

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 21577 of 2017

**Managing Director, OLIC Ltd. and
others**

.....

Petitioners

Mr. B.K. Sharma, Advocate

Vs.

Bijay Prasad Kanungo and another

.....

Opposite Parties

Mr. S. Patra, Advocate

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

09.05.2022

Order No.

14.

This matter is taken up through hybrid mode.

2. Heard Mr.B.K. Sharma, learned counsel appearing for the petitioners and Mr. S. Patra, learned counsel appearing for opposite party no.1.

3. Mr. B.K. Sharma, learned counsel for the petitioners, contended that opposite party no.1 while working as the Assistant Executive Engineer, was allowed to remain overall charges of Executive Engineer. However, he having not been extended with the benefit of scale of pay admissible to the post of Executive Engineer, approached the Orissa Administrative Tribunal, Bhubaneswar in O.A. No. 976 of 2017. The tribunal vide order dated 21.06.2017, since directed the petitioners to extend the scale of pay of the post of Executive Engineer to opposite party no.1, the same has been challenged in the present writ petition. To substantiate his contention, he relied upon the judgment passed by this Court in the case of *State of Odisha v. Prafulla Chandra Panda* (W.P.(C) No. 3616 of 2016 disposed of on 10.05.2017) and *State of Odisha v. Baishnab Charan Senapati* (W.P.(C) no. 859 of 2016 disposed of on 21.02.2017). Learned counsel for the petitioners contended that opposite party no.1 is not entitled to get the relief as directed by the tribunal. Therefore, seeks for quashing of the same.

4. Mr. S. Patra, learned counsel appearing for opposite party no.1 contended that, though opposite party no.1 was eligible and entitled to get promotion to the post of Executive Engineer, but he was not given regular promotion. However, he was allowed to remain in overall charges after handing over complete charge to one Debarchin Behera, Assistant Engineer (Mechanical). Thereby, opposite party no.1 has discharged the duties and responsibility of the post of Executive Engineer. As a result of which, he is entitled to get the scale of pay admissible to the post. Considering the same, if the tribunal has extended such benefit to the opposite party no.1, no illegality or irregularity has been committed by the tribunal by passing the impugned order. Therefore, the said order needs no interference by this Court, at this stage.

6. Having heard learned counsel for the parties and after going through the records, it appears that opposite party no.1 was working as Assistant Executive Engineer under the Orissa Lift Irrigation Corporation. Even though he remained in overall charges of the Executive Engineer, he had never been posted as the regular Executive Engineer nor was allowed to discharge the duty on officiating basis. Needless to say that if somebody is remaining in charge or is discharging in officiating basis, he may be entitled to get the charge allowances. But fact remains; nothing has been placed on record to show that opposite party no.1 remained in charge of the Executive Engineer to claim such benefit. However it is contended that he remained in overall charge after the Executive Engineer got promotion to the rank of Superintending Engineer, by handing over complete charge to Sri Debarchan Behera. Thereby, he claimed that once he was continuing and discharging the duties having higher responsibility, therefore, he is entitled to get the benefit of the scale of pay admissible to the said post, even though he has not been promoted to the said post.

7. The cases referred above, clearly indicate that even if somebody remains in charge, he is not entitled to get the benefit of the higher post as claimed by him. Therefore, the tribunal has committed gross error

apparent of the face of the record, by allowing benefit to opposite party no.1 to get the scale of pay of the post of Executive Engineer for the period from 27.09.2002 to 30.04.2003 and basing on the last pay drawn, his pension was to be fixed and paid. The tribunal has committed gross error by issuing such direction as opposite party no. 1 has neither promoted to the post of Executive Engineer, nor he has been directed to discharge the duty on officiating basis. Only remaining in overall charge, that does not mean that he had discharged the duty of Executive Engineer to get such benefit. More so, the scale of pay of the higher post is not admissible to opposite party no.1. If at all he was discharging the overall duty, he may entitle to get some charge allowances, as due and admissible to him in accordance with law.

8. In view of the above, the direction given by the tribunal vide order dated 21.06.2017 in O.A. No. 976 of 2017 cannot sustain and accordingly the same is hereby quashed. But fact remains, if for any reason opposite party no.1 had remained in overall charges, it is open to the petitioners to consider the case of opposite party no.1 for extension of benefit of charge allowances, as due and admissible to him, in accordance with law. The entire exercise shall be completed within a period of three months from the date of communication of the order.

9. With the above observation/direction the writ petition stands disposed of.

10. Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

Arun/Bichi

(SAVITRI RATHO)
JUDGE