

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OA) No. 1275 of 2015

Pradipta Kumar Pani

....

Petitioner

Mr. K.C.Sahu along with
Mr. D.K.Mahalik, Advocate

-versus-

State of Odisha and others

.... ***Opposite Parties***

Mr. D. Mund, AGA.

**CORAM:
JUSTICE M.S.SAHOO**

**ORDER
21.06.2022**

Order No.

1. 1. This matter is taken up through hybrid mode.
2. The writ petition has been registered before this Court on 21st August, 2021 after the O.A. was transferred from the learned State Administrative Tribunal, Principal Bench, Bhubaneswar upon its abolition.
3. On perusal of the available order sheet of the learned Tribunal it is indicated :

“Order No.5 dated 11.9.2017

Vide order dt.11.9.2017 passed in OA 1265/15.

*Sd/-
M(J)”*

4. Apparently since the order dated 11.9.2017 is not clear as to whether the matter was disposed of or not, the O.A. has been treated to be pending before the learned Tribunal and has been transferred and registered before this Court as a writ petition.
5. Learned counsel for the petitioner produces copy of the order dated 11.9.2017 disposing of the O.A. No. 1275 of 2015 along with a batch of four other O.As. Copy of the said order is also served on the learned AGA appearing for the other side. Copy of the order dated 11.9.2017 passed by the learned Tribunal as produced by the learned counsel for the petitioner, is taken on record.

6. On 11.9.2017 in O.A. No. 1265 of 2015 along with four other O.As, the following order was passed :

O.A. No. 1265 of 2015
O.A. No. 1275 of 2015
O.A. No. 1249 of 2015
O.A. No. 1234 of 2015
O.A. No. 1276 of 2015

"Order No. 6 dated 11.9.2017
later

I have heard all the cases analogously as it involves the common question of facts and law.

Heard Mr. K.C.Sahu, learned counsel for the applicants and Mr. N.C.Badajena, learned Standing Counsel.

In O.A. No. 1249/2015, the original petitioner, Yudhistira Badajena died during the pendency of the OA on 14.11.2015 and therefore his wife has been substituted. The petitioners except petitioner Yudhistir Badajena who has died are working as chainman in the office of Spl. L.A. & R.O., M.C.II, Project, Gandarpur and they have completed more than 20 years of service in a single cadre, i.e. chainman. On implementation of the Finance Department Resolution No. 3560/F dt.6.12.2013 in the matter of RACP which is effective from 1.1.2013, the applicants were allowed 2nd RACP w.e.f. 1.1.2013 vide order No. 543 dt.9.11.2014 (Annexure-4) issued by the Spl. L.A. & R.O. M.C.II Project Cuttack granting them grade pay of Rs.4200 w.e.f. 1.1.2013. But on the basis of Govt. of Orissa Department of Water Resources letter dt.2.5.2015 (Annexure-5) addressed to the Assistant Financial Adviser, Mahanadi Birupa Barrage Project, Cuttack issuing clarification regarding allowing the grade pay of Rs.4200/- in respect of peon/chainman under RACP scheme, it was instructed that the first financial up-gradation under RACP on completion of 10 years of service, the grade pay will be Rs.1600/-, 2nd financial up-gradation on completion of 20 years will of Rs.1750/- and 3rd financial up-gradation on completion of 30 years is Rs.1800/- as per first schedule of ORSP Rule, 2008.

The grievances of the applicants are that chainman has got a definite avenues of promotion and they can be promoted to Amin, Revenue

Inspectors, Revenue Supervisor and therefore as per para-10 of the Finance Department Resolution dt.6.2.2013, they are entitled for next higher grade pay of the promotional post and therefore the authority has wrongly basing on Annexure-5 has reduced their grade pay.

Counter has been filed. Admitting that chainman are group-D employees but they are considered for promotion to the post of Amin which is another cadre post and therefore they will not be entitled for grade pay of another cadre, but they will be guided by the grade pay mentioned in the first schedule of ORSP Rule, 2008.

Learned counsel for the applicant has submitted that the order dt.27.6.2016 of the Hon'ble High Court in W.P.(C) No. 2831 of 2016 in the case of State of Odisha and another v. Bihari Lal Barik & others wherein the Hon'ble High Court has rejected the writ and has up-held the decision of the Tribunal wherein the Tribunal had given a definite finding that VLWs have got definite hierarchy of promotion and, therefore if they are not promoted and considered for RACPs, they will be entitled for grade pay available to the promotional post. Against this order, the State Respondents had gone to Hon'ble Supreme Court, but the same has also been dismissed in the Hon'ble Supreme Court on 23.8.2017. He has also submitted the order dt. 12.3.2015 of OA No. 520/2014 and batch of cases which is case of Biharilal Barik against the said order, the State has lost in the Hon'ble High Court as well in Hon'ble Supreme Court. Learned counsel for the applicant also relied on the decision dt.7.11.2016 of OA no. 893/2015 and batch where in the case of Amin, similar finding has been given i.e. they are entitled for grade attached to the promotional post as there is a definite promotional hierarchy. He has also filed the decision dt.2.3.2017 in OA N. 1055/2015 and batch of cases wherein also similar finding has been given in the case of Amins.

In the instant cases under consideration, it is not disputed in the counter that the chainman has promotional avenues, rather it is admitted that they are considered for promotion to the post of Amin and therefore, they have got the benefit of promotional hierarchy and therefore as per para-10 of the Finance Department Resolution dt.6.2.2013 and as per the

decision mentioned above, they are entitled for grade pay attached to the promotional post and therefore, the authority has rightly granted grade of Rs.4200/- under RACP vide Annexure-4 to the applicants w.e.f. 1.1.2013.

In view of the above discussion, the O.As are allowed. The order under Annexure-5 regarding reduction of grade pay of the applicants is hereby quashed. The respondents are directed to extend the benefit of 2nd RACP with grade pay of Rs.4200/- to the applicants as has already been granted under Annexure-4 within a period of two months from the date of receipt of a copy of this order.

With these orders, the O.As are disposed of.

*Sd/-
M(J)”*

7. Present writ petition has to be treated as disposed of in view of the earlier order of disposal by the learned Tribunal dated 11.9.2017.

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

dutta

