

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.A. No.1335 of 2022 arising out of W.P.(C) No.8484
of 2022**

AFR

State of Odisha & Others* *Appellants

Mr. D.R. Mohapatra, Senior Standing Counsel,

School & Mass Education Department

-versus-

Rabinarayana Mohapatra* *Respondent

Mr. Manas Pati, Advocate

CORAM:

JUSTICE JASWANT SINGH

JUSTICE M.S. SAHOO

ORDER (Oral)

03.11.2022

(Hybrid Mode)

Order No.

02. 1. The instant intra-court appeal is directed against the order dated 07.04.2022, as modified vide order dated 13.05.2022, passed by the learned Single Judge in the aforementioned Writ Petition, whereby the appellant/employer has been directed to sanction and disburse the annual increment subject to the outcome of the Vigilance/Departmental proceedings pending against the Respondent-Petitioner.

2. Learned counsel for the appellants submits that the Respondent, while working as Head Clerk in the Office of the BEO, Brahmagiri was caught red handed by the vigilance authorities for accepting gratification on 15.04.2017 and was taken into custody and a Vigilance P.S. Case No.18/15.04.2017 was registered under Section 13(2) read with Sec.13(1)(d)/7 PC Act, 1988. The respondent was put

under suspension w.e.f. 16.04.2017 in contemplation of a disciplinary proceeding, however he was reinstated on 12.12.2017 pending conclusion of the disciplinary proceedings. It is thus contended that the annual increment which fell due after 16.04.2017 could not be granted in view of the suspension period w.e.f. 16.04.2017 to 12.12.2017 as an appropriate decision *qua* that period would only be possible on conclusion of the departmental/vigilance proceedings. In support, reliance has been placed on Rule 77 of the Odisha Service Code.

On the other hand, learned counsel for the Respondent submits that his client has superannuated from his service w.e.f. 30.04.2022 on attaining the age of superannuation and is receiving provisional pension due to non-conclusion of the disciplinary proceedings. He further submits that no order of withholding of the annual increment due for 2017-2018 and onwards has been passed and therefore the provision of the Rule 77 do not come to the aid of the department/appellant for withholding the annual increment due for the year 2017-2018 and also the subsequent years till his date of superannuation.

3. After hearing learned counsel for the parties, we find that the present Writ Appeal is devoid of any merits.

4. Before we advert to the facts of the case, it would be advantageous to examine Rule 77 of the Odisha Service Code :

“77. AN INCREMENT SHALL ORDINARILY BE DRAWN AS A MATTER OF COURSE UNLESS IT IS WITHHELD.

An increment **shall ordinarily** be drawn as a matter of course **unless it is withheld**. The authority empowered to make a substantive appointment to the post which a Government servant holds, may, if it considers that the conduct of such Government servant has not been good or that his work has not been satisfactory, withhold an increment from him. In the Police Department Superintendents are empowered to withhold increments of Sergeants and Sub-Inspectors. **In ordering the withholding of an increment such authority shall state the period for which it is withheld and whether the postponement shall have the effect of postponing future increments.”**

A careful perusal of the aforesaid Rule reveals that an employee as a matter of course ordinarily earns his annual increment, however the same can be withheld by the competent authority if the same considers that the conduct of the employee/ Government servant has not been good or that his work is not satisfactory by passing of an order. It nowhere contemplates an automatic withholding of an increment for the periods a Government servant/ employee remains under suspension on the plea that there is a break in service. Not only it is incumbent on the competent authority to pass an order withholding the increment in the given case but also state the period for which it shall remain withheld and also as to whether the postponement of the

increment shall have the cascading effect of postponing future increments.

5. Concededly in the present case the respondent is facing a departmental proceedings and a vigilance case and the competent authority, in our considered view was fully competent to withhold the increment for the relevant period/year. However, admittedly no order of withholding the increment for the relevant year 2017-2018 has been passed. The learned Single Judge in our view has rightly directed the employer/department to extend the benefit of the annual increment subject to the pending vigilance case. There is another aspect that the respondent has suffered extreme prejudice as not only he has been denied the benefit of annual increment for the relevant year 2017-2018 but also his subsequent increments till his date of superannuation have also not been released in the absence of any order which is contemplated by the aforesaid Rule 77.

6. Now turning to the scope of interference in Letters Patent Appeals/Writ Appeals with the order passed by the learned Single Judge, this Court in the case of **Anindita Mohanty Vrs. The Senior Regional Manager, H.P. Co. Ltd., Bhubaneswar & Ors., 2020 (II) ILR – CUT -398** held as follows:

“Let us first examine the power of the Division Bench while entertaining a Letters Patent appeal against the judgment/order of the Single Judge. This

writ appeal has been nomenclatured as an application under Article 4 of the Orissa High Court Order, 1948 read with Clause 10 of the Letters Patent Act, 1992. Letters Patent of the Patna High Court has been made applicable to this Court by virtue of Orissa High Court Order, 1948. Letters Patent Appeal is an intra-Court appeal where under the Letters Patent Bench, sitting as a Court of Correction, corrects its own orders in exercise of the same jurisdiction as vested in the Single Bench. (Ref: (1996) 3 Supreme Court Cases 52, Baddula Lakshmaiah Vrs. Shri Anjaneya Swami Temple). The Division Bench in Letters Patent Appeal should not disturb the finding of fact arrived at by the learned Single Judge of the Court unless it is shown to be based on no evidence, perverse, palpably unreasonable or inconsistent with any particular position in law. This scope of interference is within a narrow compass. Appellate jurisdiction under Letters Patent is really a corrective jurisdiction and it is used rarely only to correct errors, if any made.

In the case of *B. Venkatamuni Vrs. C.J. Ayodhya Ram Singh* reported in (2006) 13 Supreme Court Cases 449, it is held that in an intra-Court appeal, the Division Bench undoubtedly may be entitled to reappraise both questions of fact and law, but entertainment of a letters patent appeal is discretionary and normally the Division Bench would not, unless there exist cogent reasons, differ from a finding of fact arrived at by the Single Judge. Even a Court of first appeal which is the final Court of appeal on fact may have to exercise some amount of restraint. Similar view was taken in the case of *Umabai Vrs. Nilkanth Dhondiba Chavan* reported in (2005) 6 Supreme Court Cases 243. In the case of *Commissioner of Income Tax Vrs. Karnataka Planters Coffee Curing Work Private Limited* reported in (2016) 9 Supreme Court Cases 538, it is held that the jurisdiction of the Division Bench in a writ appeal is primarily one of adjudication of questions of law. Findings of fact recorded concurrently by the authorities under the Act concerned (Income Tax Act) and also in the first

round of the writ proceedings by the learned Single Judge are not to be lightly disturbed.

Thus a writ appeal is an appeal on principle where the legality and validity of the judgment and/or order of the Single Judge is tested and it can be set aside only when there is a patent error on the face of the record or the judgment is against established or settled principle of law. If two views are possible and a view, which is reasonable and logical, has been adopted by a Single Judge, the other view, howsoever appealing may be to the Division Bench; it is the view adopted by the Single Judge, which would, normally be allowed to prevail. If the discretion has been exercised by the Single Judge in good faith and after giving due weight to relevant matters and without being swayed away by irrelevant matters and if two views are possible on the question, then also the Division Bench in writ appeal should not interfere, even though it would have exercised its discretion in a different manner, were the case come initially before it. The exercise of discretion by the Single Judge should manifestly be wrong which would then give scope of interference to the Division Bench.”

7. In this view of this matter, we find no grave error or fault in the order passed by the learned Single Judge warranting interference.

The Writ Appeal is accordingly dismissed.

**(Jaswant Singh)
Judge**

**(M.S. Sahoo)
Judge**

AKK

3rd November, 2022
Cuttack