

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C). No.26412 of 2021

Nani Gopal Sen

....

Petitioner(s)

Mr.R.N.Parija, Advocate

-versus-

State of Odisha & Ors.

....

Opposite Party(s)

Mr.R.P.Mohapatra, AGA

CORAM:

JUSTICE BISWANATH RATH

ORDER

14.03.2022

Order No.

- 4.
1. For the earlier direction of this Court, counter affidavit has been filed with service of copy thereof on the other side along with cost being accepted by the petitioner.
 2. Heard Mr.Parija, learned counsel appearing for the petitioner and Mr.R.P.Mohapatra, learned Additional Government Advocate for the State.
 3. On consent of parties this matter is heard finally at the stage of admission but however after filing of the counter affidavit by the State contesting opposite party. Advancing his submission, Mr.Parija, learned counsel for the petitioner contended that for making available of benefit by way of one or two increments in favour of Green Card Holder, referring to document at page- 16 onwards (Aannexure-4) urges

that the petitioner since found to be eligible to such benefit was granted with a Green Card vide Annexure-4 series and consequently the petitioner was also issued with an order dated 20.4.2021 at Annexure-5, page 23 of the brief thereby allowing incentive allowance at the rate 1100/- only per month equal to one increment with effect from 01.11.2020. It is in reference to Annexure-6, the order dated 09.11.2012, drawing attention of this Court to the Clause-3 therein, an attempt is made that for the exclusion of category belonging to the petitioner from the disentitlement under Annexure-6, there was no occasion on the part of the competent authority in applying such office order and debarring the petitioner from such entitlement by issuing order at Annexure-5. Taking this Court to the averments made in paragraph-13 to the writ petition, there is allegation of non-compliance of natural justice before undertaking exercise of cancellation of the benefit involving petitioner. In the above background, petitioner requested this Court for interfering in the impugned order at Annexure-1 and setting aside the same.

4. Mr.Mohapatra, learned Additional Government Advocate in reference to the counter averment though contended that there has been right approach of the competent authority following the direction in Annexure-6 herein attempted to submit that the impugned action is justified. However, on the question of taking away such order without afford of opportunity, Mr.Mohapatra, learned Additional Government Advocate fairly submitted that there has been no compliance of natural justice before taking out the benefit in favour of the petitioner drawn since 1.1.2020. However, in reference to the counter averment, Mr.Mohapatra, learned Additional Government Advocate brings to the notice of the Court that even though an order of entitlement has been issued in favour of the petitioner but in fact there is no release of any such benefit in favour of the petitioner. Learned Additional Government Advocate therefore fairly submitted that while issuing order at Annexure-1, there was no necessity of direction of recovery.

5. Considering the rival contentions of the parties, this Court taking into account the submission of learned counsel for the petitioner objecting to Annexure-1 particularly for no application of the direction contained in Annexure-3, for the benefit flowing in favour of the petitioner, for the protection at Clause-3 therein and at this stage of the matter taking into account the impugned order taken together with allegation that there has been no compliance of natural justice, from the impugned order through Memo No.2322 dated 23.7.21, this Court finds Mr.Mohapatra, learned Additional Government Advocate fairly submitted that there is in fact no payment of incentive. This Court therefore finds the recovery part in Annexure-1 is wholly untenable.

6. Now coming to consider if order at Annexure-1 has been passed in afford of opportunity to the petitioner since he was already in enjoyment of order on benefit by issuing a Green Card at Annexure-4 and also the sanction of benefit in Annexure-5, for the clear submission of learned Additional Government Advocate, this Court finds there has been no opportunity provided before issuing the order of cancellation vide Annexure-1. This Court here observes once a benefit is already accrued in favour of the service holder by way of grant of Green Card, in the event the competent authority was desirous in taking out such benefit, considering the benefit is financial benefit and it is taken out, minimum opportunity of natural justice should have been complied with before attaining to such order. For the claim of the petitioner, this Court is of the prima facie opinion that had the petitioner been provided with opportunity before issuing order at Annexure-1, he had a chance satisfying the competent authority that there is in fact no legal ground in withdrawing such benefit. In the circumstance, this Court finds the order at annexure-1 is not sustainable. While setting aside the same, this Court further observes in the event the authority is not satisfied from the pleading of the petitioner herein and attempt to go for cancelling the order at Annexure-5 as well as the Green Card at Annexure-4 should

provide opportunity of response to the petitioner and pass appropriate order.

7. With this observation and direction, the writ petition stands disposed of.

(Biswanath Rath)
Judge

Sks

