

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No. 486 of 2018

State of Odisha and another ***Appellants***

Mr. Manoj Kumar Khuntia, AGA

-versus-

***Odisha Khadi and Village Industries
Board Karmachari Sangha and Respondents
another***

Mr. Budhadev Routray, Senior Advocate
along with Mr. J. Biswal, Advocate

**CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN**

**ORDER
24.11.2022**

Order No.

29. 1. Two questions were taken up for consideration by the learned Single Judge in the impugned judgment dated 9th February, 2018 in W.P.(C) No. 4802 of 2011 filed by the Respondent No. 1. The said questions are as follows:

(I) Whether the employees of the Board are at par with the State Government employees and are entitled to the benefits so far as the revision of scale of pay and other allowances available to the Government employees?

(II) Whether the employees of the Board are entitled to revision of scale of pay and DA in terms of ORSP Rules, 1998 and 2008 with effect from 01.01.1996 and 01.01.2006 respectively and release of arrear of salary and allowances from such date respectively?

2. In answering Questions No.I above, the learned Single Judge took note of the applicable regulations and came to the following conclusion:

“23. The Regulation prepared by the Board in 1960 clearly shows that it is schematic one. This regulation has been made to regulate the service conditions including salary etc of employees of the Board. Clause Nos.8 and 40 of the Regulations, 1960 states as follows:

“8. Classification of employment:-

(1) The employees of the Board shall fall under two categories, namely, (1) regular establishment and (2) schematic establishment.

(2) All posts under the Board shall be classified by the Board into Class I, Class II, Class III and Class IV as specified in Schedule I hereto annexed.

Provided that at the time of creation of a new post not mentioned in Schedule I, the Board will specify the class under which the post will be included.”

40. General conditions of service:-

Unless otherwise provided in these regulations, the rules in the Orissa Service Code, Volume I with all its Appendices, except Appendices 1 to 4, 8 and 12, as amended from time to time by the Government shall apply to the employees of the Board mutatis mutandis. For this purpose, the words “Government”, “Government Servant” and “Head of Department” wherever they occur except in Chapter-I of the Code shall mean “the Board” “the President” respectively. “Superior Service” referred to in the Orissa Service Code shall mean posts in Classes I, II and III and “Inferior Service’ shall mean post in Class IV.”

From the aforesaid provisions, it is clear that the staff of the Board is to be accepted as Government servants according to the Orissa Service Code. Besides, the entire Regulation shows that the disciplinary proceedings for staff are pari material to the provisions of Orissa Civil Services

(Classification, Control and Appeal) Rules, 1962. Similarly, Clause-41 of the Regulations, 1960 shows that the Orissa Travelling Allowance Rule, as amended from time to time by Government, shall be applicable to the employees of the Board accepting them as Government servant and under Clause-42 of the said Regulations, the employees of the Board shall be governed by the Orissa Leave Rules, 1939. The employees of the Board under Clause-70 of the Regulations, 1960 shall be subject to the same rules of conduct as are applicable to Government servants. All these provisions of the Act, 1955, Rules, 1956 and Regulations, 1960 only show that the employees of the Board are absolutely controlled by the conditions of service as applicable to the State Government employees including the pay, allowances, leaves, proceedings and other ancillary matters.

24. It is admitted fact that the employees of the Board have been already paid the pay and allowances as per the ORSP Rules made from time to time. Not only this but also the opposite parties have also admitted at paragraph-25 of their counter affidavit that they have already implemented ORSP Rules, 1998 and 2008 in favour of the employees of the Board. If it is admitted that they have implemented ORSP Rules, 1998 and 2008 as it is implemented to the employees of the State Government, the question of not making the employees of the Board at par with the State Government employees is a misnomer on the part of the learned Additional Government Advocate. On the other hand, the contention of Mr. Routray, learned Senior Advocate for the petitioner deserves approval.

3. In view of the above discussion, the learned Single Judge answered Question No.I in the affirmative.

4. Learned counsel for the State/Appellant contends that members of the Respondent No.1-Union continued to remain employees of the Board by virtue of the separate set of regulations and that the government merely releases a grant to the Board, which makes the payment. According to him, merely because the Explanation to Regulation 40 requires employees of the Board to be treated as government servants for the purposes of disciplinary action would not *ipso facto* make them government servants eligible to the same scale of pay.

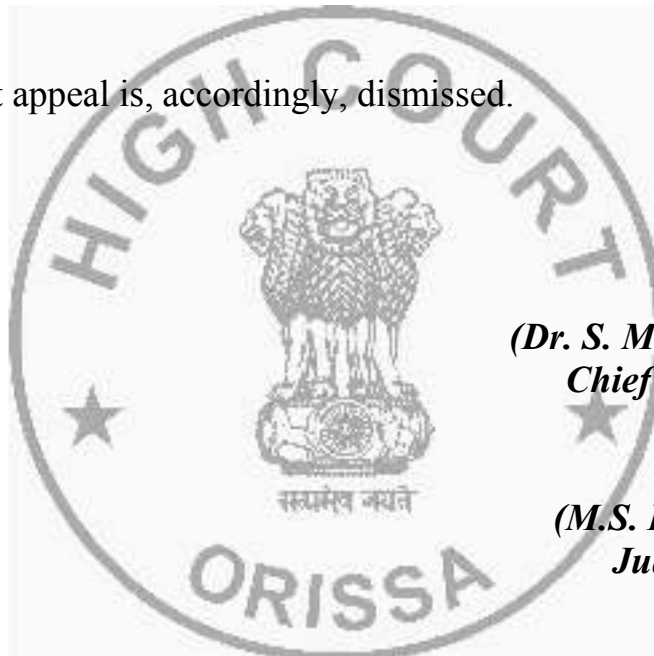
5. The very question before the learned Single Judge was whether there was any rational basis for discriminating against employees of the Board *vis-a-vis* government servants despite subjecting them to the same regimen as regards disciplinary action. Indeed, the State was unable to place before the learned Single Judge any rational basis for this differentiation when it came to the matter of pay and even before this Court no rational basis has been presented.

6. In fact, Question No.I is also tied up with Question No. II, where employees of other statutory bodies i.e. the Mahila Bikash Sambaya Nigam, the State Social Welfare Board, State Haj Committee, State Waqf Board, Shree Jagannath Temple Administration, the Utkal University, University of Agriculture and Technology and the Odisha Water Supply and Sewerage Board have been treated on par with employees of the State Government as regards pay and terms and conditions of service. In fact, counsel for the Appellant-State concedes that even the employees of the Board have been given the benefit of the ORSP Rules, 1998 and 2010 but only from 2010 and not earlier. The State has not been able to show what is the basis for

discriminating against employees of the Khadi and Village Industries Board *vis-a-vis* employees of other statutory bodies mentioned above and what is the rational basis for restricting the benefit of the applicability of ORSP Rules only from 2010.

7. Consequently, even on point No.II, the conclusion reached by the learned Single Judge in favour of Respondent No.1, cannot be found fault with. The Court is, therefore, not satisfied that the impugned judgment of learned Single Judge suffers from any legal infirmity that calls for interference.

8. The writ appeal is, accordingly, dismissed.



(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

AK Pradhan