IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 987 of 2011

State of Orissa	…..	***Petitioner***
		Mr. A.K. Mishra, A.G.A.
	Vs.	
Lalit Mohan Patra and others	…..	***Opposite Parties***
		Mr. B.S. Tripathy-1, Adv.

CORAM:

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

ORDER
09.03.2022

Order No. 6.

This matter is taken up through hybrid mode.

2. Heard Mr. A.K. Mishra, learned Addl. Government Advocate for the petitioner-State and Mr. B.S. Tripathy-1, learned counsel for opposite party no.1.

3. The petitioner-State has filed this writ petition challenging the order dated 08.03.2010 passed by the learned State Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 1668 (C) of 2001 under Annexure-3, by which direction has been given to the petitioner-State to pay the T.I. to the opposite party no.1, who retired from Government service and employed in private organization by misinterpreting para-4(a) of the office memorandum of Finance Department dated 09.11.1991, which has been annexed as Annexure-8 to the writ petition, with regard to admissibility of temporary increase (T.I.) on pension/family pension.

4. Mr. A.K. Mishra, learned Addl. Government Advocate appearing for the petitioner-State contended that though para-4(a) of the office memorandum of Finance Department dated 09.11.1991 under Annexure-8, clearly provides that T.I. of a

Government Servant, who is receiving pension including family pension, shall be suspended when he/she is employed/reemployed in the services/posts under the State/Central Government/Company or Local Fund Institutions or Industrial or Commercial undertaking, the tribunal, by misconstruing the same has observed that the T.I. of opposite party no.1, who was a retired government employee and had joined in a private company shall not be stopped and directed to pay the same.

5. Mr. B.S. Tripathy-1, learned counsel for the opposite party contended that admittedly the opposite party no.1 is a government servant who retired from service and, therefore, he is entitled to get T.I. as per para-4(a) of the office memorandum of Finance Department dated 09.11.1991 under Annexure-8. It is contended that after retirement since the petitioner was employed in a private organization, he is entitled to get T.I. and, therefore, the tribunal has rightly passed the order impugned, which need not warrant any interference by this Court.

6. For better appreciation of the case, para-4(a) of the office memorandum of Finance Department dated 09.11.1991 under Annexure-8 is quoted below:-

> *"4 (a) T.I. of a pensioner (Including a family pension holder) shall be suspended when he/she is employed/reemployed in the services/posts under the State/Central Government/Company or Local Fund Institutions or Industrial or Commercial undertaking or Corporations/Boards of State as well as Central Government or under any other aided institutions or nationalized banks including Reserve Bank of India and State Bank of Universities or under any other society including Cooperative Societies/Cooperative Banks."*

7. On bare perusal of the aforementioned provisions, it is

made clear that T.I. of a Government Servant, who is receiving pension including family pension, shall be suspended when he/she is employed/reemployed in the services/posts under the State/Central Government/Company or Local Fund Institutions or Industrial or Commercial undertaking, etc. Admittedly, the opposite party no.1, who had retired from government service, got an employment under a private organization, namely, M/s STUP Consultants Ltd. as Senior Bridge Engineer for 4-Laining Project of N.H.5 in the scale of pay and allowances as per letter dated 21.06.1995 under Annexure-5 and, as such, Government has also approved such re-employment. Therefore, once opposite party no.1, who is a pensioner, got re-employment under a private organization, as per para-4(a) of the office memorandum of Finance Department dated 09.11.1991 under Annexure-8, his T.I. has to be suspended. But the tribunal, while considering the case of the opposite party no.1, vide order impugned dated 08.03.2010, came to hold that there is no reason to stop payment of T.I. to the opposite party no.1, who retired from government service and, as such, there is also no reason to direct him to refund any such amount already paid to him, and by so holding quashed the order under Annexure-9, by which direction had been given to refund the amount which the opposite party no.1 had already received towards T.I. Thereby, it appears that the tribunal has committed gross error apparent on the face of record, while interpreting para-4(a) of the office memorandum of Finance Department dated 09.11.1991 under Annexure-8, and lost sight of the fact that opposite party no.1 was rendering service in a private company. However, if the opposite party no.1 left the private organization and continued to be a retired employee, then in that case, the T.I. shall be admissible to him.

8. In the above view of the matter, the order dated 08.03.2010 passed by the tribunal in O.A. No.1668 (C) of 2001 cannot sustain in the eye of law and the same is liable to be quashed and is hereby quashed. It is clarified that in view of letter dated 30.06.2001 under Annexure-A/2, T.I. of the opposite party no.1 has to be restored w.e.f. 01.03.2001.

9. The writ petition is accordingly disposed of.

Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE

Ashok/Puspa