

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.7757 of 2022

Patitapaban Lenka and others

.... Petitioners
Mr.N.Sarkar, Advocate

-versus-

State of Odisha and others

.... Opp.Parties
Mr. Y.S.P.Babu, A.G.A.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER
29.03.2022

Order No.

- 01.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. Heard learned counsel for the Petitioners and the learned Additional Government Advocate..
 3. The present writ application has been filed by the Petitioners with the following prayer:
“It is, therefore, prayed that this Hon’ble Court may graciously be pleased to issue notice to the opposite parties calling upon them to file show cause as to why the order dated 10.03.2022 issued by the Opposite Party No.3 under Annexure-10 regarding entitlement of Grade Pay as per the order dated 03.11.2020 as under Annexure-8 shall not be quashed and after hearing the parties be pleased to quash the order dated 10.03.2022 issued by the Opposite Party No.3 under Annexure-10.
 4. Learned counsel for the Petitioners submits that all the Petitioners, who are retired as MPHS (Male) working under

Kendrapara district have been granted 2nd and 3rd RACP benefit and availing Grade Pay of Rs.4600/- and Rs.4800/- with effect from 01.01.2013. It is submitted by the learned counsel for the Petitioners that after issuance of Resolution by Opposite Party No.1 framing the recruitment Rule to the post of MPH (Male and Female), clarification was sought for from Finance department regarding grant of RACP benefit in favour of MPH (Male and Female) and the Finance Department clarified in its letter dated 09.08.2016 as there was no promotional avenue prior to 01.07.2015 MPH (Male and Female) are not entitled to grade pay of Rs.4200/- as per RACP Rules 2008 and directed for recovery for the period from 01.01.2013 to 30.06.2015. It is also submitted by the learned counsel for the Petitioners that the Finance Department Resolution dated 09.08.2016 was challenged before the learned Orissa Administrative Tribunal and the learned Tribunal quashed the Finance Department Resolution dated 09.08.2016 and observed that in absence of cadre Rule, the employees are entitled for higher pay with grade pay of the next promotional post as per the judgment rendered by this Court in the matter of **State of Orissa-v.- Biharilal Barik** and the said judgment was confirmed by the Hon'ble Supreme Court of India. Learned counsel for the Petitioners submits that on the plea of pendency of the writ application challenging the order dated 03.11.2020 issued by Opposite Party No.1 the MPH (Male and Female) are not being granted 3rd RACP benefit of Rs.4800/- even though they have completed more than 30 years of service in the meantime. It is submitted that as per the Finance Department Resolution dated 06.02.2013 the Petitioners have also availed Grade Pay of Rs.4800/- as 3rd RACP benefit with effect from 01.01.2013. On the plea of order passed by the Opposite Party No.1 dated 03.11.2020 the Opposite Party No.3 vide order dated 10.03.2022 has directed all the C.D.M.Os. to take steps for re-fixation of pay/entitlement of Grade

Pay. Therefore, a direction may be issued to the opposite parties to extend the RACP benefit in favour of the Petitioners as per Finance department Resolution dated 06.02.2013. It is further submitted by the learned counsel for the Petitioners that order dated 03.11.2020 issued by Opposite Party No.1 has already set aside by this Hon'ble Court, the subsequent order dated 10.03.2022 of the Opposite Party No.3 directing all the CDMOs to take steps for re-fixation of pay/entitlement of Grade Pay under Annexure-10 is not sustainable and liable to be quashed.

5. Learned counsel for the Petitioners submits that similar question had come up for consideration before a Division Bench of this court in W.P.(C) no.2831 of 2016 disposed of on 27.06.2016 (State of Odisha and another v. Biharilal and others) which was arising out of an order dated 12.03.2015 passed by the State Administrative Tribunal in O.A.No.520 of 2014. It is also submitted by the learned counsel for the Petitioners that the Opposite Parties may be directed to consider the case of the Petitioners as per the settled law decided in the case of **State of Odisha v. Biharilal Barik** decided by this Court in W.P.(C) No.20358 of 2017 decided on 23.08.2017.

6. Considering the aforesaid facts and circumstances of the case and the fact that the Petitioners have been discriminated, this Court remits the matter to the authority to consider the case of the Petitioners afresh in the light of the judgment rendered by this Court in the case of **Biharilal Barik (supra)** as well as the Resolution of the Finance Department, Government of Odisha dated 06.02.2013. The case of the Petitioners as well as other similarly situated persons belonging to Health & Family Welfare Department be considered strictly in accordance with law. The entire exercise shall be completed within a period of three months from the date of production of certified copy of this order. It is open for the Petitioners to appear before the authority along with certified copy of this order along with other documents and

orders/judgments, they are relying upon.

7. With the above direction, the writ application stands disposed of.
8. Issue urgent certified copy as per Rules.

RKS

(A.K. Mohapatra)
Judge

