

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No.1144 OF 2009

Ashok Kumar Behera & Ors.		Petitioner
		<i>Mr. K.K. Swain, Advocate</i>
	Vs.	
State of Odisha & Ors.		Opposite parties
		<i>State Counsel</i>

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

21.01.2022

Order No.
01

This matter is taken up through video conferencing mode.

2. Heard Mr. K.K. Swain, learned counsel for the petitioners and Mr. B. Mohanty, learned Standing Counsel for School and Mass Education Department.

3. The petitioners have filed this writ petition to quash the order dated 11.05.2009 under Annexure-5, by which Time Bound Advancement Scale of Pay (T.B.A.) granted to them earlier has been cancelled on the plea that they had not completed 15 years of service in a post/grade after his promotion from L.S.E.S. to Jr. S.E.S. Cadre.

4. Mr. K.K. Swain, learned counsel for the petitioners contended that taking into consideration the fact that the petitioners are Trained Graduate Teachers and completed 15 years of service, they were allowed to receive T.B.A. Scale of pay vide Annexure-4 dated 29.01.2008. In compliance of the said order, the petitioners were granted the said benefit, but all on a sudden, T.B.A. Scale of pay sanctioned vide order dated 29.01.2008 was cancelled by the authority vide Annexure-5 dated 11.05.2009 with a direction for recovery of the excess payment made to the petitioners without giving opportunity of hearing to them. It is further contended that the petitioners being continued in TGT post

and completed 15 years of service, they were entitled to get T.B.A. scale of pay. Therefore, the abrupt order passed by the authority with regard to recovery of amount from the petitioners cannot sustain in the eye of law. To substantiate his contentions he has relied upon the judgment of the apex Court in ***State of Punjab v. Sr. Vocational Staff Masters Association***, (2017) 2 SCC 586 and also the judgment of this Court in ***Balabhadra Sarangi vs. State of Odisha***, 2003 (I) OLR 24.

5. Mr. B. Mohanty, learned Standing Counsel for School and Mass Education Department relying upon paragraph-6 of the counter affidavit contended that the petitioners had not completed 15 years of service in a post/grade though they were allowed to draw salary in the T.G. Scale of pay for the period they worked against sanctioned T.G. posts vide order dated 29.01.2008 under Annexure-4 in view of the order dated 07.10.1996 passed by the Tribunal in O.A. No.583 of 1993. But, subsequently the said benefit vide order dated 11.05.2009 under Annexure-5 was cancelled by the authority directing to recover the excess payment drawn by them. Thereby, no illegality or irregularity has been committed by the authority in cancelling the T.B.A scale of pay granted to the petitioners.

6. Considering the contentions raised by learned counsel for the parties and after going through the records, it is the admitted fact that the petitioners were working against T.G.T. post and they were allowed to draw T.B.A. scale of pay vide order dated 29.01.2008 under Annexure-4 and subsequently, vide order dated 11.05.2009 under Annexure-5 the said benefit has been withdrawn on the plea that they had not completed 15 years of service in a post/grade after their promotion from L.S.E.S to Jr. S.E.S. cadre and also direction has been issued for recovery of the excess payment drawn by the petitioners. Needless to say, if the opposite parties subsequently found any illegality or irregularity in allowing the petitioners for drawal of T.B.A. scale of pay,

while cancelling the said benefit vide order dated 11.05.2009 under Annexure-5, they should give opportunity of hearing to the petitioners. In the present case, while passing order impugned, the authority has not given any opportunity of hearing to the petitioners, which has been duly admitted in the counter affidavit. In course of hearing, learned Standing Counsel for School and Mass Education Department has also admitted that no opportunity of hearing has been given to the petitioners while passing the order withdrawing T.B.A. scale of pay from the petitioners. This fact is also fortified by the judgments of the apex Court in ***Sr. Vocational Staff Masters Association*** (supra) and this Court in ***Balabhadra Sarangi*** (supra).

7. In that view of the matter, the order dated 11.05.2009 under Annexure-5 passed by the District Education Officer, Sundargarh, so far it relates to the petitioners, is hereby quashed and the matter is remitted back to the very same authority to reconsider the case of the petitioners after giving due opportunity of hearing to the petitioners.

8. With the above observation and direction, the writ petition is disposed of.

9. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a print out of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed, vide Court's Notice No.4587 dated 25th March, 2020, as modified by Court's notice no. 4798 dated 15th April, 2021, and Court's Office Order circulated vide Memo Nos.514 and 515 dated 7th January, 2022.