

ORISSA HIGH COURT: CUTTACK

W.P.(C) No. 13237 OF 2017

In the matter of an application under Article 226 of the
Constitution of India.

AFR Sri Laxmidhar Mishra Petitioner

-Versus-

State of Odisha and others Opp. Parties

For Petitioner : M/s. Susanta Kumar Dash,
A.K. Otta, A. Dhalsamanta,
B.P. Dhal, S. Das and N.K. Das,
Advocates.

For Opp. Parties : Mr. S.N. Nayak,
Additional Standing Counsel
[O.Ps. No.1 to 4]

Mr. Saroj Kumar Das,
Standing Counsel (AG&A)
[O.P.No.5]

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HONOURABLE MR. JUSTICE G. SATAPATHY**

Date of hearing: 23.08.2022 : Date of judgment: 30.08.2022

DR. B.R. SARANGI, J. The Petitioner, who was working as
Salaried Amin under the District Judge, Cuttack (re-

engaged after superannuation), has filed this writ petition seeking to quash the letter no.4009 dated 12.05.2014, as at Annexure-6, by which the Government of Orissa in Law Department observed that the Salaried Amins and Drivers of Subordinate Judiciary are not entitled to get one increment in pursuance of Law Department Resolution No. 10077/L dated 13.09.2012. The petitioner also seeks to quash the order dated 26.05.2017 at Annexure-11 rejecting the representation filed by All Orissa Judicial Employees Association regarding giving benefit of one advance increment to the Salaried Amins working in the Subordinate Judiciary, and to hold that the petitioner is entitled to get one advance increment like other staff in the ministerial cadre of the Subordinate Judiciary and accordingly his pension/family pension is to be processed and released within a stipulated time. The petitioner also further prayed to direct the opposite parties not to recover the amount paid to him by grant of one advance increment.

2. The genesis of the case revolves around the fact that this High Court considering the necessity to appoint 'Salaried Amins' in place of 'Survey Knowing Pleader Commissioners', vide letter no.9938 dated 07.11.1973, clarified that the posts of 'Salaried Amin' with scale of pay Rs.125-190/-, shall be created under the Government, but those Salaried Amins will remain under the control of the District Judges. The qualification and other eligibility criteria for appointment were also indicated therein. Consequentially, recommendation was made by this Court for creation of the posts of Salaried Amin with the scale of pay Rs.320-450/- which is equal to that of the Grade-II Assistants, keeping in view the recommendation of the 4th State Pay Commission in 1974. Such recommendation was made to the Government, vide letter no.5443, dated 16.07.1979, by indicating that the posts of Lower Division Assistant in the Subordinate Civil Court, for which the prescribed qualification is Matriculate, carry a scale of pay of Rs.255-360/- and, therefore, it will not be reasonable to prescribe a lower scale of pay for the post of Salaried Amin,

for whom the prescribed qualification is higher than the post of Lower Division Assistant. Accordingly, the posts of Salaried Amin were created with scale of pay of Rs.320-450/-, vide Government Letter No.2097/L dated 15.11.1980. The prescribed qualification for the post of Salaried Amin is passing of Matriculation and Revenue Inspectorship Examination with knowledge in Survey, while the prescribed qualification for the post of Revenue Inspectors in the Government was passing of Matriculation Examination only. Therefore, the scale of pay for the post of Revenue Inspector has relevancy in the context of scale of pay for the post of Salaried Amin. When the Government, vide Resolution No.10533 dated 02.03.2009, raised the scale of pay of the Revenue Inspectors to Rs.9,300-34,800/- with a grade pay of Rs.4,200/-, but did not increase the pay scale of the Salaried Amins notwithstanding the fact that prior to 02.03.2009, the Salaried Amins, who were enjoying higher scale of pay than that of the Revenue Inspectors, were equated with the un-equals, i.e., the Assistant Revenue Inspectors. The

scale of pay of Rs.125-190/-, as was recommended by the High Court, was equivalent to that of the scale of pay of the Grade-II Revenue Supervisors, which is the next promotional post of the Revenue Inspectors. Thus, the Salaried Amins have been placed in the most disadvantageous position, due to non-consideration of the relevant aspects, as mentioned above.

2.1 The duties and responsibilities attached to the post of Salaried Amin have not been visualized in proper perspective. While there are 52 sanctioned posts of Salaried Amin in the State in different Judgeships, keeping in view that the cases in which their assistance is sought for even by the Higher Courts, where expertise and greater care is required, up-gradation of 50% of the posts of the 'Salaried Amin' would rather facilitate effective disposal of the complicated matters. Chance of promotion being a part of every job, to provide incentive and prevent stagnation, it would have been necessary to have up-gradation of certain posts and creating promotional avenues for the Salaried Amins. The duties and responsibilities attached to the

posts of the Salaried Amin is not at all clear from the designation, rather the designation creates confusion at all levels. One such example is, while considering the revision of the scale of pay of the Salaried Amins in the Courts' establishment, their scale of pay was equated with the Amins working in the Settlement Operation and in the Tahasils. Though in terms of the Orissa District Revenue Service (Method of Recruitment and Conditions of Rules), 1983, an Amin is promoted to the post of Revenue Inspector, after completion of five years of service, as per Rule 11-A, whereas the Salaried Amins, who are recruited with higher qualification than the Revenue Inspectors suffer the most. The petitioner, who was in the cadre of Revenue Inspector, came to join as Salaried Amin, considering that the establishment is in higher pedestal. Thus, the designation of the 'Salaried Amin' ought to have been changed to 'Civil Court Commissioner'.

2.2 Keeping in view the report of the Justice Shetty Commission, the Salaried Amins working under different Judgeships, like the petitioner, were granted one advance

increment. But the Government, vide Law Department Letter No.4009, dated 12.05.2014, decided that the Salaried Amins are not entitled to the above said increment. As per the terms and conditions mentioned in Clause-6 of the order of this Court dated 28.01.1981, the Salaried Amins are also discharging other clerical works and duties, when are not occupied with the functions of the Court Commissioner. The grievance of the Salaried Amins was ventilated through the representation dated 04.01.2016 of the All Orissa Judicial Employees' Association. Said representation was forwarded by this Court, after taking into account the fact that the services of the Salaried Amins are being utilized for other ministerial work by the District Judges as per provision of the Rule 186-A of G.R.& C.O. (CIVIL) Vol.1. This Court recommended the Government, to allow one increment on the existing scale of pay to the cadre of Salaried Amins with effect from 01.04.2003, i.e., the day from which one advance increment was allowed in favour of the different common category posts in the ministerial cadres of the

Subordinate Judiciary in terms of the Resolution No.10077 dated 13.09.2012. But the said representation filed by the All Orissa Judicial Employees' Association has been rejected, vide order dated 26.05.2017, as per the observation of the Finance Department of the Government that the benefit of advance increment to the Salaried Amins working under Subordinate Judiciary hardly merits consideration.

3. Mr. Susanta Kumar Dash, learned Counsel appearing for the petitioner, vehemently contended that the benefit, which has been admissible to the petitioner, pursuant to the recommendation made by Justice Shetty Commission, having been extended with effect from 01.04.2003, the same should not have been withdrawn, without application of mind, by holding that the Salaried Amins are not entitled to the said increment. Such withdrawal of benefit is arbitrary, unreasonable, contrary to the Provisions of Law and violates the principle of natural justice. It is further contended that as per the terms and conditions mentioned in Clause-6 of the order

of the High Court dated 28.01.1981, the Salaried Amins are also discharging other clerical works and duties, when are not occupied with the functions of the Court Commissioner. More so, they are discharging the higher responsibility, as a consequence thereof their scale of pay had been fixed at Rs.125-190/-, as recommended by the High Court, which was equivalent to that of the scale of pay of the Grade-II Revenue Supervisors, which is the next promotional post of the Revenue Inspectors. Therefore, the 'Salaried Amins' stood in higher pedestal than that of the Revenue Supervisor and, as such, they were getting the scale of pay of Grade-II Revenue Supervisor, which is the promotional post of Revenue Inspector. It is further contended that once the benefit of one increment has been allowed with effect from 01.04.2003, surreptitiously, the said benefit cannot and could not have been withdrawn on a plea without germen to the issue in question and without considering the nature of work discharged by this category of employees. It is further contended that once the recommendation has been made by the High Court,

the same should not have been considered lightly and, as such, the benefit should have been extended to the petitioner without creating any hindrance, and that he is entitled to get one increment as per the recommendation made by Justice Shetty Commission, as the increment recommended by the 1st National Judicial Pay Commission, which has been implemented by the Government vide Resolution dated 13.09.2012, in that case, the Government has no right to recover the amount already sanctioned and disbursed to the Salaried Amins.

To substantiate his contention, Mr. S.K. Dash, learned counsel for the petitioner relied upon the judgments of the apex Court as well of this Court in the cases of **Santosh Kumar Samantray v. State of Orissa**, 70 (1990) CLT 110; **Narayan Sahoo v. State of Orissa**, 68 (1989) CLT 771; **Bhibuti Bhusan Mohapatra v. State of Orissa**, 78 (1994) CLT 665; **Sk. Hyder v. State of Orissa**, 1998 (I) OLR 157; **Sahib Ram v. State of Haryana**, 1995 Supp (1) SCC 18; **Syed Abdul Quadir v. State of Bihar**, (2009) 3 SCC 475; **Purshottam Lal Das**

v. The State of Bihar, 2006 (II) SCC 492 and ***Shyam Babu Verma v. Union of India***, 1994 (2) SCC 521.

4. Mr. S.N. Nayak, learned Additional Standing Counsel appearing for the State-Opposite Parties No.1 to 4 justified the order passed by the authorities under Annexure-6 and 11 and also contended that on the basis of the grievance of the All Orissa Judicial Employees' Association, vide representation dated 04.01.2016, the matter was considered and it was intimated that as per the observation of the Finance Department, the benefit of one advance increment to the Salaried Amins working in the Subordinate Judiciary hardly merits consideration. He also contended that on receipt of such letter of the Law Department, the matter is also now pending before the Court on administrative side for reconsideration. Therefore, he contended that the benefit is not admissible to the petitioner and, as such, no error has been committed by the authorities in denying such benefit to the Salaried Amins and consequentially the writ petition is liable to be dismissed.

5. Mr. Saroj Kumar Das, learned counsel appearing for opposite party no.5 contended that the Pension Sanctioning Authority, i.e., the learned District Judge, Cuttack submitted the pension paper of the petitioner in the office of opposite party no.5, vide letter no. 349 dated 22.04.2017, for authorization of pensionary benefits, but on scrutiny, it was noticed that one advance increment was allowed to the petitioner with effect from 01.04.2003 in the existing scale of pay attached to the cadre of Salaried Amins at par with the ministerial posts. But as clarified by the Government of Odisha, Law Department, vide letter dated 12.05.2014, the Salaried Amins of the Subordinate Judiciary do not come under the category of Ministerial Posts and they are not entitled to get one increment in pursuance of the Law Department Resolution No.10077/L dated 13.09.2012. In view of such clarification, opposite party no.5 returned the pension papers of the petitioner, vide letter dated 30.05.2017, for necessary compliance. In the meantime, the Pension Sanctioning Authority resubmitted pension papers of the

petitioner, vide letter no.664 dated 04.08.2017, with due compliance to the observations made by the office of the opposite party no.5, i.e., by withdrawing one advance increment allowed to the petitioner w.e.f. 01.04.2003. Accordingly, the office of opposite party no.5 authorized pension vide PPO No.567058, along with Gratuity Payment Order (GPO) and Commutation Payment Order (CPO), as admissible in favour of the petitioner, vide letter dated 13.09.2017, by effecting recoveries towards the following outstanding Government dues from the gratuity of the petitioner, as per suggestion given by the Pension Sanctioning Authority in pension papers.

“i) Rs.4105/- towards interest on Special House Building Advance.

ii) Rs.65314/- towards excess drawn on pay and allowance.

iii) Rs.7890/- excess drawn on un-utilised leave salary.”

Since one increment admissible to the petitioner and extended to him with effect from 01.04.2003 had been withdrawn and the pension papers were re-submitted

thereafter, opposite party no.5 has not committed any illegality or irregularity, so far as the benefit admissible to the petitioner is concerned. As such, opposite party no.5 has discharged its duties and responsibility for authorization of pensionary benefits in respect of the petitioner, as per the prevailing rules and regulations/instructions issued by the Government of Odisha.

5. This Court heard Mr. Susanta Kumar Dash, learned counsel appearing for the petitioner; Mr. S.N. Nayak, learned Additional Standing Counsel appearing for the State-opposite parties no.1 to 4; and Mr. Saroj Kumar Das, learned Standing Counsel (AG&A) appearing for opposite party no.5 by hybrid mode, and perused the record. Pleadings having been exchanged between the parties, with the consent of learned Counsel for the parties, this writ petition is being disposed of finally at the stage of admission.

6. On the basis of the factual matrix as well as the rival contentions of the parties, as delineated above, the

only question to be considered by this Court is, “*whether the withdrawal of one increment granted to the Salaried Amins pursuant to the recommendation of Justice Shetty Commission is justified or not*” and “*if not justified what relief can be granted to the Petitioner*”.

7. Undisputedly, the High Court considering the necessity to appoint 'Salaried Amins' in place of 'Survey knowing Pleader Commissioners', vide letter no.9938 dated 07.11.1973, clarified that the posts of 'Salaried Amins' with scale of pay of Rs.125-190/- shall be created under the Government, but those Salaried Amins will remain under the control of the District Judges as per Annexure-1. The qualification and other eligibility criteria for appointment were also indicated therein. The High Court recommended for creation of the posts of 'Salaried Amins' with the scale of pay Rs.320-450/-, vide its letter dated 16.07.1979 under Annexure-2, which is equal to that of the Grade-II Assistants, keeping in view the recommendation of the 4th State Pay Commission in 1974.

Therefore, the recommendation made to the Government, vide letter no.5443, dated 16.07.1979, indicating that the posts of Lower Division Assistant in the Sub-ordinate Civil Courts, for which the prescribed qualification is Matriculate, carry a scale of pay of Rs.255-360/- and, therefore, it will not be reasonable to prescribe a lower scale of pay for the posts of Salaried Amins, for whom the prescribed qualification is higher than the post of Lower Division Assistant. Therefore, the posts of Salaried Amins were created with scale of pay of Rs.320-450/-, vide Government order dated 15.11.1980. The Government, vide Resolution No.10533 dated 02.03.2009, raised the scale of pay of the Revenue Inspectors to Rs.9,300-34,800/- with a grade pay of Rs.4,200/-, but did not increase the pay scale of the 'Salaried Amins' notwithstanding the fact that prior to 02.03.2009, the 'Salaried Amins', who were enjoying higher scale of pay than that of the Revenue Inspectors were equated with the un-equals, i.e., the Assistant Revenue Inspectors. Needless to say that the scale of pay of Rs.125-190/-, as

recommended by this Court, was equivalent to that of the scale of pay of the Grade-II Revenue Supervisors, which is the next promotional post of the Revenue Inspectors. Keeping in view the report of Justice Shetty Commission, the 'Salaried Amins' working in different Judgeships, like the petitioner, were granted one advance increment. It is apt to place on record that National Judicial Pay Commission did not specifically consider about extending the benefit of one advance increment to the 'Salaried Amins'. But, the National Judicial Pay Commission report or the recommendation made therein clearly stated as under, making room for consideration of the question relating to grant of such benefit to the Salaried Amins. It is relevant to quote the note appended to the recommendation in respect of the common category posts under Chapter-VII of the report of the National Judicial Pay Commission.

"NOTE : The aforesaid posts are indicative and not exhaustive. If there are any other common category posts in the Ministerial Cadres, the incumbents thereof are also entitled to the benefit of our recommendation."

The aforementioned Note clearly indicates that if there are any other common category posts in the Ministerial Cadres, the incumbents thereof are also entitled to the benefit of the recommendation. Therefore, the question comes for consideration is whether the posts of 'Salaried Amins' are coming within the ambit of "other common category posts in the Ministerial Cadres". Therefore, the circumstances leading to the creation of the posts of 'Salaried Amins' will indicate that the Civil Courts used to take the help of the Survey knowing Pleaders and Amin Commissioners, to undertake local investigation and submit reports, mostly in the matter of boundary disputes, encroachments, location of trees, ponds and buildings and for carving out shares in suits for partition amongst the co-sharers. Therefore, the High Court, vide order dated 07.11.1973, considered the necessity to appoint 'Salaried Amins' in place of 'Survey knowing Pleader Commissioners' with scale of pay of Rs. 125-190/- and clarified that the posts of 'Salaried Amins' shall be created under the

Government, but those 'Salaried Amins' will remain under the control of the District Judges. Their qualification and other eligibility criteria for appointment were also prescribed. Consequentially, recommendation was also made for the creation of the posts of 'Salaried Amins' with the scale of pay of Rs. 320-450/-, which is equal to that of the Grade-II Assistants, keeping in view the recommendation of the 4th State Pay Commission in 1974.

8. Therefore, there is no iota of doubt that the 'Salaried Amins' working under the Subordinate Judiciary comes within the ambit of other common category posts in the Ministerial Cadre of the Note to Chapter-VII of the report of the National Judicial Pay Commission. Therefore, on the basis of the Report at Page-253 to 255 of the Justice Shetty Commission under the heading "Common Category Posts" it has been recommended that holder of common category post in the Ministerial cadre other than to whom the Commission have recommended higher pay scale be given one increment at the initial scale of pay admissible to them. Further, Justice Shetty Commission

have suggested that the aforesaid posts are indicative and not exhaustive. The same has also been clarified by the apex Court, vide judgment dated 07.10.2009 passed in W.P.(C) No. 1022 of 1989, and it was directed that there shall be benefit of one advance increment on the existing scale of pay instead of initial pay scale. Therefore, on the recommendation made by Justice Shetty Commission, one increment had been allowed to 'Salaried Amins' with effect from 01.04.2003 and the said benefit had also been extended to the Petitioner from that date.

9. Considering from other angle, Rule 186-A of G.R. & C.O. (CIVIL) Vol.1, which deals with the duties and responsibility of 'Salaried Amins', reads as follows:-

*"186-A - Duties and responsibilities of Salaried Amins
Salaried Amins as far as possible should be utilised for the purpose of the works for which they have been appointed, i.e. for spot inspections. Survey and measurement works and effecting partition in final decree proceeding, etc. If there is dearth of such work during the period their services may be utilised for other suitable purposes in the office as ordered by the Controlling Officer. Regarding the outturn, the Controlling Officer taking into consideration the nature of the work entrusted while issuing writ should specify the period of its execution. The Salaried Amins should be required to maintain a daily diary of the work done by them during the period of absence from the*

headquarter Station when they discharge other duties, the yardstick applicable to regular employees discharging such duties will also be , , applicable to Salaried Amins.”

10. In view of the nature of duties and responsibility of the ‘Salaried Amins’, as mentioned above, the benefit of one increment is admissible to them. As such the same was extended with effect from 01.04.2003. But such benefit extended to the Petitioner was withdrawn relying upon the Resolution No. 4009 dated 12.05.2014 issued by the Law Department. It is to be noted here that such benefit had been extended, pursuant to the recommendation made by the High Court to the Government relying upon Rule-186-A of G.R. & C.O. (CIVIL) Vol.1 and taking into consideration the nature of duties discharged by the ‘Salaried Amins’, with effect from 01.04.2003, the day from which one advance increment was allowed in favour of different common category posts in the Ministerial Cadre of the Subordinate Judiciary. Once this Court had recommended to extend the benefit of one advance increment, the same should not have been

lightly considered by the authority and withdrawal of such benefit of one advance increment with effect from 01.04.2003, without complying the principle of natural justice, cannot sustain in the eye of law.

11. On attaining the age of superannuation, when pension papers of the petitioner were submitted, the same were returned to re-submit after deducting the benefit of one increment extended to the petitioner with effect from 01.04.2003. But fact remains, the prescribed qualification for 'Salaried Amin' in the Subordinate Judiciary is Matriculate with passing of Revenue Inspectorship Examination, whereas the qualification for Junior Clerk, which has been re-designated as Lower Division Assistant, is passing of 10+2 Examination with Diploma in Computer Application, as prescribed in Orissa District and Sub-Ordinate Courts Non-Judicial Staff Services (Method of Recruitment and Conditions of Service) Rules, 2008. Similarly, the qualification for Revenue Inspector under the Government of Odisha is Bachelor's Degree with knowledge in Computer Operation and the qualification for

Amin and Assistant Revenue Inspector is passing of Higher Secondary Examination (10+2) with knowledge of Computer Operation, as per the Odisha District Revenue Service (Method of Recruitment and Conditions of Service) Amendment Rules, 2011. The qualifications, as prescribed under the Rules of 2008 and 2011, have no application to the case of the petitioner, as because the petitioner had already been appointed much prior to the commencement of these Rules, on the recommendation made by the High Court, and that at the relevant point of time these 'Salaried Amins' were having higher qualification than that of the Revenue Inspectors holding the posts, and their duties and responsibility were much more than that of the Revenue Supervisor, which is a promotional post of the Revenue Inspector. Since 'Salaried Amins' were discharging higher responsibility, on the recommendation made by Justice Shetty Commission, the petitioner was allowed one advance increment with effect from 01.04.2003. Thus, extension of such benefit to the petitioner cannot be found

to be faulted with so as to withdraw the same without complying with the principle of natural justice.

12. In ***Russel v. Duke of Norfolk***, (1949) 1 All ER 109, it was observed “whatever standard of natural justice is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case”.

13. The expression “reasonable opportunity” is a principle of natural justice. The term denotes the minimum standard of fairness in the adjudicatory process embodying the specific requirements that the party affected must be heard and no man can be condemned unheard, i.e., *audi alteram partem*. Whether an opportunity is reasonable or not would also, to an extent, depend on the nature of the charge, the nature of the power which is sought to be exercised, the ramification of the order that is sought to be made, the rights and interests that are sought to be protected. Finally, the opportunity to show cause must not only be reasonable by

all the objective criteria but must also appear to a reasonable person to be so.

14. In **General Medical Council v. Spackman**, (1943) 2 All ER 337, Lord Writ said that if the principles of natural justice are violated in respect of any decision, it is indeed, immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision must be declared to be no decision.

15. In **Ridge v. Baldwin**, (1963) 2 All ER 66 (HL), it was held that a decision given without regard to the principles of natural justice is void.

16. Applying the said principle to the present case, if the authorities have withdrawn the benefit without giving reasonable opportunity of hearing to the petitioner, that itself is void being violative of principle of natural justice.

17. In the counter affidavit filed by opposite party no.3, reference has been made to the letter dated

24.11.2016 under Annexure-A/3, whereby the grievance of All Orissa Judicial Employees Association regarding giving of benefits of one advance increment to the 'Salaried Amins' working in Subordinate Judiciary, as per the recommendation of the Justice Shetty Commission, has been recommended to the Government. The letter under Annexure-A/3 is quoted hereunder:-

"ORISSA HIGH COURT : CUTTACK

*Letter No 10494 / Date 24.11.2016
IV- 04/2016*

From

*Shri D.R. Kanungo, O.S.J.S.,
Secretary (J.J.C.) & Deputy Registrar (Admn. &
Protocol)*

To

*The Principal Secretary, Government of Odisha,
Law Department, Bhubaneswar.*

*Sub: Grievances All Orissa Judicial Employees
Association regarding giving benefits of one
advance increment to the Salaried Amin working
in the Subordinate Judiciary as per
recommendation of the Hon'ble Shetty
Commission.*

Sir,

*In enclosing herewith a copy of representation
dated 04.01.2016 submitted by the President, All
Orissa Judicial Employees' Association on the above
subject, I am directed to say that the Hon'ble Justice
Shetty Commission vide their report at Page 253 to 255
under heading common category post have*

recommended that holder of common category post in the Ministerial cadre other than to whom the Commission have recommended higher pay scale be given one increment at the initial scale of pay admission to them. Further, the Hon'ble Justice Shetty Commission have suggested that the aforesaid posts are indicative and not exhaustive. If there are any other common category posts in the Ministerial cadres, the incumbents thereof are also entitled to the benefit of their recommendation.

Subsequently, the Hon'ble Supreme Court of India vide their Judgment dated 07.10.2009 passed in W.P.(C) No. 1022/1989 have directed that there shall be benefit of one advance increment on the existing scale of pay instead of initial pay scale.

Accordingly, the Govt. of Odisha in Law Department vide Resolution No. 10077 dated 13.09.2012 have allowed one increment at the existing scale of pay in respect of different common category posts in the ministerial cadres of all the Judgeships of the State w.e.f. 01.04.2003 where the post of Salaried Amins did not find place.

Since the work of the Salaried Amins are being utilized for other ministerial work as per the provision of the Rule 186 - A of G.R C.0 (Civil) Vol.- I, the grievance of the All Orissa Judicial Employees' Association for giving one increment on the existing scale of pay to the Salaried Amin was under active consideration of the Court and the Court after careful consideration of the matter have been pleased to recommend for grant of one advance increment to the Salaried Amins working in the Subordinate Judiciary of the State on the existing scale of pay like other ministerial cadre staff as per the recommendation of the Hon'ble Justice Shetty Commission w.e.f. 01.04.2003 and in response to Law Department Resolution No. 10077 dated 13.09.2012.

I am, therefore, to request that the matter may kindly be placed before the State Government and their orders allowing one increment on the existing scale of pay to the posts Salaried Amins in the subordinate

Judiciary w.e.f. 01.04.2003 be obtained and communicated to the Court soon.

Yours faithfully,

Deputy Registrar (A &P) I/c”

18. On perusal of the aforementioned recommendation, it is made clear that the Government of Orissa in Law Department, vide Resolution No. 10077 dated 13.09.2012, have allowed one increment at the existing scale of pay in respect of different common categories of posts in the ministerial cadres of all the Judgships of the State with effect from 01.04.2003, where the post of ‘Salaried Amin’ did not find place. Therefore, justifying the claim of the ‘Salaried Amins’, the recommendation has been made by this Court to the Government. In view of the judgment of this Court in **Narayan Sahoo, Bibhuti Bhusan Mohapatra and Sk. Hyder** (supra), the recommendation made by this Court should have been given priority and worked out.

19. In **Santosh Kumar Samantray** (supra), this Court observed as follows:-

“ In this view of the matter, we cannot but hold that the fixation of their salary in the pay scale of Rs.625-940/- under the Orissa Revised Scales of Pay Rules, 1985 and treating them at par with the general Amins is arbitrary and has been made on incorrect assumption and, therefore, cannot be sustained in law.....”

20. Therefore, taking into consideration the judgments mentioned above, once the High Court has made a recommendation to the Government to extend the benefit of one advance increment to the ‘Salaried Amins’ taking into consideration the nature of duties performed by them, their qualification and the responsibility shouldered by them, the State Government should not have considered the same lightly and withdrawn the benefit on flimsy ground. Therefore, the order passed for withdrawal of such benefits vide Annexure-6 dated 12.05.2014 and consequential rejection of the representation vide Annexure-11 dated 26.05.2017 cannot sustain in the eye of law.

21. In **Sahib Ram** (supra), the apex Court held that when the authority granted upgraded pay scale to an employee due to the wrong construction of the relevant order without any misrepresentation or fraud on the part of the employee concerned, such excess amount should not be recovered from the employee.

22. Admittedly, in the case at hand, the benefit of one advance increment was extended to the petitioner pursuant to the recommendation made by Justice Shetty Commission and also on the basis of the report of the National Judicial Pay Commission and there was no misrepresentation or fraud on the part of the petitioner. In such circumstance, any amount paid to the petitioner should not have been recovered from him.

23. In the case of **Syed Abdul Qadir** (supra), the apex Court directed the concerned authority not to recover the excess amount sanctioned in favour of the Teachers, irrespective of the fact whether they have moved before the apex Court or not. It was also directed that the amount

that has already been recovered from some of the Teachers, after the impugned judgment was passed by the High Court, be refunded to them within three months from the date of receipt of copy of that judgment, irrespective of the fact whether they have moved the apex Court or not.

24. Applying the ratio decided in **Syed Abdul Qadir** (supra) to the present context, it can safely be concluded that whatever amount has been paid to the petitioner on account of granting of one advance increment, being in terms of the Justice Shetty Commission report and also the report of the National Judicial Pay Commission, the same cannot be recovered irrespective of the fact whether such 'Salaried Amins' have approached this Court by filing writ petition or not. Similar view has also been taken in **Purhottam Lal** (supra) as well as in the case of **State of Punjab v. Rafiq Masih (White Washer)**, AIR 2015 SC 696.

25. In view of the facts and law, as discussed above, this Court is of the considered view that the decision of the

Government disentitling 'Salaried Amins' to get one advance increment, in pursuance of subsequent clarification in Resolution No. 10077 dated 13.09.2012 that they do not come under the category of ministerial cadre, cannot sustain, and, further, in absence of any reason contained in Annexure-A/3 to the counter affidavit filed by the opposite party no.3 to disagree with the recommendation of this Court, the order under Annexure-11 dated 26.05.2017 to the writ petition rejecting the representation also cannot sustain, in view of the ratio decided in **Narayan Sahoo, Bibhuti Bhusan Mohapatra and Sk Hyder** (supra). Accordingly, the orders dated 12.05.2014 in Annexure-6 and dated 26.05.2017 in Annexure-11 are liable to be quashed and are hereby quashed. Consequentially, the petitioner is entitled to get one advance increment w.e.f. 01.04.2003, like other staff in the ministerial cadre of the Subordinate Judiciary, and, accordingly, his pensionary benefits be calculated and released in his favour within a period of three months from the date of communication of this judgment.

26. In the result, the writ petition is allowed. There shall be no order as to costs.

.....
DR. B.R. SARANGI,
JUDGE

G. SATAPATHY, J. I agree.

.....
G. SATAPATHY,
JUDGE

Orissa High Court, Cuttack
The 30th August, 2022, Arun/GDS

