IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.C(OAC) No.177 of 2010

Ramakanta Giri .... ***Petitioner***

Mr.Bimbisar Dash,
Advocate

-versus-

State of Odisha & others .... ***Opposite Parties***

Mr. R.N.Acharya,
Standing Counsel, S&M.E

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER
15.03.2022.

Order No.

02. 1. This matter is taken up through hybrid mode.

2. The Petitioner has filed the present application claiming the following relief(s):-

> "(i) The original application may be allowed.
>
> (ii) The impugned order reducing the pay of the applicant may be quashed.
>
> (iii) The Opposite Parties may be directed not to consider the grant of Rs.1080/- to Rs.1800/- to be a financial up-gradation.

> (iv) The Opposite Parties may be directed to continue giving the applicant his existing pay i.e. Rs.4000/- to Rs.6000/-.
>
> (v) And such other order(s)/direction(s) may be given in giving complete relief to the Petitioner.

3. The brief facts of the case are that the Petitioner entered into service as a Physical Education Teacher (PET) in Panchayat High School at Ramtirtha in the year 1985 which was an aided institution. The School received grant-in-aid w.e.f. 13th August, 1987 and the Petitioner was granted pay scale of Rs.780-16-860-18-896-EB-18-950-20-1050-EB-22-1160. In 1989 the pay scale of the Petitioner was revised to Rs.975-25-1150-EB-30-1660. The aforesaid pay scale was meant for untrained matriculate teachers. The trained matriculate teachers were granted scale of Rs.1080-30-1440-EB-3-1800. In view of the anomaly as above, the pay scale of the PETs like the Petitioner was revised to Rs.1080-1800 w.e.f. 1st May, 1995 pursuant to Finance Department Resolution No.11315 dated 25th March, 1994. After completion of 15 years of service, the Petitioner was granted the benefits of Time Bound Advancement Scale of pay and as such, was allowed to draw the pay scale of Rs.4000-100-6000. The Petitioner exercised option to come over to the Orissa Revised Scale of Pay Rules, 2008 by submitting appropriate form, which is enclosed as Annexure-4 to the Writ Petition. However, the Inspector of Schools, Mayurbhanj Education Circle, Opposite Party No.3, scored through the relevant

particular relating to the pay scale of the Petitioner by mentioning Rs.3,600/- to Rs.5,600/- as also by changing the grade pay from Rs.2400/- to Rs.2,200/- at the appropriate places of the form. As such the pay was wrongly fixed at Rs.8,560/- instead of Rs.8,750/-. In the said form itself the Opposite Party No.3 endorsed that the Petitioner is liable to refund excess payment on account of fixation of his pay in the TBA Scale under ORSP Rules, 1998. Further, by order dated 15th December, 2009, enclosed as Annexure-6 to the Writ Petition, the Opposite Party No.3 observed that the fixation of pay under ORSP Rules, 2008 was erroneous and accordingly passed orders cancelling the above referred sanction. By such order, the PETs were allowed to continue in Matric CPED scale of pay of Rs.3600-5600 with retrospective effect from the date of fixation of their pay under ORSP Rules, 1998 and thereby the pay of the Petitioner was reduced to Rs.4500/- as on 1st January, 2005 even though he was entitled to Rs.4700/-. The periodical increments were also sanctioned holding the Petitioner to be entitled to Rs.4600/- as on 1st January, 2006 and further, it was held that the excess payment made on account of allowing TBA scale earlier is to be recovered from the Petitioner. It is stated that the action of the Opposite Party No.3 is based on misconception that the Petitioner had been granted financial up-gradation from the scale of Rs.975-1660 to Rs.1080-1800 even though the same was only a revision, which was a rectification of a mistake.

4. A counter affidavit has been filed by the Opposite Party No.3 disputing the averments made in the Writ Petition. While admitting the basic facts relating to joining of the Petitioner and the pay scale granted to him, it is stated that the Petitioner is not a trained teacher but a trained PET and that trained matriculate teachers and trained PETs are two separate entitles. The revision under the ORSP Rules, 1995 had been made only in respect of trained matriculate teachers and grant of the same to trained PETs was erroneous. It is further stated that according to the scheme of Time Bound Advancement Scale of the Government in Finance Department O.M. No.431/F dated 29th January, 2002, the period of completion of 15 years of service in a post/grade is to be counted with reference to the post held if there is no up-gradation in the scale of pay of that post or the incumbent has not moved to higher scale of pay, and if the incumbent moved to higher scale, 15 years for the purpose of TBA Scale would be counted from the date on which the incumbent moved to such higher scale of pay. On such basis, it is stated that the Petitioner, being a trained PET and not a trained teacher was erroneously allowed the higher scale of pay meant for the latter, i.e. Rs.1080-1800 and, therefore, in course of verification of their services for the purpose of fixation of pay under ORSP Rules, 2008, such error came to notice and, therefore, the TBA Scale of pay of Rs.4000-6000 allowed to all PETs similarly situated including the Petitioner, was cancelled and they were allowed to continue in the existing

scale of Rs.3,600-5,600 with retrospective effect suggesting recovery of excess payment. In short, it is stated that since the scale of pay of Rs.975-1660 allowed to the Petitioner under ORSP Rules, 1989 w.e.f. 1st May, 1989 was changed to higher scale of Rs.1080-1800 w.e.f. 25th March, 1994, he is not entitled to TBA Scale of pay of Rs.4000-6000 from the date prior to 1st January, 2006. Further since the excess payment was made on account of TBA Scale inadvertently, the same is liable to be recovered from the Petitioner.

5. Heard Mr. Bimbisar Dash, learned counsel for the Petitioner and Mr. R.N.Acharya, learned Standing Counsel for the School and Mass Education Department.

6. Mr. Dash has made a two fold argument- firstly, the impugned orders under Annexure-4 and 6 are based on complete misconception of the authority concerned inasmuch as the fixation of pay scale of Rs.1080-1800 was made by way of rectification, which cannot be treated as a financial up-gradation and Secondly, there can be no distinction between trained PETs with matriculate qualification and other trained teachers. It is further argued by Mr. Dash that there is neither any statutory provision nor any Government Order making a distinction between trained teachers and trained PETs with matriculate qualification. The Petitioner, admittedly, is a trained PET with matric qualification and was wrongly granted scale of Rs.950-1500, which was meant for untrained

matriculate teachers. Hence, the Government in Department of School and Mass Education vide its letter dated 15th April, 1994, enclosed as Annexure-1 to the Writ Petition, revised the pay scale of trained PETs (matric with CPED), to Rs.1080-1800 w.e.f. 25th March, 1994. According to Mr. Dash, the aforementioned order, which was issued with concurrence of the Finance Department, has never been revoked nor withdrawn. As such, the impugned order issued by Opposite Party No.3 amounts to overreaching, the said Government order, which cannot be sustained in the eye of law.

7. Per contra, Mr. R.N.Acharya has contended that a trained PET cannot be equated with a trained teacher. Secondly, it is the admitted case of the Petitioner that despite being granted the scale of Rs.975-1660, his scale was enhanced to Rs.1080-1800. This, according to Mr. Acharya is nothing but a financial up-gradation or at least a clear case of moving to a higher scale of pay. On such ground, it is argued by Mr. Acharya that the Petitioner is not entitled to TBA scale prior to 1st January, 2006 in view of the clear guidelines laid down in the scheme of TBA of the Government in Finance Department O.M. dated 29th January, 2002. The Petitioner, according to Mr. Acharya, is entitled to the TBA scale after 15 years of service calculated from 25th March, 1994 and not 1st May, 1989 as claimed by him.

8. The basic facts do not appear to be disputed inasmuch as the Petitioner's scale of pay was revised to Rs.975-1660 w.e.f. 1st May, 1989. On the basis of letter dated 15th April, 1994 (Annexure-1) the said pay scale was revised to Rs.1080-1800 as per Finance Department Resolution No.11315 dated 25th March, 1994. The earlier scale of pay i.e. Rs.975-1660 was meant for untrained matriculate Teacher. It is claimed by the Petitioner that he was a trained PET as on the date of the grant of the aforesaid scale and, hence, he was entitled to the scale meant for trained PETs. In the counter affidavit, it is stated that the scale of Rs.975-1660 was meant for all Teachers and trained PETs other than trained matriculate teachers. The untrained matriculate Teachers, it is stated, were allowed the scale of play of Rs.950-1500 and trained matriculate Teachers were granted the scale of Rs.1080-1800 in OSRP Rule, 1989. The Petitioner's claim is sought to be rejected on the ground that trained matriculate teachers and trained PETs are two separate entities and both cannot be equated with each other. In course of hearing, however, the learned Standing Counsel for the School and Mass Education Department could not produce any Rule/Office Order/Circular of the Government showing such distinction between trained matriculate Teachers and trained PETs with matric qualification. Further, admittedly, the scale of pay of the Petitioner was revised to Rs.1080-1800. It is stated in the counter that the same was meant for trained matriculate Teachers only. If so, how could such scale as is said to be

applicable to the trained matriculate Teachers be granted to trained PETs if they are considered to be separate entities? This question has remained unanswered. The Petitioner is a trained PET with matric and CPED qualification. This Court finds no reason much less any basis for holding a person with such qualification to be different from a trained matriculate Teacher. This is all the more evident from the fact that the Government itself granted the scale to the Petitioner meant for trained matriculate Teacher, though w.e.f. 25th March,1994.

9. The factual position being as narrated in the preceding paragraph, it is now to be considered whether the revision of the scale of pay from Rs.975-1660-1080-1800 was in the nature of financial upgradation. It is asserted by the State authorities that the Petitioner would be entitled to TBA benefit after 15 years of service calculated from 25th March, 1994 and not from 1st May, 1989 and, therefore, the excess payment made by treating 1st May, 1989 as the starting date has to be recovered from him as the same was wrongly granted. As it appears, the crux of the dispute lies in the distinction sought to be made by the State authorities between trained matriculate Teacher and trained PET. In view of what has been discussed in the preceding paragraph there is no basis to do so and in any event, by granting the scale meant for trained matriculate Teacher, albeit from 25th March, 1994, the Government has implicitly acknowledged such fact. Such being the factual position, this Court finds considerable force in the

submissions made on behalf of the Petitioner that the grant of scale of pay meant for untrained matriculate Teacher w.e.f. 1st May, 1989 being fundamentally erroneous, the same was revised appropriately w.e.f. 25th March, 1994. This in effect, is nothing but a correction of the anomaly or error and cannot in any manner be treated as a financial upgradation. In other words, by granting to the Petitioner what he was entitled to w.e.f. 1st May, 1989, the Opposite Parties cannot be said to have effected any financial advancement or upgradation to the scale of pay but have merely rectified their mistake. The contentions advanced by Mr. Acharya are, therefore, not tenable in the eye of law. The reference to the TBA scheme of the Government in Finance Department vide O.M. No.431/F dated 29th January, 2002 also appears to be redundant in view of the categorical finding of this Court that the revision of pay scale effected in 15th March, 1994 was not a financial upgradation so as to deprive the Petitioner from the benefit of TBA.

10. For the foregoing reasons, therefore, this Court holds that the Petitioner being entitled to the revised scale of pay w.e.f. 1st May, 1989, the calculation of 15 years for the purpose of grant of TBA benefits ought to be made from such date and not from the date of such revision. Of course, as per the order under Annexure-1, the actual financial benefits may have been granted w.e.f. 25th March, 1994, but for the purpose of calculation of the period of 15 years, the date 1st May, 1989

shall be relevant. This Court, therefore, finds that the impugned order under Annexure-6 in holding that the TBA scale of pay granted to the Petitioner (and others) is erroneous and liable to be recovered from them, cannot be sustained in the eye of law.

11. In the result, the Writ Petition succeeds and is, therefore, allowed. The impugned order under Annexure-6 is hereby quashed. The Opposite Party-authorities are directed to pass necessary order holding the Petitioner to be entitled to the TBA Scale from 1st June, 2005. Consequently there shall be no recovery of any dues paid to the Petitioner in the TBA scale from the said date earlier.

12. Urgent certified copy of this order be granted on proper application.

(Sashikanta Mishra)
Judge

A.K.Behera