

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.16641 of 2022, W.P.(C) Nos. 21910, 22928, 22932, 23460, 23673, 23676, 23678, 23679, 23893, 23981, 23985, 23987, 24184, 24187, 24190, 24192, 24193, 24194, 24196, 24198, 24200, 24201, 24202, 24386, 24387, 24484, 24488, 24490, 24509, 24510, 24512, 24513, 24514, 24515, 24516, 24737, 24739, 24740, 24741, 24742, 24744, 24745, 24747, 24750, 24752, 24755, 24757, 24760, 24764, 25067, 25072, 25077, 25080, 25081, 25082, 25083, 25084, 25085, 25168, 25273, 25274, 25275, 25276, 25277, 25279, 25280, 25281, 25283, 25284, 25285, 25288, 25290, 25324, 25327, 25328, 25329, 25330, 25332, 25333, 25335, 25453, 25457, 25460, 25603, 25607, 25641, 25646, 25648, 25653, 25656, 25815, 25835, 25836, 25837, 25839, 25840, 25841, 25842, 25844, 26045, 26048, 26064, 26069, 26076, 26149, 26215, 26218, 26409, 26411, 26413, 26414, 26416, 26417, 26418, 26419, 26421, 26438, 26444, 26909, 26913, 26914, 26917, 26925, 26928, 26930, 27094, 27096, 27320, 27321, 27322, 27323, 27325, 27714, 28188, 28195, 28203, 28620, 28622, 29084, 29087, 29498, 29500, 30726, 30756, 30758, 30760, 31943, 31961, 32705, 34244, 34941, 35567, 35572, 35575, 35577, 35578, 35579, 35580 & 38195 of 2021, W.P.(C) Nos.3352, 7343, 10533, 10535, 10539, 10542, 15189 & 16405 of 2022

In the matter of an application under Articles 226 and 227 of the Constitution of India.

W.P.(C) No.16641 of 2022

Manamohan Sahoo

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioners : M/s.K.C. Sahu, S.Pradhan & D.K.Mahalik.

For Opp. Parties : Addl. Government Advocate
Mr. R.N.Mishra.

Mr. S.K.Patra,
Accountant General

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 24.09.2022 and Date of Order: 30.09.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Since common question is involved in all the aforesaid Writ Petitions, all are heard analogously and disposed of by this common order.
3. Heard Mr. K.C.Sahu, learned counsel for the Petitioners and Mr. R.N.Mishra, learned Addl. Government Advocate for the State-Opposite Parties and Mr. S.K. Patra, learned counsel for Accountant General (A & E), Odisha in all the cases.
4. All these Writ Petitions have been filed with identical prayer, which is quoted hereunder:-

“ It is therefore prayer that the Hon’ble Court be graciously pleased to grant following relief(s):-

- (i)** *The Hon’ble Court be pleased to admit & allow the Writ Petition.*
- (ii)** *The Hon’ble Court be pleased to quash the impugned orders under Annexure-13, dtd. 02.07.2021 and Annexure-14, dtd. 22.07.2021 as well as the consequential order dtd. 08.09.2021 under Annexure-15 with further holding that the petitioner is entitled to get the G.P. of Rs.5400/- with corresponding scale of pay in lieu of 3rd RACP with all consequential benefits.*

(iii) *The Hon'ble Court be pleased to declare / held that the petitioner has rightly got the G.P. of Rs.5400/- in lieu of 3rd RACP benefit as per Annexure-11 pursuant to the order of learned OAT under Annexure-8 which was implemented as per the order of Govt. so also Law & Finance Deptt. Under Annexure-6,9 & 10 of the Writ Petition*

(iv) *The Hon'ble Court be pleased to pass any other order(s)/directions(s)/ writ(s) as deems fit & proper for the bona fide interest of justice*

And for this act of kindness the petitioner as in duty bound shall ever pray”.

5. Mr. K.C.Sahu, learned counsel for the Petitioners submitted that all the Petitioners were initially appointed as Village Agriculture Worker (VAW).

6. It is submitted that while so continuing, the Petitioners were promoted to the post of Agriculture Overseer in the year 2007.

7. Mr. Sahu, learned counsel for the Petitioners submitted that while the Petitioners were so continuing as against the post of Agriculture Overseer, Government in the Finance Department issued the Resolution on 06.02.2013 under Annexure-2 proposing therein to extend the benefit of RACP in favour of the employees on completion of 10/20/30 years of service.

8. It is submitted that as per the said resolution though the Petitioners and similarly situated employees became eligible to get the benefit of 3rd RACP with grade pay of Rs.5400/- and the same was not extended ins pite of the issuance of the revised resolution on 8.8.2013 under Annexure-4, some of the similarly situated employees approached the learned Tribunal in O.A. No.726 of 2017.

9. It is submitted that learned Tribunal vide order dated 04.01.2018 under Annexure-5 allowed the said original application with a direction on the opposite parties to grant the benefit of 3rd RACP with grade pay of Rs.5400/- in favour of the petitioners therein.

10. Mr. Sahu, learned counsel for the Petitioners submitted that the order passed by the learned Tribunal under Annexure-5 on 4.1.2018 was subsequently implemented with due concurrence given by the Law Department as well as Finance Department and the said fact is reflected in the letter dated 19.03.2018 of the Opposite Party No.2 under Annexure-6.

11. It is also submitted that basing on the letter issued under Annexure-6, the Petitioners in O.A. No.726 of 2017 were allowed the benefit of 3rd RACP with grade pay of Rs.5400/- vide order dated 24.04.2018 of the Opposite Party No.2 under Annexure-7.

It is submitted that though the present petitioners are similarly situated as like the Petitioners in O.A. No.726 of 2017, but in spite of their similarity as well as eligibility, the Petitioners when were not allowed the benefit of 3rd RACP with grade pay of Rs.5400/-, all of them approached the learned Tribunal in different Original Applications and learned Tribunal disposed of those Original Applications by directing the Opposite Parties to sanction 3rd RACP with grade pay of Rs.5400/- as has been directed by the learned Tribunal in its order passed in O.A. No.726 of 2017.

12. It is submitted that on receipt of the orders passed by the learned Tribunal in the Original Applications filed by

the present Petitioners, Government-Opposite Party No.1 issued a letter on 20.11.2018 under Annexure-9 directing the Opposite Party No.2 to sanction the benefit of 3rd RACP with grade pay of Rs.5,400/- in favour of all Village Agriculture Worker/Agriculture Overseer on completion of 30 years of service.

13. It is submitted that in the said letter, it was also indicated that similar benefit with due concurrence of the Finance Department has been allowed in favour of the Petitioners in O.A. No.726 of 2017.

14. It is submitted that basing on the letter issued by the Government-Opposite Party No.1 under Annexure-9, Opposite Party No.2 passed a general order on 24.07.2019 under Annexure-10 directing sanction of Grade Pay of Rs.5,400/- in favour of the Petitioners and accordingly Opposite Party No.3 vide order dated 24.08.2020 under Annexure-11 allowed the benefit of 3rd RACP with Grade Pay of Rs.5,400/- in favour of the Petitioners in all these Writ Petitions.

15. Mr. Sahu, learned counsel for the Petitioners submitted that even though the Petitioners were duly allowed the benefit of 3rd RACP with Grade Pay of Rs.5,400/- in terms of the order passed by the Government-Opposite Party No.1 under Annexure-9 and subsequent order passed by the Opposite Party No.2 under Annexure-10 and consequential order by the Opposite Party No.3 under Annexure-11, but without issuing any show cause and without affording any opportunity of hearing to the Petitioners, the impugned order dated 2.7.2021 under

Annexure-13 was issued by the Opposite Party No.1 by withdrawing the order passed by it on 20.11.2018 under Annexure-9 by referring to Finance Department letter dated 01.07.2020 under Annexure-12.

16. It is submitted that basing on the said impugned order issued by the Government-Opposite Party No.1 under Annexure-13, Opposite Party No.2 passed a consequential order by withdrawing the benefit extended in favour of the Petitioners vide order dated 22.07.2021 under Annexure-14 and by the Opposite Party No.3 vide order dated 8.9.2021 under Annexure-15.

17. Mr. Sahu, learned counsel for the Petitioners while assailing the impugned order dated 02.07.2021 passed by the Government-Opposite Party No.1 under Annexure-13 and consequential order passed by the Opposite Party No.2 under Annexure-14 and by the Opposite Party No.3 under Annexure-15 submitted that since the Petitioners are similarly situated in all respect as like the Petitioners in O.A No.726 of 2017, learned Tribunal allowed the claim of the Petitioner for getting the benefit of 3rd RACP with grade pay of Rs.5,400/- vide different orders passed in different Original Applications.

18. It is submitted that since the order passed by the learned Tribunal in O.A No.726 of 2017 was duly implemented by the Government-Opposite Party No.1 with due concurrence given by the Law Department as well as Finance Department under Annexure-6, taking into account the order passed by the learned Tribunal, Government-Opposite Party No.1 passed the general order

on 20.11.2018 under Annexure-9 with a direction to extend the benefit of 3rd RACP with Grade Pay of Rs.5,400/- in favour of the Petitioners and similarly situated Village Agriculture Worker/Agriculture Overseer vide order dated 20.11.2018 under Annexure-9.

19. It is submitted that since the Petitioners are similarly situated as like the Petitioners in O.A. No.726 of 2017, the Government-Opposite Party No.1 rightly allowed the claim vide its order dated 20.11.2018 under Annexure-9 and there was no occasion on the part of the Government to issue the impugned order on 02.07.2021 by withdrawing the order passed on 20.11.2018 under Annexure-9.

20. It is submitted that since the order passed in O.A. No.726 of 2017 was duly implemented vide order dated 19.03.2018 under Annexure-6, the Petitioners were rightly extended with the benefit of 3rd RACP in terms of the order issued under Annexure-9 and it should not have been withdrawn at a later stage.

21. Mr. Sahu, learned counsel for the Petitioner submitted that though vide impugned order dated 02.07.2021 under Annexure-13, the order passed on 20.11.2018 under Annexure-9 was withdrawn referring to Finance Department letter dated 01.07.2020 under Annexure-12, but the Finance Department in the said communication issued on 1.7.2020 under Annexure-12 never directed for withdrawing of the benefit extended in terms of the order dated 20.11.2018 under Annexure-9.

22. It is also submitted that though vide the impugned order dated 02.07.2021 under Annexure-13, the

Government-Opposite Party No.1 withdraw its earlier order passed on 20.11.2018 under Annexure-9, but the benefit extended in favour of the Petitioners in O.A No.726 of 2017 was never withdrawn. On the other hand, it is submitted that the said order passed in O.A. No.726/2017 though was challenged by the State-Opposite Party in W.P.(C) No.5644 of 2022, this Court vide order dated 18.04.2022 dismissed the said writ petition.

23. It is accordingly submitted by the learned counsel for the Petitioners that since the benefit extended in favour of the Petitioners in O.A. No.726 of 2017 has been confirmed by this Court in its order dated 18.04.2022 in W.P.(C) No.5644 of 2022, the impugned order passed by the Government-Opposite Party No.1 under Annexure-13 and consequential order passed under Annexure-14 & 15 by the Opposite Party No.2 & 3 cannot sustain legal scrutiny and hence are liable for interference of this Court.

24. Mr. Sahu, learned counsel for the Petitioners submitted that in view of the extension of the benefit in favour of the similarly situated persons in O.A. No.726 of 2017 which has been affirmed by this Court in its order in W.P.(C) No.5644 of 2022, the Petitioners being similarly situated, they are entitled to continue with the benefit so extended in their favour in terms of the order passed under Annexure-9 to 11.

25. It is also submitted that pursuant to the interim order passed by this Court, the Petitioners are in receipt of Grade Pay of Rs.5,400/- so allowed in their favour in terms of the order passed under Annexure-9 to 11.

26. Mr. Sahu, learned counsel for the Petitioners in support of the aforesaid submissions relied on the decision of the Hon'ble Apex Court reported in **Sunil Kumar Verma & Others vrs. State of Uttar Pradesh & Others** reported in **(2016) 1 SCC 397**. It is submitted that in the said reported decision, the Hon'ble Apex Court held that similarly situated persons are entitled to get the benefit of any judgment passed in any judicial proceeding. Hon'ble Apex Court in Para-15 to 24 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 and 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”.

27. Mr. R.N.Mishra, learned Addl. Government Advocate on the other hand made his submission basing on the stand taken in the counter affidavit.

28. Mr. Mishra, learned counsel for the State submitted that since Government-Opposite Party No.2 vide its letter dated 01.07.2020 under Annexure-12 directed to consider the claim of the Petitioners and similarly situated employees who have been extended with the benefit of Grade Pay of Rs.5,400/- pursuant to the order passed by different Courts to be examined in the light of the principle decided in **Biharilal Barik's** case, the Opposite Party No.1 basing on the said letter passed the impugned order under Annexure-13 on 02.09.2021 by withdrawing the benefit which was allowed vide order dated 20.11.2018 under Annexure-9.

29. Mr. Mishra, learned counsel for the State submitted that since Government-Opposite Party No.1 directed all the Administrative Departments to reconsider the extension of benefit under RACP Scheme extended pursuant to different Court's order in the light of the principle decided in **Biharilal Barik's** case, the claim of the Petitioners will be

reconsidered in the light of the said order passed in the case of **Biharilal Barik**.

30. Accordingly, Mr. Mishra submitted that no illegality has been committed by the Opposite Party No.1 in withdrawing the benefit extended in favour of the Petitioners as per order under Annexure-9 by issuing the impugned order dated 02.07.2021 under Annexure-13.

31. Heard learned counsel for the Parties.

32. Perused the materials available on record. This Court after going through the same finds that the Petitioners were extended with the benefit of 3rd RACP with Grade Pay of Rs.5,400/- in terms of the order passed by the learned Tribunal in different Original Applications. Learned Tribunal taking into account on the order passed in O.A. No.726 of 2017 allowed all the Original Applications so filed by the Petitioners for extension of the benefit of 3rd RACP with Grade Pay of Rs.5,400/-. This Court further finds that the order passed by the learned Tribunal in O.A. No.726 of 2017 was implemented by the Government-Opposite Party No.1 with due concurrence of the Law Department as well as Finance Department as reflected in the Government letter dated 19.3.2018 under Annexure-6. This Court also finds that the benefit extended in favour of the Petitioners in O.A No.726 of 2013 vide order dated 24.04.2018 under Annexure-7 has been confirmed by this Court in its order dated 24.04.2022 in W.P.(C) No.5644 of 2022. It is also found that while issuing the impugned communication, the benefit extended in favour of the Petitioners in O.A No.726 of 2017 vide order dated 19.03.2018 under

Annexure-6 has not been withdrawn by the Government. It is also found that the Opposite Party No.2 while issuing the communication dated 01.07.2020 under Annexure-12 never directed the Opposite Party No.1 to withdraw the benefit as has been extended. The Opposite Party No.2 only directed the Administrative Department to reconsider the claim in the light of the principle decided in **Biharilal Barik's** case.

33. Therefore, after going through the materials available on record, pleadings made in the writ petition and the submissions made by the learned counsel for the Parties, this Court is of the view that since persons similarly situated have been extended with the benefit of 3rd RACP with Grade Pay of Rs.5,400/- vide order dated 24.04.2018 under Annexure-7 basing on the Government letter dated 19.03.2018 under Annexure-6 with confirmation of the same by this Court in its order passed in W.P.(C) No.5644 of 2022, the action of the Opposite Party No.1 in withdrawing the order dated 20.11.2018 vide the impugned order under Annexure-13 is not legally sustainable. While holding so, this Court is inclined to quash the said order dated 02.07.2021 passed by the Opposite Party No.1 under Annexure-13 and consequential orders issued on 22.07.2021 under Annexure-14 and order dated 8.9.2021 under Annexure-15. While quashing all those orders issued under Annexures-13 to 15, this Court directs the Opposite Parties to continue with the benefit as has been extended in favour of the Petitioners vide order dated 24.08.2020 under Annexure-11.

34. With the aforesaid observations and directions, these

Writ Petitions are disposed of. There shall be no order as to costs.

35. The photocopy of the order be placed in all the connected matters.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 30th of September, 2022/Subrat

