

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) NO.40 OF 2010

Dibakar Naik

....

Petitioner

Mr.P.C.Acharya, Adv.

-versus-

State of Orissa & ors.

....

Opposite Party(s)

Mr.R.K.Samal, SC

**CORAM:
JUSTICE BISWANATH RATH**

**Order
No.**

03.

**ORDER
28.2.2022**

1. Heard learned counsel for the Parties.
2. The Petitioner while giving stress on the pleading on the premises that the Petitioner here has discharged the position of the Headmaster from 31.8.2006 till 28.2.2010, Mr.P.C.Acharya, learned counsel for the Petitioner contended that once the Petitioner has discharged the duty in a position, there cannot be deprivation in the entitlement to such post till the Party at least discharged such position. Referring to the relief sought for in the Original Application came here on transfer for disposal of this Court, learned counsel for the Petitioner claims for release of payment for the aforesaid period while also claiming promotion to Level-IV and thereafter Level-III, further consequential financial benefit.

3. Mr.R.K.Samal, learned Standing Counsel for the School & Mass Education Department referring to the counter averments filed by O.P.5 contended that in absence of any provision in the grant of such benefit, there is no legal force in the submission of the learned counsel for the Petitioner here involved.

4. It is at this stage, considering the rival contentions of the Parties and going through the decision of the Hon'ble apex Court in ***Selva Raj vrs. Lt.Governor of Island, Port Blair & ors.*** reported in AIR 1999 SC 838 in Paragraph-3 this Court finds, the Hon'ble apex Court has come to observe as follows :-

“3. It is not in dispute that the appellant looked after the duties of Secretary (Scouts) from the date of the order and his salary was to be drawn against the post of Secretary (Scouts) under GFR 77. Still he was not paid the said salary for the work done by him as Secretary (Scouts). It is of course true that the appellant was not regularly promoted to the said post. It is also true as stated in the counter-affidavit of Deputy Resident Commissioner, Andaman & Nicobar Administration that the appellant was regularly posted in the pay scale of Rs 1200-2040 and he was asked to look after the duties of Secretary (Scouts) as per the order aforesaid. It is also true that had this arrangement not been done, he would have to be transferred to the interior islands where the post of PST was available, but the appellant was keen to stay in Port Blair as averred in the said counter. However, in our view, these averments in the counter will not change the real position. Fact remains that the appellant has worked on the higher post though temporarily and in an officiating capacity pursuant to the aforesaid order and his salary was to be drawn during that time against the post of Secretary (Scouts). It is also not in dispute that the salary attached to the post of Secretary (Scouts) was in the pay scale of 1640-2900. Consequently, on the principle of quantum merit the respondents authorities should have paid the appellant as per the emoluments available in the aforesaid higher pay scale during the time he actually worked on the said post of Secretary (Scouts) though in an officiating capacity and not as a regular promotee. This limited relief is required to be given to the appellant only on this ground.”

5. It is keeping in view the above, this Court finds, even though the whole relief at Clause-7 of the Application is not permissible, the Petitioner in the minimum is entitled to the salary attached to the post of Headmaster for the period the Petitioner was discharging as in-charge of Headmaster. For the settled position of law, the Petitioner may be entitled to only the differential arrear for the period he was discharging the Headmaster-in-charge post. This Court clarifies the relief so far as promotion to further Levels, for there is no provision in the Rules, is not allowable to the Petitioner.

6. This Court in disposal of the Writ Petition directs the Competent Authorities to calculate the differential wages/salary for the period the Petitioner was discharging the Headmaster-in-charge post and pay the same along with at least @ 5% interest all through by completing the calculation as well as the payment at least within a period of two months from the date of communication of this order by the Petitioner.

(Biswanath Rath)
Judge

M.K.Rout