

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 23931 of 2017

State of Orissa and others

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Petitioners

*Mr. S. Jena, Standing Counsel for
S&ME Deptt.*

Vs.

*Ashok Kumar Mahapatra and
another*

.....

Opposite Parties

Mr. L.K. Mohanty, Advocate

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

04.04.2022

Order No.

05.

This matter is taken up through hybrid mode.

2. Heard Mr. S. Jena, learned Standing Counsel for S&E Department appearing for the State-petitioners, and Mr. L.K. Mohanty, learned counsel for opposite party no.1.

3. The State-petitioners have filed this writ petition assailing the order dated 02.05.2017 passed by the State Administrative Tribunal, Odisha, Bhubaneswar in O.A. No. 1722 of 2016. In the said order, the Tribunal has observed that, this Court, vide order dated 24.01.2014 passed in W.P.(C) No. 22715 of 2013 (***State of Orissa and others Vs. Rusav Kumar Pradhan***), has held that the clarification made in the Finance Department Office Memorandum dated 29.01.2002 cannot supersede the statutory rules and relying on the said decision of this Court, in various cases, it has already been held that the untrained period shall be taken into account towards TBA/ACP. By so observing, the Tribunal has quashed the order dated 21.01.2015 and directed the

present petitioners not to recover any amount pursuant to the said order and on the other hand to disburse pension and all other retiral benefits in favour of opposite party no.1 including DCRG with statutory interest as due and admissible within a period of two months from the date of communication of the order.

4. Mr. S. Jena, learned Standing Counsel for the School & Mass Education Department, appearing for the State-petitioners contended that the opposite party no.1 is not entitled to get such benefit, but the Tribunal, without application of mind, has passed the order, for which they have approached this Court in the present writ petition.

6. Mr. L.K. Mohanty, learned counsel for the opposite party no.1 contended that opposite party no.1 was initially appointed as an Assistant Teacher in Bastari Thakur Primary School under the B.E.O., Cuttack Sadar in the district of Cuttack and retired from government service on attaining the age of superannuation with effect from 30.04.2010. Thereafter, letter dated 21.01.2015 was issued by the Controller of Accounts, Odisha by returning the service book and pension papers of the opposite party no.1 to B.E.O., Cuttack Sadar with a direction to recover the excess pay and allowances paid till the date of retirement from the DCRG. The opposite party No.1 challenged the same in O.A. No. 1722 of 2016 contending that such action of the authorities cannot sustain in the eye of law. The tribunal is justified in quashing the order dated 21.01.2015. Therefore, he prays for dismissal of the writ petition.

7. Having heard learned counsel for the parties and after going through the record including the order impugned, it appears that

the opposite party no.1 was initially appointed as primary school teacher on 29.12.1979 and while continuing as such, he was granted TBA benefits on completion of 15 years of service with effect from 01.01.1996 as per Rule-8 (2) of ORSP Rules, 1998 and 2nd ACP as well as 3rd ACP on completion of 25/30 years of service as per Rule-14 of the ORSP Rules, 2008 with effect from 1.1.2006 and 29.12.2009 respectively, by taking into account the initial date of joining. After his retirement, pension papers along with his service book were sent to the Controller of Accounts on the basis of the last pay drawn for sanction of pension and other retiral benefits. But the Controller of Accounts returned the pension paper of opposite party no.1 vide letter dated 21.01.2015 to the BEO, Cuttack Sadar, Cuttack with a direction to recover excess pay and allowance paid with effect from 1.1.1996, 1.1.2006 and 29.12.2009 till the date of retirement from the DCRG account on the ground that TBA/ACP has been sanctioned in favour of the opposite party no.1 taking into account the service from the date of his initial joining, but not from the date of passing training examination. This question had been considered by this Court in the case of ***Shyam Sundar Panda v. Director of Public Instruction (Secondary) and others***, (2001) 1 ATT (HC) 175, wherein it was held that irrespective of salary, while considering the case of a teacher relating to time bound advancement scale, the grade pay or post which was held by him was to be taken into consideration. Accordingly, the tribunal also extended the similar benefit to similarly situated persons. Therefore, the tribunal should not have discriminated the case of the opposite party no.1. Accordingly, the tribunal by the impugned order, quashed the

order dated 21.01.2015 and directed the State authorities not to recover any amount and to disburse the pension and all other retiral benefits in favour of the opposite party no.1.

8. Similar question had also come up before this Court for consideration in the case of ***Satyaranjan Das and others v. State of Orissa and others***, 2022 (I) OLR 9, where one of us (Dr. Justice B.R. Sarangi) was a member and also in the case of ***Sanjay Pradan v State of Odisha and others*** (WPC (OAC) No. 4298 of 2015 decided on 01.07.2021). In ***Satyaranjan Das*** (supra), this Court referred the principle decided in the case of ***State of Punjab v. Rafiq Masih (White Washer) etc.***, AIR 2015 SC 696 to the extent that recovery of excess payment made from an employee, who has retired from service, or close to his retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit before their retirement. By so saying, the apex Court held that it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year of the date of his retirement on superannuation. Similar view has also been taken by this Court in ***Sanjay Pradhan*** mentioned supra.

9. In view of such position, this Court is of the considered view that the order dated 02.05.2017 passed by the State Administrative Tribunal, Odisha, Bhubaneswar in O.A. No. 1722 of 2016 is well justified and this Court is not inclined to interfere with the same. The opposite party no.1 is entitled to get the benefit

as due and admissible to him in terms of the direction given by the Tribunal in the impugned order.

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

Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

Arun/ Bichi

(SAVITRI RATHO)
JUDGE