

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.18200 of 2022

Bijoy Kumar Mohanty

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

COROM:

JUSTICE BIRAJA PRASANNA SATAPATHY

Order No

ORDER
20.9.2022

- 3.** **1.** This matter is taken up through Hybrid Mode.
- 2.** Heard Mr. S. Roy, learned counsel for the petitioner and Mr. A.P. Das, learned A.S.C.
- 3.** The present writ petition has been filed with the following prayer.

“Why the impugned order dated 28.6.2022 passed by the Opposite Party No.1 under Annexure-8 in the facts and circumstances of the case will not be declared as illegal and as such liable to be set aside and

Why the opp. parties will not be directed to extend the financial benefit in favour of the petitioner w.e.f 1.3.2009 within a stipulated time.

Why the opp. parties will not be directed to sanction and disburse the differential salary on such extension of the benefit w.e.f 1.3.2009 within a stipulated time.”

- 4.** It is submitted that though the claim raised by the petitioner for release of the financial benefit and Grade Pay w.e.f 1.3.2009 was an issue before the learned Tribunal in different O.As and learned Tribunal vide order dated 25.4.2017 in O.A. No.3261(C) of 2014 and batch directed the opp. parties to extend

the service and financial benefit w.e.f 1.3.2009, but the said order was challenged before this Court in W.P.(C) No.23222 of 2017 and batch. It is submitted that this Court vide its order dated 18.5.2018 when confirmed the common order passed by the learned Tribunal on 25.4.2017, the State-Opp. Parties challenging the order passed by this Court approached the Hon'ble Apex Court in different Special Leave Petitions (Civil). It is submitted that Hon'ble Apex Court vide its order dated 13.7.2020 dismissed all those Special Leave Petitions by confirming the order passed by this Court on 18.5.2018. Mr. Roy, learned counsel for the petitioner further submitted that subsequent to the dismissal of the matter by the Hon'ble Apex Court, the petitioners in the said batch of OAs in O.A. No.3261(C of 2014 and batch have been extended with the financial benefit w.e.f 1.3.2009. It is also submitted that though all the materials were placed before Opp. party No.1 with a prayer to extend similar benefit, but the same was not considered. Mr. Roy, learned counsel for the petitioner submitted that challenging such inaction on the part of opp. party No.1, the petitioner approached this Court in W.P.(C) No.7508 of 2022 and this Court vide order dated 7.4.2022 disposed of the said writ petition with a direction to take a decision on the claim of the petitioner. It is submitted that without following the order passed in similar nature of cases by the learned Tribunal confirmed by this Court as well as by the Hon'ble Apex Court and extension of the benefit as directed, the prayer of the petitioner has been illegally rejected vide the impugned order dated 28.6.2022 under Annexure-8. It is submitted that since similar claim was allowed with extension of benefit in favour of the said employees, the petitioner being similarly situated, he should have been extended with similar benefit instead of rejecting the same vide impugned order dated 28.6.2022. Mr. Roy in support of his aforesaid submission relied on a decision of the Hon'ble Apex Court reported in the case of **Sunil Kumar Verma & Others Vs. State of Uttar Pradesh & Others (2016)**

(1) SCC 397. Hon'ble Supreme Court in para 15 to 24 of the said judgment has held as follows.

“15. We have already adumbrated the facts in extensor to understand the nature of controversy. It is evident from the narration of the factual score that Mukund Lal Singh, who had approached the High Court in 2004, did not stand on a better footing than the present appellants herein. The learned Single Judge had treated him as a retrenched employee on similar facts. The Special Bench had declined to interfere and this Court, while dismissing the civil appeals, as the order would clearly show, had directed to give effect to the order passed in *State of U.P. v. Mukund Lal Singh*, strictly in accordance with Rule 3(1) of the 1991 Rules and it was eloquently stated that the Rule would apply to the batch of appeals. Needless to emphasise, the writ petition preferred by the present appellants should have been listed along with the writ petition preferred by Mukund Lal Singh and Shailendra Kumar Pandey, but, unfortunately, it did not so happen.

16. Be it stated, there had already been interpretation of the 2003 Rules by the learned Single Judge which has been affirmed up to this Court. In such a situation, we really fail to fathom how the Division Bench could have thought to entering into the analysis of the ratio of the earlier judgment and discussion on binding precedents. That apart, the Division Bench should have also kept itself alive to the direction issued by this Court in the civil appeals.

17. We will be failing in our duty if we do not take note what followed thereafter. After the directions were issued by this Court, Contempt Petition No.255 of 2008 in Civil Appeal No.782 of 2006 and certain other contempt petitions were filed. This Court issued directions from time to time as the employees were not absorbed. Thereafter, they were absorbed and this Court directed for payment of salary component and certain other consequential benefits from the date of retrenchment.

18. This Court referred to the order passed by the State Government and reproduced the same. It is extracted hereunder: (*M.L.Singh Case*, SCC pp. 409-10, para 4)

“4 ‘Hon’ble Governor has been pleased to accord his sanction to extend following facilities / benefits to the petitioners of Contempt Petition No.255 of 2008, *Mukund Lal Singh v. Atul Kumar Gupta*, Secy., Govt. of U.P., Contempt Petition No.256 of 2008, *Shailendra Kumar Pandey v. Fateh Bahadu Singh* and Contempt Petition No.15 of 20098 (*Civil Appeal No.782 of 2006*), Mohd.

Shakiluddin v. Atul Kumar Gupta and other connected civil appeals pending before the Hon'ble Supreme Court as well as those petitioners who are covered by the judgment and order of the Hon'ble Supreme Court dated 31.1.2008 and in furtherance to Government Order No.3504/77-1/2009/13 (Cement)/2004 dated 3-12-2009.

- (1) All the petitioners of the aforesaid contempt petitions and all others who are covered by the judgment of the Hon'ble Supreme Court dated 31-1-2008 will be deemed to have been absorbed in the government service with effect from the date of further retrenchment by Uttar Pradesh State Cement Corpn. Ltd.*
- (2) If it is not possible to absorb the petitioners of the aforesaid contempt petitions and all others who are covered by the judgment of the Hon'ble Supreme Court dated 31-1-2008, on the posts on which they were working in Uttar Pradesh Cement Ltd. On the date of their retrenchment, then they be protected in the pay scale for the post on which they are being absorbed, in such a manner that their salaries are closest to the salaries which they were withdrawing on the date of their retrenchments from the Corporation. It was further decided in the meeting that if the last salary drawn by them was higher than the salary being given to them after their absorption in the government service, then such a difference be considered as personal pay and such personal pay be given to them from the date of their retrenchment. But before doing so, an undertaking must be obtained from the personnel concerned that he has not already received any other benefits, salary, retrenchment compensation, etc. from the Official Liquidator, for the period after their retrenchment from parent department. If any personnel has already availed any benefit from the Official Liquidator for the period after his retrenchment, then same will be adjusted from the arrears of the said personnel. Affidavit of undertaking given by the personnel should also be got verified from the Official Liquidator.*
- (3) Besides above, these personnel will also be entitled to added increment and arrears with effect from the date of their retrenchment.*
- (4) These benefits are being extended to all the petitioners of the aforesaid contempt petitions and all others who are covered by the judgment of the Hon'ble Supreme Court dated 31.1.2008, in accordance with the directions given by the Hon'ble Supreme Court. However, these benefits would not have been available to them in normal course.*

It is also pertinent to mention here that no other personnel will be entitled to such benefits in future.

- (5) Services rendered by these personnel in U.P. Cement Corpn. Ltd. i.e. before their absorption in government service, will not be considered for the purpose of their pensionary benefits”.*

19. *After reproducing the said order, this Court noted that as the Order had been substantially complied with the direction given by the High Court and the order passed by this Court, there is no valid reason to continue with the contempt proceedings. Additionally, this Court added, which we may profitably reproduce: (M. L. Singh case, SCC p.410, para 6).*

“6..... If the petitioners are not satisfied with the fixation of their pay, etc., they may make representation(s) to the competent authority. Such representation shall be disposed of by the authority concerned within next two months by passing speaking order. If the petitioners are not satisfied with the order passed on their representation(s), then they shall be free to avail appropriate legal remedy.”

20. *In the obtaining factual matrix, we are disposed to think that it was absolutely inappropriate on the part of the High Court to go in search of ratio of the judgment rendered by the Single Judge on the earlier occasion, when the controversy had really been put to rest by this Court. The Division Bench, we are disposed to think, should not have entered the arena which was absolutely unwarranted. The decision rendered by this Court inter se parties was required to be followed in the same fact situation. When the factual matrix was absolutely luminescent and did not require any kind of surgical dissection, there was no necessity to take a different view. Needless to say, this kind of situation procrastinate the litigations and the litigants, as has been stated, though in a different context in Koppisetty Venkat Ratnam v. Pamarti Venkayamma is extremely expensive and time-consuming.*

21. *In this regard, a few lines from Sundarjas Kanyalal Bhatija v. Collector is worth reproducing: (SCC p.406, para8)*

“8..... One must remember that pursuit of the law, however glamorous it is, has its own limitation on the Bench. In a multi-Judge court, the Judges are bound by precedents and procedure. They could use their discretion only when there is no declared principle to be found, no rule and no authority”.

22. We have highlighted this aspect as we intend to ingeminate that this kind of unnecessary enthusiastic quest should be avoided. It is because it is contrary to the principles of judicial discipline. In this regard reference to *Official Liquidator v. Dayanand* would be apt. In the said ruling, it has been observed thus: (SCC p.52, para 78)

“78. There have been several instances of different Benches of the High Court’s not following the judgments/orders of coordinate and even larger Benches. In some cases, the High Courts have gone to the extent of ignoring the law laid down by this Court without any tangible reason. Likewise, there have been instances in which smaller Benches of this Court have either ignored or bypassed the ratio of the judgments of the larger Benches including the Constitution Benches. These cases are illustrative of non-adherence to the rule of judicial discipline which is sine qua non for sustaining the system”.

23. In view of the aforesaid analysis, we find no reason that the appellants herein should not reap the benefits of absorption and, accordingly, it is directed that they shall be absorbed by the State Government as per their seniority and be given the benefit of increments, within eight weeks hence. Needless to say, they will be entitled to their seniority as per the prevalent rules. If anyone has been retired from service, he shall get the retiral benefits inclusive of pension.

24. At this juncture, the question arises as to what amount should be paid towards back wages. In this context, our attention has been invited to the order passed by this Court in contempt proceeding. However, after some debate, the learned counsel for the appellants left it to the discretion of this Court. Ms. Reena Singh, learned Additional Advocate General for the State vehemently opposed with regard to grant of any back wages. Having heard the learned counsel for the parties on this score and regard being had to the facts and circumstances of the case, we think that the cause of justice would be best served if each of the appellant is paid 40% of the back wages, and it is so directed. It shall be computed as per our directions issued hereinbefore within a period of twelve weeks hence and be paid to the appellants”.

6. Though this Court taking into account the nature of claim allowed time to the learned A.S.C to obtain instruction in the matter, but no instruction was either obtained or produced before this Court. However, it is fairly submitted that if similar

benefit has been extended, then appropriate order be passed by this Court in considering the grievance of the petitioner.

7. Having heard learned counsel for the parties and in view of fact that similar benefit as has been claimed by the petitioner, has already been extended, placing reliance on the decision in Sunil Verma's case, this Court is inclined to quash the impugned order dated 28.6.2022 passed by the Government-opp. party no.1 under Annexure-8. While quashing the same, this Court directs opp. Party No.1 to pass appropriate order directing extension of financial benefit in favour of the petitioner w.e.f 1.3.2009. Such extension of the benefit as directed by this Court be complied with within a period of three months from the date of receipt of this order.

8. The Writ Petition is disposed of accordingly.

(Biraja Prasanna Satapathy)
Judge

sangita