IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 13852 of 2012

Engineer in-Chief -cum- Secretary to Govt. of Odisha, Works Department, Bhubaneswar & Others	…..	***Petitioners***
		Mr. A.K. Mishra, A.G.A.
	Vs.	
Tapan Kumar Behera	…..	***Opposite party***
		Mr. Suraj Mohanty, Advocate

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

ORDER
19.04.2022

Order No. 06.

This matter is taken up through hybrid mode.

2. Heard Mr. A.K. Mishra, learned Additional Government Advocate for the petitioners and Mr. Suraj Mohanty, learned counsel for the opposite party.

3. The petitioners, who are functionaries of the State, have filed this writ petition seeking to quash the order dated 08.02.2012 passed in O.A. No.176 of 2011 under Annexure-2, by which the Odisha Administrative Tribunal, Bhubaneswar has held that since the opposite party had undergone vasectomy operation on 23.12.2006 and ORSP Rules came into force w.e.f. 01.01.2006, he is entitled to increments as per ORSP Rules, 2008, and accordingly directed the petitioners to settle the claim of the opposite party with reference to office memorandum no.11162/F dated 16.03.1992 within a period of two months from the date of receipt of the order.

4. Mr. A.K. Mishra, learned Additional Government Advocate

for the petitioners contended that the tribunal, while passing the impugned order dated 08.02.2012, has not taken into consideration the Finance Department order No.22984/F dated 04.06.1985, as modified vide office memorandum dated 16.03.1992, and came to an erroneous conclusion that the opposite party is entitled to increments and accordingly directed the petitioners to settle the claim of the opposite party within a period of two months from the date of receipt of the order. It is further contended that the Finance Department order dated 04.06.1985, which has been annexed as Annexure-A to the counter affidavit filed in O.A. No.176 of 2011, clearly indicates that the benefit of incentive allowance would be sanctioned from 1st day of the month following the date of sterilization after 19th October, 1983, i.e., the date of issue of Resolution No.34707/H, dated 19th October, 1983 of Health & Family Welfare Department. It has also been indicated therein that incentive allowance would be sanctioned by the authority competent to sanction the normal incentives in respect of the Government servants on production of Green Card and other documents, if any, to the satisfaction of the sanctioning authority. This basic office memorandum dated 4th June, 1985 of the Finance Department has been modified, vide office memorandum dated 16th March, 1992, to the extent that the Government servants, who are in possession of "Green Cards" with one child will be entitled to incentive allowance equal to twice the amount of increment and the Government servants, who are in possession of "Green Cards" with one or two children will be entitled to incentive allowance equal to the amount of one increment and the Class-IV Government servants, who are in possession of "Green Cards" with one or two children will be entitled to incentive allowance equal to twice the amount of increment. In view of above modification of the Finance Department Office Memorandum dated 04.06.1985, the benefit claimed is admissible to the opposite party in terms of Clause- J and K thereof. The Tribunal has failed to take into consideration this aspect in proper perspective and passed the order impugned, which cannot sustain in the eye of law.

5. Mr. Suraj Mohanty, learned counsel for the opposite party contended that since the Finance Department resolution dated 04.06.1985 has been modified, vide office memorandum dated 16.03.1992, the benefit as admissible to the petitioner should be extended in terms of the office memorandum. Thereby, the tribunal has not committed any error apparent on the face of the order, so as to warrant interference of this Court.

6. Having heard learned counsel for the parties and after going through the records, it appears that the opposite party, who was working as Asst. Engineer in the office of the Executive Engineer (R & B) Division, Malkangiri, had approached the Odisha Administrative Tribunal, Bhubaneswar by filing O.A. No. 176 of 2011 to modify the sanction order of incentive allowance in view of the provisions contained in para-6 of the Finance Department resolution dated 16.12.2008 under Annexure-7 and to issue modified order that the opposite party is entitled to Rs.1240/- per month instead of Rs.400/- towards incentive allowance w.e.f. 23.12.2006. But fact remains, the opposite party, while working as Asst. Engineer under the petitioner no.3, his wife gave birth to a female child on 22.01.2001 and, thereafter, he accepted the

terminal method of vasectomy on 23.12.2006 in order to avail the benefit extended to Green Card holders for possessing one child, in view of Finance Department Memorandum dated 16.03.1992. Accordingly, the C.D.M.O., Koraput issued Green Card to the opposite party on 13.06.2007. Thereafter, the opposite party was transferred from the office of petitioner no.3 to the office of the petitioner no.4, as consequence thereof, the opposite party applied to petitioner no.3 for extending the incentive w.e.f 23.12.2006 vide letter dated 02.02.2009. Petitioner no.4, vide letter dated 22.01.2010, intimated petitioner no.3 that the pay of the opposite party as on December, 2006, as per the Revised Scale of Pay Rules, 2008 was fixed at Rs.16050/- + Grade Pay Rs.4600/- and accordingly, in view of the Finance Department Office Memorandum, the incentive to the opposite party may be sanctioned. In spite of such intimation, petitioner no.3 did not take any action for extending the benefit of incentive, and therefore, the opposite party, vide letter dated 15.01.2011, requested again to petitioner no.3 by enclosing Finance Department Resolution dated 16.03.1992. In response to same, petitioner no.3, vide office order dated 21.01.2011, sanctioned incentive allowance w.e.f. 23.11.2006 at the rate of Rs. 400/- per month. As the pay of the opposite party, as on 23.12.2006 was already fixed at Rs.16050/- with grade of pay of Rs.4600/-, the incentive allowance as per the Finance Department Resolution, should be Rs.1240/- per month instead of Rs.400/-. Therefore, the opposite party approached the Odisha Administrative Tribunal, Bhubaneswar by filing O.A. No. 176 of 2011.

7. Pursuant to notice, the petitioners appeared before the

tribunal and contended that the opposite party is not entitled to get the allowance of Rs.1240/- per month, but he is only entitled Rs.400/-, in view of the office memorandum dated 04.06.1985, being the holder of Green Card from the C.D.M.O., Koraput on 13.06.2007. It is admitted fact that the opposite party had undergone vasectomy operation on 23.12.2006. Therefore, by that time, whatever salary was receiving, on that basis, the opposite party got the incentives in terms of the office memorandum dated 04.06.1985.

8. The Finance Department issued office memorandum No. 22984/F dated 04.06.1985, sub-clause-C, J and K of para-3 whereof read as follows:-

> *"(c) The incentive allowance is not to be taken into account for fixation of pay on promotion and the benefit of incentive allowance would continue to be available the same rate even after promotion.*
>
> *(j) the benefit of incentive allowance would be sanctioned from the 1st day of the month following the date of sterilization after 19th October, 1983, i.e., the date issue of Resolution No. 34707/H, dated 19th October, 1983 of Health & F.W. Department.*
>
> *(k) Incentive allowance would be sanctioned by the authority competent to sanction the normal incentives in respect of the Government servant of production of Green Card and other documents, if any, to the satisfaction of the sanctioning authority"*

9. In view of the aforesaid clauses, the opposite party is entitled to get the benefit of incentive allowance, which would be sanctioned from the 1st day of the month following the date of sterilization after 19th October, 1983, i.e., the date of issue of Resolution No. 34707/H, dated 19th October, 1983 of Health & F.W. Department, and such incentive allowance would be sanctioned by the authority competent to sanction the normal

incentives in respect of the Government servants on production of Green Card and other documents, if any, to the satisfaction of the sanctioning authority. Therefore, the opposite party, having undergone vasectomy operation on 23.12.2006, was granted incentive allowance w.e.f 23.12.2006. In view of sub-clause-3(c) of the order dated 04.06.1985 of the Finance Department, the incentive allowance is not to be taken into account for fixation of pay on promotion and the benefit of incentive allowance would continue to be available at the same rate even after promotion. Therefore, the opposite party is not at all eligible to get incentive as per sub-clause-3(c) and 3(j) of the Finance Department order dated 04.06.1985. Taking into consideration the factual matrix of this case, that the Green Card was issued to the opposite party by the C.D.M.O., Koraput on 13.06.2007 and at that point of time, the opposite party was in receipt of pay of Rs.8500/- per month i.e. from 3rd March, 2006 to 2nd March, 2007, in the scale of pay of Rs. 6500-200-10500/-, the rate of annual increment of the opposite party on the date he was declared eligible for the incentive allowance, as per sub-clause-3(k) of the Finance Department order dated 04.06.1985, is Rs.200/- and, accordingly, Rs.400/- incentive was rightly granted to the opposite party. The claim made by the opposite party in view of the subsequent modification of the resolution vide Office Memorandum dated 16.03.1992, that he should be extended with incentive allowance of Rs. 1240/-, cannot have any justification in the present case. If the office memorandum dated 4th June, 1985 and 16th March, 1992 are taken into consideration, the only difference will be found in respect of clauses-a, b and c of office memorandum dated 16th March, 1992, but all other conditions stipulated in the office memorandum dated 4th June 1985 remained as it is.

10. In view of such position, the claim of the opposite party to grant incentive of Rs.1240/- cannot have any justification. More so, the benefit as admissible to the opposite party, i.e., Rs.400/- per monthin terms of the Finance Department order dated 4th June, 1985 has been granted in his favour. The claim made that as per the ORSP Rules, 2008, which came into force w.e.f. 24.12.2008 with retrospective effect from 01.01.2006, for revision of his scale of pay, the amount of incentive should be extended enhanced from Rs.400/- to Rs.1240/- per month, is also not admissible to the opposite party at this point of time. Thereby, the tribunal having not taken into consideration the material aspect, which is apparent on the face of the record, the order dated 08.02.2012 passed by the tribunal in O.A. No. 176 of 2011 is hereby quashed.

11. The writ petition is allowed.

(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE

Alok/Sukanta