

ORISSA HIGH COURT: CUTTACK

WPC (OAC) NO. 1047 OF 2016

In the matter of an application under Articles 226 and 227 of the Constitution of India.

AFR

Tirtha Basini Mishra Petitioner

-Versus-

State of Odisha and others Opp. Parties

For Petitioner : Mr. J.K. Rath, Senior Advocate
along with M/s. D.N. Rath and
P.K. Rout, Advocates.

For Opp. Parties : Mr. S.K. Jena, Standing
Counsel for School & Mass
Education Department.

P R E S E N T:

THE HONOURABLE DR. JUSTICE B.R.SARANGI

Date of hearing & judgment : 05.09.2022

DR. B.R. SARANGI, J. The Petitioner, who was appointed as a Hindi Teacher through due process of selection by the State Selection Board, has filed this writ petition seeking direction to Opposite Party No.5-Comptroller of Accounts to sanction the pension and all retiral dues of the

Petitioner and release the same without any further delay. The Petitioner further seeks direction to the Opposite Parties to calculate her legitimate dues with interest @ 18 % per annum and pay the same to her within a stipulated time.

2. The factual matrix of the case, in brief, is that the Petitioner, having been selected by the State Selection Board, constituted as per Rule-5 of the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 (hereinafter to be referred as "Recruitment Rules, 1974"), was posted as a Hindi Teacher and accordingly joined the said post in Korikol M.E. School, an Aided Educational Institution, on 31.10.1980. She was receiving her salary in the scale of pay of Rs.320-500/- from the State Government in accordance with Rule-9 of the Recruitment Rules, 1974. The Petitioner acquired her training qualification on 31.10.1984 and accordingly she was paid the scale of pay of Rs.400-750/- as a Trained Kovida Hindi Teacher. She was continuing in the grade and post of Hindi Teacher throughout. The school in

question, where the Petitioner was continuing as Hindi Teacher, was taken over by the State Government on 01.04.1991. Consequentially, the Petitioner became a Government Servant with effect from that date.

2.1 As per the provisions of Orissa Revised Scale of Pay Rules, 1998 (for short "ORSP Rules, 1998") introduced by the State Government, which was given effect to w.e.f. 01.01.1996, the pay of the Petitioner was fixed in the scale of pay of Rs.4750-125-7500 at Rs.4875/- w.e.f. 01.01.1996. The ORSP Rules, 1998, prescribed Time Bound Advancement (TBA) scale of pay benefit to the employees, who have completed 15 years of continuous service, from the date of appointment in one post and the grade. Since the Petitioner had completed 15 years of continuous service w.e.f. her initial date of appointment, i.e., 31.10.1980 on the date, the ORSP Rules, 1998 came into force, i.e., 01.01.1996, the Petitioner was extended with TBA scale of pay on 01.01.1996 and accordingly the pay of the Petitioner was fixed at Rs.5150/-. When the Petitioner was enjoying such scale of pay, the State Government, taking into

consideration its resolution passed on 11.11.2002, in an erroneous manner decided to extend such benefit w.e.f. 01.11.2002 or thereafter instead of 01.01.1996 for taken-over employees and directed to recover the TBA scale of pay received by such employees w.e.f. 01.01.1996. Aggrieved by such decision of the Government, the Petitioner filed an Original Application before the State Administrative Tribunal, Cuttack Bench, Cuttack bearing O.A. No. 3229(C) of 2002 seeking to quash the resolution dated 11.11.2002 of the State Government in Finance Department and to allow the TBA scale of pay, which she was receiving with effect from 01.01.1996, and not to recover the TBA amount which has already been paid to her. Not only the Petitioner herself, but also similarly situated persons also approached the Tribunal with the self same relief in O.A. No. 2301 of 2002 (***Manorama Setty and others v. State of Orissa and others***) and 199 other Original Applications. The Tribunal heard all the Original Applications analogously and a common order was passed on 21.09.2005, whereby the Tribunal held that the resolution dated 11.11.2002 is bad in law

and accordingly quashed the same, and directed that the grant of TBA scale of pay to such employees are within the scheme and, therefore, the question of refund of the said amount does not arise. Accordingly, the Petitioner was allowed to draw the TBA scale of pay as she was receiving without the same being withdrawn from her. The Petitioner was also extended with the incremental dues as provided in the time scale of pay from time to time.

2.2 The Petitioner was transferred and posted as Hindi Teacher in the Government Girls High School, Athagarh, where she continued to discharge her duty as such, till she was superannuated from her service on 31.07.2010. On being superannuated from service, she submitted her pension paper before the Inspector of Schools, Cuttack Circle, Cuttack-Opposite Party No. 4, as it was then, for release of her retiral dues, such as pension, gratuity and unutilized leave salary etc. The same was transmitted by Opposite Party No. 4 to Opposite Party No.5 recommending the case of the

Petitioner for release of her retiral dues taking into consideration the last pay drawn by the Petitioner.

2.3 The Comptroller of Accounts-Opposite Party No. 5 wrote to the Inspector of Schools, Cuttack-Opposite Party No. 4 with intimation to the Petitioner objecting that since the Petitioner was allowed higher scale of pay of Rs.400 to 750/- w.e.f. 31.10.1984 on acquiring higher qualification, i.e., Hindi Training and she drew TBA scale of pay at Rs.5,150/- on completion of 15 years of service on 01.01.1996, instead of 31.10.1999, therefore, the same was wrong and directed for correction of the Service Book of the Petitioner accordingly and to recover the excess amount drawn by her from 01.01.1996 till she was made to retire, from her DCRG and thereafter to submit the Revised L.P.C. for approval. Accordingly, the Service Book and Pension Papers of the Petitioner were returned by the Comptroller of Accounts to the Inspector of Schools, Cuttack. In response to the same, the Petitioner made a representation on 24.01.2014 to the Opposite Party No. 5 by explaining the quarry made by him to Opposite Party No. 4 and requested him to release her

pension. Comptroller of Accounts communicated to the Petitioner on 19.02.2014 that necessary clarification regarding sanction of TBA on Post/Grade or Scale has been sought from the Government in Finance Department, which is still awaited, and that on receipt of the clarification from the Government, her case shall be considered /disposed of accordingly.

2.4 The Comptroller of Accounts wrote a letter to Opposite Party No. 4 on 12.05.2014 asking him to pursue the matter with the Government and re-submit the pension proposal of the Petitioner after receipt of the clarification from the Government. The Petitioner requested to the Comptroller of Accounts on 09.09.2015 stating inter-alia that since the Court of law has decided the issue and settled the matter relating to TBA payment of aided and taken-over employees, therefore, he should release the retiral dues as the Petitioner by that time had already crossed 6 years after retirement, referring his letter dated 19.02.2014 and 20 months time already gone after seeking clarification by Opposite Party No. 5 in the matter. Therefore, the Petitioner requested for sanction of

pension without any further delay. Along with his letter, a copy of the judgment of the High Court was also annexed for ready reference of Opposite Party No. 5.

2.5 The Petitioner since was not extended with the appropriate retiral benefits, in spite of the law having being settled by the Tribunal, she again made a detailed representation on 12.11.2015 to Opposite Party No. 5 bringing to his notice that Opposite Party No.5 is unnecessarily harassing her although law has been established by the Tribunal in the case of **Manorama Setty** (supra) and batch of Original Applications, including the case of the Petitioner bearing O.A. No.3220(C) of 2002, as well as the law has been settled by the Hon'ble High Court of Orissa in OJC No. 115 of 1992 decided on 05.05.1994, OJC No. 1006 of 1995 decided on 05.02.1997 and OJC No. 17 of 1999 decided on 06.12.1999, that 15 years is to be counted from the date of appointment for the purpose of granting the benefit of advancement of scale of pay. The same principle has also been adopted in the case of **Jyotsna Mayee Behera v. State of Orissa**, 2000 (II) OLR 544 that on acquiring

higher educational qualification by the employee continuing in the said post and grade and thereby earning higher scale of pay would not change the status of the employee and 15 years of continuous service to be calculated from the date of the initial appointment for the purpose of calculation of Time Bound Advancement Scale of Pay. In spite of such communication being made, Opposite Party No.5 did not extend the retiral benefits as due and admissible to the Petitioner. Hence, this writ petition.

3. Mr. J.K. Rath, learned Senior Advocating appearing along with Mr. D.N. Rath, learned counsel for the Petitioner contended that once TBA scale of pay has been extended to the Petitioner, the same cannot be withdrawn or asked to be refunded, as the Petitioner is entitled to get such scale of pay with effect from the date she completed 15 years of service. It is further contended that the Petitioner joined in service on 31.10.1980. Therefore, taking into consideration 15 years of service, she has been extended with TBA scale of pay with effect from 01.01.1996 as per the ORSP Rules, 1998. Therefore,

no illegality or irregularity had been committed by the authorities by extending such benefit and, as such, Opposite Party No.5 in order to cause harassment to the Petitioner has not released the retiral benefits, though she has been granted the provisional pension. Till now, the final pension and other retiral dues, as due and admissible to the Petitioner, have not been paid. Consequentially, the Petitioner is also entitled to get interest for the delayed payment of benefit due to the callous attitude of Opposite Party No.5 in spite of the fact that it has been brought to his notice that similar matter has been considered by this Court and the issue has been set at rest with regard to the eligibility criteria for grant of TBA scale of pay admissible to an employee. Applying the same, if the benefit had been extended to the Petitioner, which was of course in accordance with law, there would not have been any impediment on the part of Opposite Party No.5 to release the final pension and other retiral benefits to the Petitioner. To substantiate his contention, learned Senior Counsel appearing for the Petitioner has relied upon the judgments of this Court in the case of

Jyostna Mayee Behera v. State of Orissa and others, 2000 (II) OLR 544 and ***Balabhadra Sarangi v. State of Orissa and others***, 2003 (I) OLR 24.

4. Mr. S. Jena, learned Standing Counsel appearing for the School & Mass Education Department, referring to the counter affidavit filed by Opposite Party No.4, vehemently objected to the claim made by the Petitioner and contended that the Petitioner was appointed as a Hindi Teacher in Karikol M.E School under control of the then D.I of Schools, Athagarh, in the District of Cuttack, and she joined against the post on 31.10.1980. The said Korikol M.E. School was an Un-aided Non-Govt. M.E School, which was taken over by the State Govt. w.e.f 01.04.1991. Consequent upon taken over of the M.E. School, the petitioner enjoyed the status of a Government employee and she is to abide by the rules and regulations framed by the Government from time to time. It is further contended that after introduction of ORSP Rules, 1989 (effecting from 01.05.1989), the TBA benefit which was extended under ORSP Rules, 1985 was ceased and put to an end from

02.10.1989. As by that time the Petitioner had not completed her 15 years of service or in between the cutoff date, i.e., 02.10.1989, she was not entitled for the said benefit. The State Government, while granting the TBA benefit to taken over employees under ORSP Rules, 1998, was extended the said benefit from 01.11.2002 instead of 01.01.1996 or thereafter. This was a common order for all concerned and not for the Petitioner only. Accordingly, the pay of the Petitioner in the TBA scale was shifted to 01.11.2002, but later on the said order was modified and the TBA benefit was extended from the date of eligibility of completion of 15 years of service against the post/grade w.e.f. 01.01.1996 and later. It is also contended that the Petitioner entered into the service on 31.10.1980 and later on she was allowed the higher scale / grade on acquisition of B.A. Kovida qualification on 31.10.1984, wherefrom her grade was changed and the TBA benefit was to be counted from that date. Accordingly, she was eligible to get the TBA benefit from 31.10.1999 instead of 01.01.1996. This error, which has been committed, has been rectified and, thereby, no illegality or irregularity has

been committed by Opposite Party No.5, while directing Opposite Party No.4 to get clarification from the Government, so as to warrant interference of this Court at this stage.

5. This Court heard Mr. J.K. Rath, learned Senior Counsel appearing along with Mr. D.N. Rath, learned Counsel for the Petitioner and Mr. S. Jena, learned Standing Counsel for School & Mass Education Department appearing for the State Opposite Parties by hybrid mode, and perused the records. Pleadings having been exchanged between the parties, with the consent of learned Counsel for the parties this writ petition is being disposed of finally at the stage of admission.

6. Both the counsel unequivocally state that the Petitioner joined in service on 31.10.1980 and thereafter she acquired the training qualification on 31.10.1984. But taking into consideration the initial date of appointment, i.e. 31.10.1980, she has been extended with the TBA Scale of Pay with effect from 01.01.1996. As such, she continued with the said benefit till her

superannuation. But after submission of the pension papers, the same was returned seeking for submission of the pension papers afresh by revising the date of benefit of TBA, which was extended to the Petitioner with effect from 01.01.1996. It is not in dispute that the Petitioner was continuing in an aided educational institution, which was ultimately taken-over and she became a Government employee. The date of such benefit was sought to be clarified, in view of the Finance Department Resolution dated 11.11.2002. But, as a matter of fact, such Resolution issued by the Finance Department has already been quashed by the Tribunal in the Original Application filed by one Manorama Setty and other batch of Original Applications, as mentioned supra. Therefore, the entitlement of the Petitioner of the TBA scale of pay on completion of 15 years of service from the date of initial appointment has to be calculated and paid to her and in fact the same was extended to her, which has been sought to be recovered by interference of Opposite Party No.5 due to wrong interpretation of provisions of law. Even though it was brought to his notice that similar

matter has been considered by the Tribunal and confirmed by this Court and the issue with regard to grant of TBA scale of pay admissible has been set at rest, but the reasons best known to Opposite Party No.5 why he has not adhered to the order passed by the Tribunal and confirmed by this Court.

7. There is also no dispute that TBA scale of pay is admissible to the teachers, who have completed 15 years of service in the same “post” or “grade” prior to 01.01.1985 and are eligible to such benefit under ORSP Rules, 1998. The pay means wages or salary for services rendered. Pay includes dearness pay, special pay and personal pay, but does not include the special pay granted in view of the personal qualification of the employee or sanctioned for the post held by the employee or granted in view of the position of the employee in the cadre. The reference to scale of pay in the service rules shall be construed as reference to the revised scale of pay specified in the latest Revision of Pay and Allowance Rules and the pay shall be construed accordingly. All officials working in the same scale of pay in a department,

although holding posts with different designations, shall be deemed to be holding posts in the same grade.

8. In ***Bombay Dyeing and Manufacturing Co. v. State of Bombay***, AIR 1958 SC 328, the apex Court held that a Government employee is entitled to draw the pay while he is on duty. The duty includes the departmental examination or any other optional examination or training of the Government employees, provided they are permitted to do so by the authority concerned. When an employee has done his work, the amount of wages earned by him becomes a debt due to him from the employer and is property, which can be assigned under law. If the pay has accrued, the right to receive it becomes a Fundamental Right.

9. In ***State of Maharashtra v. Bhaishankar Aulram Joshi***, AIR 1969 SC 1302, the apex Court held that once pay is fixed, the liability to pay it arises out of contract.

10. It is worthwhile to mention here that an ordinary increment is earned as a matter of course even

during disciplinary proceedings unless withheld. The conditions for counting service for increment in the time scale of pay have been laid down in various provisions of the service rules. The increments on promotion must be given as per mandate of the service rules applicable to the employees. The time bound advancement scale of pay is granted to an employee because of stagnation he faced for future promotion and accordingly under the service rules, if a person continues in a “post” or “grade” for a period of 15 years without getting any promotion, he/she is entitled to get the time bound advancement scale of pay on completion of 15 years of service in one “post” with the same scale of pay.

11. Similar question had come up for consideration before this Court in **Balabhadra Sarangi** (supra). In the said case, the Petitioner was working as a Classical Teacher in an aided educational institution and was denied the benefit of time bound advancement scale of pay. This Court, by holding that 15 years of service has to be counted from the date of appointment for the purpose of granting advancement scale of pay because the

benefit if intended to be given irrespective of other benefit that could have been granted on acquiring higher educational qualification and an employee who has held the same “post” or “grade” for 15 years is to be considered for the advancement scale of pay, directed the authorities for payment of advancement scale of pay on completion 15 years of service. As such, for extension of such benefit, this Court, placing reliance on the judgments of this Court in **Bata Krishna Sahu v. State of Orissa** (OJC No.115 of 1992 disposed of on 05.05.1994), **Sanatan Barik v. State of Orissa** (OJC No. 124 of 1992 disposed of on 02.05.1995), **Karunakar Biswal v. State of Orissa**, 82 (1996) CLT 666 and **Jyostna Mayee Behera v. State of Orissa**, 2000 (II) OLR 544, in paragraph-4 of the judgment in **Balabhadra Sarangi**, mentioned supra held as follows:-

*“4. The point involved in this writ petition is no more res integra. The first decision of this Court on this point is that of **Bata Krishna Sahu v. State of Orissa** (OJC No.115 of 1992 disposed of on 05.05.1994), Chief Justice Nanavati speaking for the Bench held:-*

“There is nothing on record to show that as a result of the Petitioner acquiring

higher qualification, namely, the degree of B.A. the became entitled to a higher grade or that his post was regarded as a higher post. It is, therefore, difficult to appreciate how the period of 15 years is to be counted not from the date of appointment as a Hindi teacher but from the date he was given some benefit as a result of his passing B.A. examination. The Petitioner having completed 15 years of service in the same grade or post prior to, 1.1.1985, he became entitled to the benefit of advancement pay scale."

*The aforesaid ratio was subsequently followed in **Sanatan Barik v. State of Orissa** (OJC No. 124 of 1992 disposed of on 2.5.1995), **Karunakar Biswal v. State of Orissa**, 82 (1996) CLT 666 as well as in **Jyostna Mayee Behera v. State of Orissa**, 2000 (II) OLR 544. It has been consistently held in all the cases that 15 years of service has to be counted from the date of appointment for the purpose of granting advancement scale of pay because the benefit is intended to be given irrespective of other benefit that could have been granted on acquiring higher educational qualification. Emphasis had been laid on the words 'grade or post' and not on scale of pay which an employee had been drawing. The scale of pay may undergo changes during the tenure of service of an employee following revision of pay scale from time to time or on the employee's acquiring higher academic qualification. As per the Finance Department office memorandum, referred to above, an employee who has held the same post or grade for 15 years is to be considered for the advancement scale of pay.*

12. Taking into consideration the principles of law, as discussed above, and applying the same to the present context, this Court is of the considered view that though the Petitioner had joined as Hindi Teacher on 31.10.1980

and subsequently she acquired training qualification on 31.10.1984 and was allowed trained Hindi Teacher scale of pay of Rs.400-750/-, that itself cannot disentitle her to get the TBA scale of pay for continuous holding the “post” or “grade” for 15 years. Thus, drawal of higher scale of pay on account of acquisition of training qualification by the Petitioner being immaterial, she is eligible to enjoy the benefit of TBA scale of pay for completion of 15 years of holding of Hindi teacher “post” or “grade” w.e.f. 31.10.1980 in accordance with Finance Department Memorandum dated 29.12.1987, which fact has been clarified by the Government on 20.06.1991, as has been dealt with in the judgment passed by this Court in **Balabhadra Sarangi** (supra). In the meantime, though the Petitioner has retired from service on attaining the age of superannuation, but that *ipso facto* cannot disentitle her to get the benefit, as claimed in the writ petition.

13. In view of the facts and circumstances as well as the law, as discussed above, this Court is of the considered view that the Petitioner is entitled to get the TBA scale of pay on completion of 15 years of service from

the date of her initial appointment, i.e., 31.10.1980. Therefore, this Court directs the Opposite Parties to calculate the differential arrear salary and pay the same to the Petitioner forthwith preferably by 30th November, 2022, failing which it will carry an interest @ 9% per annum.

14. In the result, the writ petition is allowed. However, there shall be no order as to costs.

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DR. B.R. SARANGI,
JUDGE

Orissa High Court, Cuttack
The 05th September, 2022, Arun/GDS