

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.18340 of 2021

Gagan Bihari Pati

..... Petitioner
Mr.B.P.B. Bahali, Advocate

-versus-

State of Odisha and others

..... Opposite Parties
Mr.Y.S.P.Babu, A.G.A.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER
20.06.2022

Order No.

04.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. The Petitioner has filed this writ application seeking for a direction to the Opposite Parties to give promotion to the Petitioner to the next higher post as has given to other similarly placed employees and Junior Employees from the date as per Notification under Annexure-3 and grant all consequential service and financial benefits to the Petitioner.
3. Moot question involved is whether the promotion of an employee can be withheld for an indefinite period on the premises of pendency of vigilance proceeding over a period of decades.
4. This Court while considering aforesaid legal position has already settled the position of law adopting by answering that the sealed cover promotion procedure in view of pendency of the Disciplinary Proceeding and/or Vigilance Proceeding for decades causes serious prejudice to the accused Government servant whose right to get timely promotion gets seriously affected.

5. Facts involved in the case reveal that there is disciplinary proceeding and Vigilance Proceeding pending against the Petitioner under section 13(1)(b)/12 of P.C.(Amendment) Act, 2018. However in the Vigilance Proceeding charge sheet had not been filed by the date of consideration of promotion of the Petitioner as per Annexure-3. Pleadings also further make it clear that the disciplinary proceeding initiated against the Petitioner is still pending.

6. In course of argument learned counsel for the Petitioner relies upon a circular of the G.A. Department dated 17.06.2021. On perusal of the said circular vide Office Memorandum No.15643 dated 17.06.2021, it appears that the Government of Odisha in G.A. Department has amended the previous circular dated 18.02.1994 to the extent that the delinquent Government employees can be given ad hoc promotion if the proceedings are pending for more than two years. In such view of the matter, learned counsel for the Petitioner submits that the case of the Petitioner is squarely covered under the said circular and he is entitled to get promotion since the proceeding is pending against the Petitioner for more than two years.

7. In view of the above settled position of law, this Court while disposing of the writ petition observes that the Petitioner cannot suffer for the long pendency of the vigilance proceeding. It is also not known when the Vigilance Proceeding will come to an end. Keeping the aforesaid facts in view, this Court in disposal of the writ petition directs the Principal Secretary to Government of Odisha, Water Resources Department, Opposite Party No.1 to give promotion to the Petitioner to the next higher rank from the date his juniors and batch mates got such promotion. However, the promotion of the Petitioner as per the direction of this Court shall be subject to the ultimate outcome in the Vigilance Proceeding and shall also be subject to

G.A. Department Circular dated 17.06.2021. Further, it is also clarified that the promotion given to the Petitioner to the next higher rank shall not confer any equity in the event he will ultimately lose the Vigilance Proceeding. Entire exercise, as indicated herein above, shall be completed within six weeks from the date of communication of this direction. It is also clarified that upon promotion, the Petitioner shall also be entitled to all consequential benefits.

8. With the aforesaid observation the writ application stands disposed of.

9. Issue urgent certified copy of this order as per Rules.

RKS

