

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No.24661 of 2013

State of Odisha and others

.....

Petitioners

Mr.A.K.Mishra, AGA

Vs.

Markanda Seth and another

.....

Opposite parties

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

10.03.2022

Order No.

08.

This matter is taken up through hybrid mode.

2. Heard Mr. A.K.Mishra, learned Addl. Government Advocate for the petitioners-State.

3. The petitioners-State have filed the present writ petition challenging the order dated 13.03.2013 passed in O.A. No.554 of 2013, by which the Tribunal has directed to sanction the normal annual increments of opposite party no.1 during the period of his suspension and subsequent thereto till date of passing of the order and to fix the pay of opposite party no.1 in terms of ORSP Rules, 1988.

4. Mr. A.K. Mishra, learned Addl. Government Advocate appearing for the petitioners-State contended that the order of the Tribunal cannot not be implemented, in view of pendency of disciplinary proceeding against the opp.party No.1 by following the order of suspension. It reveals that subsequent to the disciplinary proceeding, vigilance case has been initiated against the opp. party No.1 under Section 13 (2) read with Section 13 (1)

(c) (d) of the P.C. Act, 1988 and Sections 409, 468/471/477-A/120-B of IPC and, as such, an amount of Rs.21,59,589/- has to be recovered from three persons, including the present opp. party No.1, and pursuant to the same the opposite party no.1 is liable to pay Rs.7.00 lakhs and odd, as Vigilance P.S. Case No.29 dated 06.06.2007 is pending against him. Thereby, the direction given by the Tribunal cannot sustain in the eye of law.

5. Though notice was made sufficient against the opp. party No.1 and a set of counsel had entered appearance on his behalf, but the conducting counsel is no more surviving. Hence, perused the records. As it appears, the Tribunal has directed that annual increment of a government servant cannot be withheld unless there is a specific order to that effect. Rule-77 of the Orissa Service Code provides that an annual increment shall ordinarily be drawn as a matter of course unless it is withheld, in accordance with the provisions of the OCS (CC & A) Rules, 1962. Therefore, in view of Rule-77 of the Orissa Service Code, the opp. party No.1 is entitled to get the annual increment as there is no other impediment. Consequent thereupon, the Tribunal has directed the petitioners-Government to pay the normal annual increment of the opp. party No.1 during the period of suspension and subsequent thereto and fix the pay of the opp. party No.1 under ORSP Rule, 1998. The subsequent contention has been raised that the opp. party No.1 has been involved in the vigilance case and the vigilance proceeding has not yet dropped. There is no iota of evidence on record to show that by written order, the petitioners-Government have stopped the annual increment of the opp. party No.1 in terms of the provisions of the OCS (CC & A) Rules, 1962.

7. In absence of any such material, this Court is of the considered view that the order dated 13.03.2013 passed in O.A. No.554 of 2013 by the Orissa Administrative Tribunal does not require any interference by this Court.

8. Hence, the writ petition, being devoid of merit, stands dismissed.

(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE

Jagadev/Bichi