

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.32191 of 2020

Sanju Dei and others

.... Petitioners
Mr.L.K. Mohanty, Advocate

-versus-

State of Odisha and others

.... Opposite Parties
Mr. YSP Babu, AGA for State

**CORAM:
JUSTICE A.K.MOHAPATRA**

**ORDER
17.03.2022**

Order No.

05. 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. Heard learned counsel for the Petitioners as well as learned counsel for the State. Perused the records.
3. The present writ petition has been filed with a prayer to quash the order dated 3.11.2020 under Annexure-12 and further direction be issued to the Opposite Parties to extend the benefit of RACP of the 2nd and 3rd stage as was given earlier as per the provision of ORSP Rule, 2008 and the Finance Department Resolution dated 6.2.2013 under Annexure-2 on completion of required period of service.
4. The factual background of the present case is that Petitioners were appointed as MPHWS (Female) in Jagatsinghpur district in

between 1985 to 1996 by Opposite Party No.4 following the due selection procedure. However due to stagnation in promotion of Govt. employees, State Govt. in Finance Department brought out a resolution dated 06.02.2013 to extend the Revised Assurer Career Progression (RACP) scheme on completion of 10, 20 and 30 years of service respectively. It is further stated by learned counsel for the Petitioners that at para-1 of the said scheme, it has been mentioned that an employee on completion of 10 years of service in entry grade will be considered for 1st up-gradation under RACP. Similarly, an employee on completion of 20 years of service shall be considered for 2nd up-gradation and on completion of 30 years of service the employee shall be entitled to receive the 3rd up-gradation. In para-2 of the said resolution, it has also been mentioned that the Financial Up-gradation under RACP would be admissible upto highest grade of Rs.7,600/- in the pay band PB-3 under ORSP Rules, 2008. Therefore, an employee is entitled for 3rd RACP benefit maximum upto Rs.7,600/-.

5. It is further submitted that while the matter stood thus, the Finance Department issued a clarification dated 20.01.2014 wherein it was stated that an employee in the pay band of Rs.9,300/- to Rs.34,800/- with grade pay of Rs.4,200/- after completion of 20 years of service shall be entitled for grade pay of Rs.4,600/- and on completion of 30 years of service shall be entitled for Rs.4,800/-. Further another resolution was passed by the Finance Department dated 17.01.2015 indicating therein at para-3 that in course of regular promotion, the past service rendered in previous (feeder) post shall not be forfeited for the next RACP benefit, if due. It is

further submitted that RACP benefit on completion of 10, 20 and 30 years of service shall be available to each employee based on total number of years of service rendered by the employee.

6. It is further submitted that initially the Petitioners were extended up-gradation under the resolution of the Finance Department dated 06.02.2013 subject to their eligibility as provided in the said Resolution. However, decision was taken by the Government whereby the Grade Pay has been reduced from Rs.4,800/- to Rs.4,200/- and now the Govt. of Odisha has initiated action to recover the differential amount paid in excess from the Petitioners. This according to the Petitioners is illegal, arbitrary and discriminatory. The decision under Annexure-12 dated 3.11.2020 reveals that the pay band and grade pay fixed by the Special Secretary, Health and Family Welfare Department, Odisha, which is not as per the Resolution issued by the Finance Department dated 06.02.2013. It is further submitted by learned counsel for the Petitioners that on the basis of the order dated 3.11.2020, the Authorities are proposing and in some cases have initiated action for recovery of excess amount paid to some of the employees.

7. It is also submitted by learned counsel for the Petitioners that the benefits of GP of Rs.4,800/- has already been extended by other Departments of the Government of Odisha to similarly situated employees, as prescribed in the Government Resolution dated 6.2.2013 and pursuant to direction in the case of *State of Odisha and another vs. Bihari Lal Barik* in *W.P.(C) No. 2831 of 2016* disposed of on 27.06.2016. In *Bihari Lal Barik (supra)* this Court has come to a conclusion that Petitioners are entitled to get RACP as

prescribed and the said decision has been affirmed by the Hon'ble Supreme Court of India. Therefore, there is no room for interpretation with regard to Grade Pay which has been extended now. However, it is learnt that different Departments of the same Government has been giving different Grade Pay to their employees, which is arbitrary and discriminatory.

8. Learned counsel for the State on the other hand relying on the counter affidavit filed, submits that the Petitioners are all similarly situated persons, who have been extended benefits of the 2nd and 3rd up-gradation of RACP scheme pursuant to the decision of this Court in the case of ***Bihari Lal Barik (supra)***. However, relying upon the order dated 3.11.2020 issued by the Special Secretary to Government, Health & Family Welfare Department under Annexure-12, the Petitioners, who are similarly situated with other employees submit that they have been extended the benefits of RACP at a flat rate of Grade Pay Rs.4,200/-. Therefore, he submits that the Authorities have not committed any illegality and the Petitioners have got the up-gradation of RACP scheme. With regard to the rate at which the Grade Pay has been paid, learned counsel for the State submits that this is pursuant to the decision of the Government vide order dated 03.11.2020 (Annexure-12) issued by the Special Secretary to Government in Health & Family Welfare Department. Therefore, the writ petition is devoid of merits and as such the same is liable to be dismissed.

9. Having heard learned counsel for the parties and upon careful examination of the case record and the documents, this Court is of the considered view that the Petitioners in fact, have been

deprived of their legitimate dues as they have been paid Grade Pay @Rs.4,200/-. Some of the orders passed by different departments of the Government of Odisha produced by the learned counsel for the Petitioners before this Court and on careful scrutiny, it is revealed that benefits have been extended to other similarly placed employees @Rs.5,400/- and @Rs.4,800/-. Such conduct in my considered opinion is clearly discriminatory in nature and while working under the same Government, similarly situated employees cannot be treated differently. Therefore, it is the bounden duty of the Authority to see that similar benefits be extended to all the employees. Therefore, the conduct of the Special Secretary to Government, Health & Family Welfare Department is not proper and the order dated 03.11.2020 under Annexure-12 appears to be an arbitrary one.

10. Considering the aforesaid facts and circumstances of the case and the fact that Petitioners have been discriminated by the order of the Government dated 03.11.2020 under Annexure-12, this Court hereby quashes the order under Annexure-12 and the matter is remitted back to the Authority to consider the case of the Petitioners afresh in the light of the judgment rendered by this Court in the case of ***Bihari Lal Barik (supra)*** as well as the Resolution of the Finance Department, Govt. of Odisha dated 06.02.2013. The case of the Petitioners as well as other similarly situated persons belonging to Health & Family Welfare Department be considered strictly in accordance with law. The entire exercise shall be completed within a period of three months from the date of production of certified copy of this order. It is open to the Petitioners to appear before the

Authority along with certified copy of this order along with other documents and orders/judgments, they are relying upon.

11. With the above direction, the writ petition stands disposed of.
12. Issue urgent certified copy as per rules.

(A.K. Mohapatra)
Judge

U.K.Sahoo

