

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.20748 of 2016

Nilambar Mishra

.....

Petitioner

Mr. B.Dash, Advocate

Vs.

State of Odisha & Ors.

.....

Opposite parties

Mr. S. Jena, SC, S&ME Deptt.

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE S.K. MISHRA

ORDER

26.07.2022

Order No.

3

This matter is taken up through hybrid mode.

2. Heard Mr. B. Dash, learned Counsel for the Petitioner and Mr. S. Jena, learned Standing Counsel appearing for School & Mass Education Department.

3. The Petitioner has filed this Writ Petition seeking to quash the Order dated 26.09.2016 passed in O.A. No.510 (C) of 2014, by which the Odisha Administrative Tribunal, Cuttack Bench, Cuttack has dismissed the said O.A. rejecting the claim of the Petitioner for grant of an advance increment on the Revised Scale of Pay of Rs.3600-5600/-.

4. The Petitioner was initially engaged as Sikhya Karmi, but subsequently he was regularly appointed as Assistant Teacher in the year 1993-94 in the scale of pay of Rs.1080-1800. The Finance Department, Government of Orissa, came up with a Resolution dated 17.04.1998 revising the scale of pay of the State Government Employees. The said Resolution was issued basing on the recommendations of Fifth Central Pay Commission. Para-

11 of the Resolution stipulates that the Primary School Teachers in the existing scale of pay of Rs.1080-1800/- will be granted one advance increment in the initial Revised Scale of Pay of Rs.3600-100-560 w.e.f. 01.01.1996 as per Revised Scale of Pay, 1998. But, the said benefit was not granted to the Petitioner. His pay was fixed in the Revised Scale with initial pay of Rs.3600/- on 01.01.1996. His further stand is that the Finance Department Clarification of Orissa Revised Scale of Pay Rules, 1998 issued vide order dated 29.07.1998 is not applicable to him and the clarification given therein, regarding the payment of one advance increment to Primary School Teachers is contradictory to the earlier Finance Department Notification dated 17.04.1992, which was issued under the Order of the Governor whereas the Finance Department Clarification of Orissa Revised Scale of Pay Rules, 1998 was not issued by the Order of the Governor. So, on this plea he sought for to direct the Opposite Parties to grant him one advance increment in the initial Revised Scale of Pay i.e. 3600-100-5600 w.e.f. 01.01.1996.

5. Pursuant to notice, Opposite Party No.4 filed Counter Affidavit before the Tribunal contending that the Petitioner was joined as regular Primary School Teacher in the year 1993-1994, i.e., before the Orissa Revised Scale of Pay Rules, 1998 came into force. In Finance Department Notification dated 17.04.98 at Para-11, it is stipulated that Primary School Teachers shall in the existing scale of pay of Rs.1080-1800/- on their "First appointment" be entitled to one advance increment at the initial stage of Revised Scale of Pay of Rs.3600-100-5600/-. So, it is very clear that only on the first appointment on or after the

Revised Scale of Pay Rules,1998, the Primary School Teachers will be entitled for one advance increment in the initial scale, but the Petitioner was not entitled as he had joined as Primary School Teacher before the Revised Pay Rules,1998 came into force. It is further contended that the Petitioner was not appointed in the Revised Scale of Pay of Rs.3050-76-3950-EB-4590/-. Para-11 of Finance Department Notification dated 17.04.1998 is not applicable to him. Rule-13 of the Orissa Revised Scale of Pay Rules, 1998 has authorized Finance Department to dispense with or relax the requirement of all or any such provisions of the said rules to such extent and subject to such conditions as may be considered necessary for dealing with the case in a just and equitable manner. Thereby, it is contended that the claim for entitlement of one advance increment, so far as fixation of pay Scale is not admissible. Accordingly the claim of the Petitioner was rejected.

6. Rejoinder Affidavit was filed before the Tribunal by the petitioner stating that he is entitled to get such benefit and claim for refixation of scale of pay i.e. subject to provisions contained in the Rules itself.

7. For just and proper adjudication of the case, Para-11 of the Finance Department Notification dated 17.04.1998 is quoted below:

“ Xxxxxxx xxxxxxxx Similarly Primary School teachers shall in the existing scale 1080-1800/- on their first appointment be entitled to one advance increment at the initial stage in the revised scale of pay of 3600-100-5600/-xxxx xxxx xxxx. The detailed guidelines in this regard would be incorporated in the Orissa revised Scales of pay Rules, 1998 when framed”.

Even the Finance Department in its Clarification dated 29.07.1998, at Para-7 instructed as follows:

“xxxxx xxxxxx that advance increments shall not be admissible if the appointment is by way of promotion or transfer from other posts/service. Further the above categories of employees who have joined for the first time in Government service in the respective posts during the period 01.01.1996 to 2.06.98, no advance increment is permissible for those employees and their pay is to be fixed in the revised scale following the prescribed procedure as clarified in Para-2 of this instruction. Those categories of employees who have joined for the first time in Government service in the respective posts on or after 3.6.98 shall be allowed the minimum of the revised scale applicable to the post along with the stipulated number of advance increment(s). If by allowing the advance increment on their first appointment at the initial stage of the revised scale in respect of those who have joined the said post on or after 3.6.98, their pay becomes higher than the pay of the seniors in the same cadre the pay of such seniors in the same cadre shall be stepped up to the same stage in the revised scale as that of the juniors.”

8. In view of aforesaid notification issued by the Finance Department, it is made clear that how the benefit can be extended to the employee concerned. The claim made by the Petitioner pursuant to Resolution dated 29.07.1998 cannot be applicable to him because this clarification has been given only in respect of employees, who had joined on or after 01.01.1996. Needless to say, the Petitioner had joined before 01.01.1996 and that is between 1993-94. In the original notification, which has been relied on by the Petitioner as a basis to enforce his claim, it has been clearly stipulated that one increment in the Revised Scale of Pay of Rs.3600-5600/- is admissible on the first appointment, but the Petitioner was already in the scale of pay of Rs.1080-1800 by

the time the ORSP Rules, 1998 came into force with effect from 01.01.1996. Therefore, he is not entitled to get an advance increment on the revised scale of pay of Rs.3600-5600/- and his pay has been rightly fixed at Rs.3600/- in the scale of pay of Rs.3600-5600/- on 03.06.2000, as on 01.01.1996.

9. In view of such position, this Court does not find any error in the order dated 26.09.2016 passed by the Tribunal in O.A. No.510 (C) of 2014. Accordingly, the Writ Petition merits no consideration and the same is dismissed.

(DR. B.R. SARANGI)
JUDGE

(S.K. MISHRA)
JUDGE

Alok/Bonita

