.07.2019. While serving as Amin, he is retired from service on 31.07.2016 on attaining the age of superannuation from the Office of Opposite Party No.3.

3. Further, it has been pleaded in the writ application that the basic pay of Rs.5,200 –Rs.20,200/- with Grade Pay of Rs.1900/- is attached to the post of Amin. The next promotional post of Amin is the post of Revenue Inspector carrying the scale of pay of Rs.9,300- 34,800/- with Grade Pay of Rs.4,600/- and the further promotional post of Revenue Inspector is Revenue Supervisor carrying the scale of pay of Rs.9300-34,800/- with Grade Pay of Rs.4,800/-. Accordingly, it has been pleaded that the entire service career of an Amin, there are only two promotional avenues i.e., the post of Revenue Inspector and Revenue Supervisor.

4. Considering the aforesaid fact and stagnation in career persons who have been appointed as Amin, the State Government had decided to implement the Career Advancement Scheme, which is known as Revised Assured Career Progression Scheme herein after referred to as (RACPS) at par with the Central Government employees with effect from 01.01.2013 by virtue of a Government Resolution. The said Resolution further clarifies that there shall be three financial upgradation under the RACPS counted from the direct entry grade on completion of 10,20 and 30 years of service in a single cadre in the absence of any promotion. Further, as per the said Resolution it has been clarified that a Government servant is eligible for 1st, 2nd and 3rd

upgradation after completion of 10 years, 20 years and 30 years of service. The 3rd RACP is to be granted on completion of 30 years of service to an employee, who has got two upgradation either by RACPS or promotion or both.

5. So far as the present Petitioner is concerned, he was initially appointed as Amin and the next promotional post of Amin is Revenue Inspector (R.I.) and thereafter the further promotional post that was available to the Petitioner was Revenue Supervisor, which carries the time scale of pay of Rs.9300-34,800/- with Grade Pay of Rs.4600/. Accordingly, it is submitted that the Petitioner is entitled to get the 3rd RACP benefit in the scale of pay of Revenue Supervisor in the next Grade Pay of 3rd RACP with effect from 01.01.2013 as because the Petitioner has already completed 30 years of service. Therefore, it is submitted by the learned counsel for the Petitioner that as per the RACP norms, the pay of the Petitioner is to be fixed at Rs.9300-34,800/- with Grade Pay of Rs.4800/- under RACPS benefits after completion of 30 years of service which is to be calculated by taking into account the initial date of appointment of the Petitioner.

6. It is further stated that despite specific instruction given by Finance Department Resolution dated 06.02.2013 under Annexure-3 which was further clarified vide Memo No.1738 dated 20.01.2014 under Annexure-4, the Petitioner was not allowed the benefit of the 3rd RACP with effect from 01.01.2013 in the scale of pay of Rs.9300-34,800/- with Grade Pay of Rs.4800/-. However, it is also stated that the Opposite Party No.1 vide Office order dated 16.02.2015 has only sanctioned lower scale and Grade Pay in PB-1 i.e. Rs.5,200-20,200/- with Grade Pay of Rs.2200/- with effect from 01.01.2013 and Grade Pay of Rs.2000/- with effect from 02.04.2014 as 1st and 2nd RACP benefits which is absolutely illegal and erroneous. Further such a decision by the Opposite Party No.1 runs contrary to the aforesaid

Government Resolution regulating payment of RACP benefit to Government employees like the Petitioner. In the year 2015 the Finance Department Government of Odisha issued another clarification vide letter 17.01.2015 stating therein that the 3rd RACP benefit payable on completion of 10, 20 and 30 years of service shall be available to each employees based on total number of years of service rendered by the employee. It is also clarified therein that the past service shall not be forfeited. However, it is alleged by the Petitioner that in the present case, the authorities by misinterpreting the provisions of law and while sanctioning the RACP benefit have paid lesser amount deliberately.

7. It has also been stated in the writ application that similarly situated Amin namely, Gopal Chandra Mishra, Brundaban Naik, Amulya Kumar Patel and Jogeswar Pradhan and many others who were Amin like the Petitioner and were extended similar erroneous benefits under RACPS approached the Orissa Administrative Tribunal by filing O.A.No.1055 of 2015 and a batch of connected matters praying therein for grant of 3rd RACP benefit at the rate of Rs.9300-34,800/- with Grade Pay of Rs.4800/-. After hearing learned counsel for the respective parties, the Orissa Administrative Tribunal in its final order has allowed all the cases and directed the Opposite Party authorities to sanction and disburse the 3rd RACP at the rate of Rs.9300-34,800/- with Grade Pay of Rs.4800/- on completion of 30 years of service. After the order was passed by the Orissa Administrative Tribunal, the Government in consultation with the Finance Department has implemented the orders passed by the learned Orissa Administrative Tribunal and have extended the 3rd RACP benefit at the rate of Rs.9300-34,800/- with Grade Pay of Rs.4800/- on completion of 30 years of service vide order dated 16.09.2019.

8. Pursuant to the order passed by the Orissa Administrative Tribunal, some employees have been given the benefit of the RACPS

as claimed by the present Petitioner. Therefore, the Petitioner approached the authorities by filing a representation requesting the Opposite Parties to grant 3rd RACP benefit in the promotional hierarchical post carrying a scale of Rs.9300-34,800/- with Grade Pay of Rs.4600/-.

9. Challenging the inaction of the authorities in extending the benefit of 3rd RACP in favour of the Petitioner, with effect from 01.01.2013, the Petitioner had approached this Court by filing a writ application bearing W.P.(C) No.5799 of 2020 claiming the benefit of 3rd RACP upon completion of 30 years of service with effect from 01.01.2013. After hearing the parties, this Court by order dated 28.02.2020 had been pleased to dispose of the writ application with a direction to the Opposite Party No.1 to consider the representation of the Petitioner in accordance with law. Since the authority did not comply with the order dated 28.02.2020, the Petitioner had again moved this Court by filing CONTC No.4237 of 2020 which was disposed of with a direction to implement the order within one month.

10. Pursuant to the order passed in CONTC No.4237 of 2020 the Government of Odisha vide impugned order No. 2506 dated 30.10.2020 rejected the claim of the Petitioner for grant of 3rd RACP benefit in favour of the Petitioner with effect from 01.01.2013. Challenging such rejection order dated 30.12.2020, the present writ application has been filed by the Petitioner.

11. Though the Opposite Party No.1 has filed a counter affidavit in the present case, defending the impugned rejection order, it is stated in the counter affidavit that there is no cadre Rules governing the Amin and showing promotional hierarchy to the post of Revenue Inspector and Revenue Supervisor. Such cadre Rule has not been framed under the Water Resource CAD department in respect of the post of Amin and the post of Amin are being treated as isolated/ex-cadre post and as

such persons like the Petitioner, who are holding ex-cadre post and not eligible to get higher grade of pay as per Paragraph-10 of the 1st Schedule of ORSP Rules, 2008 issued vide Finance Department Resolution No.3560 dated 06.02.2013.

12. Further in the counter affidavit, the Opposite Party No.1 has admitted that the Finance Department has filed a writ application bearing W.P.(C) No.2831 of 2016 before this Court and thereafter SLP before the Hon'ble Apex Court against the order of Orissa Administrative Tribunal passed in O.A.No.520 of 2014 which was filed by Biharilal Barik against State of Odisha and others. It is further stated that after dismissal of SLP, the Finance Department, Government of Odisha has advised for implementation of the order of the Orissa Administrative Tribunal passed in O.A.No.520 of 2014 and a batch of other cases of Water Resources Department i.e. the very same department under which the Petitioner was employed. Further, it is stated in the counter affidavit that the common order dated 02.03.2017 passed in O.A.No.1055 of 2015 and a batch of other cases have also been implemented by the Government. It has also been contended on behalf of the Opposite Parties that in view Paragraph-10 of the 1st Schedule of ORSP Rule, 2008 issued vide Finance Department Resolution dated 06.02.2013 the 3rd upgradation to the tune of Rs.2200/- has already been extended to the Petitioner with effect from 01.01.2013.

13. Heard Mr.K.C.Sahu, learned counsel for the Petitioner, Mr.Y.S.P.Babu, learned Additional Government Advocate for Opposite Party No.1 and Mr.S.K.Patra, learned Advocate for Accountant General of Odisha.

14. Having heard learned counsel for the parties and upon a careful scrutiny of the order passed by the Orissa Administrative Tribunal, this Court as well as the Hon'ble Supreme Court of India in Biharilal Barik

case, this Court is of the considered view that the conduct of the Opposite Parties in the present case is highly arbitrary, illegal and discriminatory. The issue which is involved in the present lis was also the issue in the previous round of litigation. After considering the materials on record and after hearing the learned counsel for the respective parties, the Orissa Administrative Tribunal ruled in favour of the Petitioner and directed the Government to extend the benefit of 3rd RACP as has been claimed by the Petitioner in the present case to the Petitioner in the earlier round of litigation. Some of such employees in the earlier round of litigation were working in the very same department where the Petitioners were also working. The order granting benefit of 3rd RACP was observed by this Court as well as by the Hon'ble Supreme Court of India when the same was assailed in the aforesaid two constitutional forums by the Government of Odisha. Once the order passed by the learned Tribunal has been affirmed by this Court as well as the Hon'ble Supreme Court, the same has not only attained finality, but also by applying the doctrine of merger, the decision in the earlier round of litigation to extend the benefit of 3rd RACP after the same was affirmed by the Hon'ble Supreme Court of India has become the law of the land. Therefore, it is no more open to the Opposite Parties to question the same in a subsequent litigation. Therefore, the conduct of the Opposite Party No.1 in the present case in rejecting the claim of the Petitioner vide order No.2506 dated 30.12.2020 under Annexure-12 is absolutely illegal and arbitrary and the same is unsustainable in the eye of law.

15. The Government of Odisha as a model employer has to apply a common standard and a common policy for all the employees, who are similarly placed. In other words, the State being a model employer is estopped to adopt a different yardsticks to different set of employees falling under one cadre. Such conduct could be grossly arbitrary and

discriminatory and would be hit by Article 14 of the Constitution of India. In the instant case, the Opposite Party No.1 without extending the benefit as has been claimed by the Petitioner, similar benefit having been extended to similarly placed employees in the State Government has passed an order rejecting the claim of the Petitioner thereby the State Government has acted in a discriminatory manner and in violation of law laid down by this Court in Biharilal Barik case, which was eventually affirmed by the Hon'ble Apex Court.

16. In view of the facts and circumstances narrated herein above, as well as the discussion of law laid down by this Court as well as the Hon'ble Supreme Court of India, this court is of the considered view that the rejection order dated 30.12.2020 under Annexure-12 is illegal, arbitrary and discriminatory and the same is liable to be quashed and is hereby quashed. Further the Opposite Parties are directed to calculate, sanction and disburse the pay scale as has been given in Biharilal Barik case and which benefit has also been extended in favour of many similarly placed employees by the State Government. The Petitioner is directed to approach the authority concerned along with a certified copy of this order within a period of two weeks from today. The authorities are directed to undertake the aforesaid exercise within two months from the date of receipt of a copy of this order and shall disburse the benefit as is due and admissible to the Petitioner within a period of one month thereafter.

17. With the aforesaid observation the writ application stands disposed of.

18. Issue urgent certified copy as per Rules.