

**IN THE HIGH COURT OF ORISSA : CUTTACK.**

**WPC(TAC) No.68 of 2015**

(An Application under Articles 226 and 227  
of the Constitution of India)

Mahadev Behera

...

Petitioner

***VERSUS***

State of Odisha  
and Others

Opposite parties

**Advocates appeared in the case:**

***For the Petitioner***

: M/s. Soubhagya Chandra Dev  
Dash, proxy counsel for  
Mr. Kunal Kumar Swain,  
Advocate

***For the Opposite  
Parties***

: M/s. Diptiranjana Mohapatra and  
Pabitra Mohan Pattajoshi,  
Standing Counsel  
for School and Mass Education

**CORAM:**

**JUSTICE MURAHARI SRI RAMAN**

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**Date of Hearing 20.01.2023 :: Date of Judgment: 27.01.2023**

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**JUDGMENT**

***MURAHARI SRI RAMAN, J.—***

1. The Petitioner, namely, Mahadev Behera, working as a 'Peon' in Nandini Bidyaniketan, Sidho, Cuttack, filed writ petition being O.J.C. No.11038 of 1999, challenging the

action/inaction of the Opposite Party No.3-Inspector of Schools, Cuttack Circle, Cuttack in not releasing his arrear as well as current salary.

1.1. This Court *vide* Orders dated 8<sup>th</sup> September, 1999 and 11<sup>th</sup> May, 2001 directed the Opposite Parties to file counter-affidavit in this matter. As the counter was not filed in spite of elapse of substantial length of time, this Court accepted the counter-affidavit *vide* Order dated 1<sup>st</sup> October, 2002 on payment of cost of Rs.10,000/- as directed in Order dated 2<sup>nd</sup> August, 2002.

1.2. On 1<sup>st</sup> October, 2002, the following order has been passed by this Court:

*“It is alleged that the salary of the Petitioner is not being paid. We call upon the Inspector of Schools to go on paying the current salary of the Petitioner on the day his colleagues and other staff members are paid.*

*Misc. Case No.5438 of 2002 is disposed of.”*

1.3. The matter was again listed on 6<sup>th</sup> August, 2015, on which date the following order has been passed:

*“Heard Mr. B. Jena, learned counsel appearing on behalf of Mr. K.K. Jena, learned counsel for the petitioner and Mr. A.K. Pandey, learned Standing Counsel for the School and Mass Education Department.*

*It is stated that the school in question has already been taken over by the Government and this Court has no jurisdiction to entertain the writ application. In view of the aforesaid submission, this writ*

*application be transferred to the State Administrative Tribunal, Cuttack Bench for adjudication.”*

- 1.4. On being transferred to Odisha Administrative Tribunal, O.J.C. No.11038 of 1999 was registered as TA No.68(C) of 2015.
- 1.5. While the matter was pending, the said Tribunal stood abolished by virtue of Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) Notification F. No. A-11014/10/2015-AT [G.S.R.552(E).], dated 2<sup>nd</sup> August, 2019. Therefore, the matter travelled again to this Court and has been renumbered as WPC (TAC) No.68 of 2015.

***Facts of the case:***

2. The Petitioner is stated to be appointed against the post of ‘4<sup>th</sup> Peon’ on 14<sup>th</sup> December, 1991 by the Managing Committee of Nandini Bidyaniketan, Sidho, Cuttack, pursuant to which he joined in the said post on 16<sup>th</sup> December, 1991.
- 2.1. Being recommended, the Inspector of Schools, Cuttack Circle, Cuttack-Opposite Party No.3, approved the appointment of the Petitioner *vide* Letter No.916, dated 11<sup>th</sup> January, 1996, which reads as under:

*“In terms of the orders dated 23.12.1995 of the Hon’ble High Court Orissa passed in O.J.C. No.8505 of 1994, appointments of the following two peons of the School*

*are hereby approved with effect from the date of their joining as noted below as reported by you in your letter under reference.*

1. *Sri Dillip Kumar Behura, 3<sup>rd</sup> Peon from 16.12.1991.*

2. *Sri Mahadev Behera, 4<sup>th</sup> Peon from 16.12.1991.”*

2.2. It is alleged by the petitioner that for the months of January and February, 1996, he received the salary under Direct Payment Scheme from the Inspector of Schools, but he has not been paid salary since the month of March, 1996. Therefore, invoking the provisions of Articles 226 and 227 of the Constitution of India, the petitioner has knocked the doors of this Court.

***Contention of the learned counsel for the petitioner:***

2.3. Mr. Soubhagya Chandra Dev Dash, learned counsel for the Petitioner referred to Circular No.28465-EYS, dated 8<sup>th</sup> July, 1981 issued by the Government of Odisha in Education & Youth Services Department and submitted that there is no dispute with regard to roll strength of the School which exceeded 100 at the relevant point of time. As such one post of ‘Peon’ was to be treated as “Daftari”. On such consideration, the present petitioner would be considered as one of the three Peons as per the yardstick. Amplifying his submission, Sri Swain would urge that if the post of “Daftari” is treated to be promotional post from the post of

‘Peon’, the instant Petitioner being appointed against the post of ‘4<sup>th</sup> Peon’ was in fact entitled to be considered as ‘Peon’, as the school is entitled to have 3 peons. So the appointment and approval of the petitioner in the post of ‘Peon’ is in conformity with the yardstick specified in the aforesaid Circular dated 8<sup>th</sup> July, 1981.

2.4. Mr. Soubhagya Chandra Dev Dash, learned Advocate proceeded further by arguing that even though subsequently the State Government has modified Circular dated 8<sup>th</sup> July, 1981 *vide* Circular bearing No. 15500-SVIIEP-50/91/E, dated 27<sup>th</sup> March, 1992, issued by the Government of Odisha in Education Department, the same has no application, as said modification has been made effective from 01.01.1992.

2.5. To buttress his argument, Mr. Soubhagya Chandra Dev Dash, learned counsel for the petitioner cited *State of Odisha & Others Vrs. Rajendra Kumar Das & Another*, (2003) 10 SCC 411 AIR 2004 SC 1009 = 2004 (I) OLR (SC) 517 and *Dipak Kumar Sahoo Vrs. State of Odisha*, 1999 (II) OLR 176 and contended that in view of the said decisions, the direction of this Court *vide* Order dated 1<sup>st</sup> October, 2002 passed in Misc. Case No.5438 of 2002 ought to have been complied with by the opposite parties.

2.6. Amplifying his submission Mr. Swain has brought the attention of this Court to the Office Order bearing No.9087-

IX-SME(HC)-19/06(Pt-1)/SME, dated 7<sup>th</sup> May, 2008, which was issued in order to comply with the direction contained in Civil Appeal No.6844 of 2003 [*Rajendra Kuumar Das (Supra)*] *vide* Judgment dated 29<sup>th</sup> August, 2003 delivered by the Hon'ble Supreme Court of India.

2.7. In the said Office Order, the Government allowed the Management to give promotion to one of the existing Class-IV employees to the post of “Daftari” taking into consideration the merit-*cum*-suitability with due regard to seniority and adjust “so called 4<sup>th</sup> Peon”. The counsel for the petitioner, therefore, pleaded parity in treatment *qua* the petitioner.

2.8. The counsel for the petitioner placed reliance on the decisions of this Court in *Prasanna Kumar Rout Vrs. State of Odisha & Others*, W.P.(C) No.3472 of 2014, *vide* Judgment dated 30.10.2017 [MANU/OR/0728/2017]; *Himanshu Sekhar Das Vrs. State of Odisha & Others*, 2021 (III) ILR-CUT 93; *Rajakishor Pradhan Vrs. State of Odisha & Others*, WPC(TAC) No.35 of 2014 & WPC(OAC) No.2620 of 2016 *vide* Judgment dated 05.07.2022 and *Amina Pradhan Vrs. State of Odisha & Others*, WPC(TAC) No.4 of 2011 *vide* Order dated 03.11.2022. It is submitted that the case of ‘4<sup>th</sup> Peon’ has been considered in these cases acknowledging that the post of “Daftari” is a promotional post. Even though in those referred cases 4<sup>th</sup>

post of Peon was not approved, direction for approval was issued and, therefore, it is urged that the petitioner is entitled to not only payment of salary, but also consequential service benefits.

- 2.9. He submitted that the instant case is on better footing inasmuch as the post of the petitioner has been approved by the Inspector of Schools at the relevant point of time. Hence, writ of *mandamus* is required to be issued to the opposite parties to pay arrear salary as well as current salary with consequential service benefits.

***Contention of the learned Standing Counsel:***

3. Referring to the counter-affidavit dated 16<sup>th</sup> August, 2002, Mr. Diptiranjana Mohapatra, the learned Standing Counsel vehemently opposed the contentions advanced by the learned counsel for the petitioner. It is submitted that the School in question was not running in shift system. As such, the Management was not competent to fill up the post of additional Peon. It is stated in the counter-affidavit that the requirement under yardstick *vide* Circular dated 8<sup>th</sup> July, 1981 was that the Management of the School could have promoted the senior most of the peons as “Daftari” which involved a higher scale of pay and then it could have taken step to fill up such vacant post out of the three posts of Peon.

3.1. Learned Standing Counsel urged that the present Petitioner could not have been directly appointed against the post of '4<sup>th</sup> Peon' without promoting any of the three Peons to the post of "Daftari" as per the yardstick. Hence, the appointment of the petitioner in the 4<sup>th</sup> post of Peon being invalid, he is not entitled for the benefits claimed for in the writ petition.

***Consideration of rival contentions and reasons for the decision:***

4. Circular bearing No.28465/EYS, dated 8<sup>th</sup> July, 1981, issued by the Government of Odisha in Education and Youth Services, so far as relevant for the present purpose, is reproduced hereunder:

*"I am directed to say that the question of fixation of standard staff for the non-Government Secondary Schools has been felt necessary by the Government due to introduction of the revised syllabus under 10 years schools pattern. After careful consideration of various aspects, Government have now been pleased to decide that the standard staff both teaching and non-teaching for different categories of non-Government Secondary Schools shall be follows:*

*A. For the Schools having no additional sections:*

|        | Category of staff<br>(1)        | 3-Class<br>(2) | 5-Class<br>(3) | 7-<br>Class<br>(4) |
|--------|---------------------------------|----------------|----------------|--------------------|
| 1 to 8 | ***                             |                |                |                    |
| 9.     | Peons—                          |                |                |                    |
|        | (i) Office peon                 | 1              | 1              | 1                  |
|        | (ii) Science Attendant          | 1              | 1              | 1                  |
|        | (iii) Night Watcher-cum-Sweeper | 1              | 1              | 1                  |

*Note.—*

**\*\*\***

**(C) Additional post of Clerks/Peons.—**

- (i) Where the roll strength of the school exceeds 1,000 or more one post of U.D.C. would be admissible in addition to the existing post of L.D.C.*
- (ii) **Where the roll strength of the school exceeds 100 one post of Daftary is admissible.***
- (iii) For the schools running in shift system for shortage of accommodation one additional post of peon is admissible.*

*The above yardstick will come into force with effect from 1<sup>st</sup> July, 1981. \*\*\**

4.1. Aforesaid Circular dated 8<sup>th</sup> July, 1981 has been modified by way of issue of Circular bearing No. 15500-SVIIIEP-50/91/E, dated 27<sup>th</sup> March, 1992, with respect to the post of “Peon” and “Daftary” to the following extent:

*“I am directed to say that the question of fixation of revised yardstick for appointment of Class IV employees in Non-Government Secondary Schools shall be as follows:*

|              | <i>Category of staff<br/>(1)</i> | <i>3-Class<br/>(2)</i> | <i>5-Class<br/>(3)</i> | <i>7-<br/>Class<br/>(4)</i> |
|--------------|----------------------------------|------------------------|------------------------|-----------------------------|
| <i>(i)</i>   | <i>Office Peon</i>               | <i>1</i>               | <i>1</i>               | <i>1</i>                    |
| <i>(ii)</i>  | <i>Science Attendant</i>         | <i>1</i>               | <i>1</i>               | <i>1</i>                    |
| <i>(iii)</i> | <i>Night Watcher-cum-Sweeper</i> | <i>1</i>               | <i>1</i>               | <i>1</i>                    |

*Where the roll strength of a 3-class high school is 500 (five hundred) or more one post of Daftary is admissible.*

*For the schools running in shift system for shortage of accommodation one additional post of peon is admissible.*

*The above yardstick will come into force with effect from 01.01.1992 and Government order referred to above stands modified to the extent indicated above.”*

5. Undisputed fact unfurled in the instant case is that on the date of appointment of the petitioner in the 4<sup>th</sup> post of Peon, the school was having more than 100 roll strength. Further fact not controverted is that the Inspector of Schools, Cuttack has approved the appointment of the petitioner by the Management with effect from 16.12.1991.

5.1. Rule 30(k) of the Odisha Education (Establishment, Recognition and Management of Private High Schools) Rules, 1991, reads as follows:

*“30. Powers and functions of the Management Committee.—*

*Subject to the provisions of the Act and these Rules, the Managing Committee shall exercise the powers and discharge the functions, as follows:*

*(a) to (j)*

*\*\*\**

*(k) appointment of teaching and non-teaching staff in accordance with the provisions contained in the Act, these Rules and instructions of the Department.”*

5.2. The Management being conferred with power under aforesaid Rules, appointed the petitioner against the post of 4<sup>th</sup> Peon and such appointment was duly approved by the Inspector of Schools *vide* Letter dated 11.01.1996.

5.3. It is beyond pale of controversy that appointment of the petitioner in the post of Peon was accorded approval with effect from 16.12.1991 by the Inspector of School, Cuttack,

which goes to show that the Management has appointed the petitioner on the basis of yardstick delineated in the Circular dated 8<sup>th</sup> July, 1981 and not as per modified yardstick specified in Circular No. 15500-SVIIIEP-50/91/E, dated 27<sup>th</sup> March, 1992, which has been given effect to from 01.01.1992. This view is countenanced by the following observation made in *Dipak Kumar Sahoo (supra)*:

“7. Now let us look at the facts of the case. The approval of the petitioner was not made by the Inspector of Schools basing on the yardstick prescribed by the Government in Order No.15500/E, dated 27.03.1992 at Annexure-A. **The aforesaid revised yardstick was brought into force with effect from 01.01.1992, i.e., after joining of the petitioner in the School on 18.12.1991.** There is no dispute that at the time of joining of the petitioner, the yardstick prescribed by the Government in Letter No.28465/EYS, dated 08.07.1981 was in force which provided for admissibility of a 4<sup>th</sup> Peon (Daftary) if the roll strength of the School exceeded 100. At the relevant time the roll strength of the School was more than 100.”

5.4. While the yardstick vide Circular dated 08.07.1991 specified under the heading “Additional post of Clerks/Peons” that where the roll strength of the school exceeded 100, one post of Daftary was admissible, the Clarification issued by the Government in Letter No.36118/SME, dated 13.11.1996 mentioned about the manner of filling up of the post of “Daftary”. Said letter is reproduced hereunder:

*“Sub: Filling up of the post of Daftary in Government High Schools.*

*I am directed to say that in this Deptt. Letter No. 28465/EYS dated 8.7.1981 it has been laid down that where the roll strength of a High School exceeds 100 (one hundred) one post of Daftary is admissible in addition to the Class IV employees such as one Office Peon, one Science Attendant and one Night Watcher-cum-Sweeper. The norm of appointment of Daftary has been revised in this Deptt. Letter No. 15500/E. dated 27.3.1992 and accordingly where the roll Strength of a High School is 500 (five hundred) or more one post of Daftary is admissible in addition to the above posts.*

- 2. Certain doubts have been raised at some quarters as to how the post of Daftary shall be filled up, whether by direct recruitment or by promotion from among the Class-IV employees of the same school.*
- 3. As per the erstwhile P&S Deptt. Letter No. 29787/GEN dated 15.12.1979 posts of Daftaries in State Govt. Offices shall be filled up by promotion from among the Peons, Orderly Peons etc. of the same office on the basis of suitability with due regard to seniority.*
- 4. It is, therefore, hereby clarified that the same principles may also be followed while filling up the post of Daftary in a High School in order to avoid legal complications.*
- 5. The above instructions may please be brought to the Notice of all concerned for their guidance”*

- 5.5. At the relevant point of time, there was dichotomy whether the post of “Daftari” is a promotion post. This question has been answered in the matter of Dipak Kumar Sahoo*

(*supra*). This Court, while taking note of Circular dated 08.07.1981, held as follows:

“6. \*\*\* On careful reading of the aforesaid letter [Government Letter No. 36118/SME dated 13.11.1996 bearing Subject— Filling up of the post of Daftary in Government High Schools], **we are of the considered opinion that the Government for the first time in the said Letter declared that since in the State Government offices the post of Daftary is filled up by promotion from among the peons, orderly peons etc. on the basis of suitability with due regard to seniority, as prescribed in the erstwhile P&S Department Letter No. 29787/Gen. dated 15.12.1979, the same principle should also be followed while filling up of the posts of Daftary in High Schools.** The aforesaid decision that the post of Daftary in non-Government aided High Schools is a promotional post is applicable or effective only from the date of issue of the letter. It has got no retrospective effect. In the order dated 8.4.1997 of this Court in Misc. Case No. 10326 of 1996 (arising out of OJC No. 7723 of 1995) reference has been made to the Government Circular dated 15.12.1979. Reference to the said circular obviously means to the erstwhile P&S Department Letter No. 29787/Gen., dated 15.12.1979 mentioned in Govt. Letter No. 36118/SME dated 13.11.1996 (extracted above). We make the position clear by stating that as per the erstwhile P&S Department Letter No. 29787/Gen., dated 15.12.1979 post of Daftary in State Government offices are to be filled up by promotion from among the Peons, Orderly Peons etc. The said norm for filling up of the post of Daftary in Government offices has been made applicable to High Schools (Non-Govt. Aided) for the first time by Letter No. 36118/SME dated 13.11.1996. **By virtue of this decision, the post of Daftary in non-Government**

***Aided High Schools is to be filled up by way of promotion from among the peons etc.”***

- 5.6. The issue was carried before the Hon’ble Supreme Court by the State of Odisha. Said Hon’ble Court in the case of *Rajendra Kumar Das (supra)*, repelling the stance “According to State Government the post of ‘Daftary’ is a promotional post and therefore, the concept of ‘forth peon as sought to be canvassed by the writ petitioners is without any legal foundation”, expressed the view by holding that:

***“It is to be noted that post of ‘Daftary’ carries higher scale of pay and is a promotional post for Class IV employees. That being the position, the High Court was not justified in directing approval of the writ petitioners’ services as ‘fourth peon’. But one significant aspect cannot be lost sight of. If a school was entitled to have a ‘Daftary’, certainly the appointment was to be made by promoting one of the three persons i.e. Office Peon, Office Attendant and Night Watcher-cum-Sweeper, there being no other class IV post in the institution. It is for the Managing Committee of the institution to decide who is to be promoted and thereafter seek approval of the concerned authorities. That way the claims of the writ petitioners could have been considered by the authorities, on being appropriately moved by the Management. It is undisputed that the writ petitioners were appointed by the Managing Committee, may be under a misreading of the relevant Government Orders.”***

- 5.7. In view of said Judgment of the Hon’ble Supreme Court in the case of *Rajendra Kuumar Das (Supra)* and the Judgment of this Court in *Dipak Kumar Sahoo (Supra)*, there is no manner of doubt persists that the post of “Daftari” is a promotional post and is to be filled up by

promotion from amongst the Peons on the basis of merit-*cum*-suitability with due regard to seniority.

- 5.8. As already noted that there was dilemma with regard to “Daftari” as a promotional post and this has been clarified not only by this Court but also by the Hon’ble Supreme Court. The case of *Rajendra Kumar Das (supra)*, was a case of 4<sup>th</sup> post of peon appointed by the Management Committee which was not accorded approval, yet in such circumstance, the Hon’ble Supreme Court came to direct as follows:

“10. *We, therefore, while allowing these appeals direct that the Management of the concerned institution shall move the concerned authorities for approval to the promotional appointment of a Class IV employee, as ‘Daftary’. Simultaneously, it can also recommend for appointment to the Class IV post, in case approval is accorded to the recommendation for appointment of ‘Daftary’ on promotion. The decision on both motions shall be taken within three months from the date of submission of the recommendation in accordance with law keeping in view the operative yardsticks in force at the time of appointments were made. Even if there has been refusal earlier, the matter shall be reconsidered in the light of what has been stated above.*”

- 5.9. While complying with the direction as made in *Rajendra Kumar Das (supra)*, the Government of Odisha in Department of School and Mass Education issued Office Order No.9087-IX-SME(HC)-19/06(Pt.1)/SME, dated 7<sup>th</sup> May, 2008 and allowed the claim as follows:

*“That after careful consideration, Government have been pleased to allow the Management to give promotion to one of the existing Class-IV employees to the post of Daftary taking into consideration the merit-cum-suitability with due regard to seniority and to adjust the so called 4<sup>th</sup> peon as mentioned in the list enclosed in the consequential vacancy of Class-IV post in the said School.”*

5.10. This Court in the case of *Prasanna Kumar Rout (supra)* taking note of yardstick dated 8<sup>th</sup> July, 1981 and case laws on the subject held as follows:

*“In view of the continuous orders of this Court right from OJC No.796 of 2000, OJC No.10789 of 2001 and W.P.(C) No.1862 of 2012, the Petitioner being in continuous working with approval of his post as 4<sup>th</sup> Peon, he cannot be denied the benefits. Moreover, the judgment of the Hon’ble Supreme Court in the aforesaid case by modifying the order of this Court only to create a post of Daftary, who is to be adjusted from senior most peon and the 4<sup>th</sup> Peon is to be adjusted in the 3<sup>rd</sup> post, the Office Order dated 7<sup>th</sup> May, 2008 cannot be said to be prospective in nature in case of this petitioner. Apart from this, it is reiterated that Office Order dated 7<sup>th</sup> May, 2008 being not a policy decision of the Government but an order to implement the order of the Hon’ble Supreme Court, the same has to be construed as operative from the date of Hon’ble Supreme Court directs. It is needless to say that Hon’ble Supreme Court has directed on 29<sup>th</sup> August, 2003 to implement the concept of 4<sup>th</sup> Peon within a period of three months from the date of recommendation made by the concerned school. **The plea of the Opposite Parties expressed through Annexure-9 that the so called 4<sup>th</sup> Peon being only adopted on 7<sup>th</sup> May, 2008 by the Government, the Petitioner is not entitled to receive the salary from 1<sup>st</sup> April, 1999 to 23<sup>rd</sup> May, 2008 not only violated order of Hon’ble Supreme Court but also against the order passed by this Court time and again. From the impugned order vide Annexure-9, it appears that***

*the Petitioner has been adjusted against 4<sup>th</sup> Peon only with effect from 23<sup>rd</sup> May, 2008 but not before that although he has been working as such is a sorry state of affairs. Hence, Annexure-9 is illegal and improper to the extent it is made prospective for the Petitioner.”*

5.11. This Court in *Himanshu Sekhar Das (supra)* at para 11 of the Judgment held as follows:

*“In view of the laws laid down by the apex Court, as well as this Court and as per the resolution passed by the Government, on the point in issue, the order dated 11.03.2013 passed by the District Education Officer in Annexure-8 cancelling approval of the post held by the petitioner, cannot sustain in the eye of law. Thereby, the said order is liable to be quashed and is accordingly, quashed. The matter is remitted back to the District Education Officer, Balasore with a direction to approve the appointment of the Petitioner against the post of 4<sup>th</sup> Peon as per the yardstick laid down in order dated 08.07.1981, which was in force, and since the roll strength of the school was more than 100, the post of 4<sup>th</sup> Peon, against which the petitioner was appointed, was justified as per the yardstick. The entire action shall be taken as expeditiously as possible, preferably within a period of four months from the date of communication of this judgment.”*

5.12. In the case of *Rajakishor Pradhan Vrs. State of Odisha & Others*, WPC(TAC) No.35 of 2014 & WPC(OAC) No.2620 of 2016 vide Judgment dated 05.07.2022 it has been held as follows:

*“10. Coming to the grounds on which the proposal for approval of the appointment of the petitioner Raj Kishore for the post of peon was turned down, it is stated that the appointment was made against a post which was not created. In the case of Shakuntala*

*Biswal Vrs. State of Orissa reported in 2008 (Supp.-II) OLR 653, this court held that if the yardstick provides for a post and such post is admissible considering the roll strength and the Managing Committee of the school appointed a teacher and sought for approval of such appointment, creation of the post is a mere formality and the proposal submitted by the managing committee cannot be turned down only on the ground that the post had not been created. The same analogy can be drawn in relation to the post of a peon also. Therefore the plea taken by the opposite parties that the post had not been created/sanctioned is not tenable in the eye of law.*

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14. *Both the petitioners have rendered service for more than two decades. As per the law laid down by the Apex Court in the case of Rajendra Kumar Das (supra), thus, their appointment requires to be approved by the authorities. It is for the Management to promote anyone among the 3 class-IV employees to the post of Daftary by submitting necessary proposal to the Government. Significantly, the Govt. in School and Mass Education Department issued an order on 07.05.2008 prescribing modalities for implementation of the Judgment of the Apex Court in Rajendra Kumar Das's case. In the case of Prasanna Kumar Rout Vrs. State of Odisha and others, reported in MANU/OR/0728/2017, this Court held that the Office Order dated 07.05.2008 cannot be held as prospective in nature."*

- 5.13. This aspect has been clarified by this Court in *Bhabagrahi Maharana Vrs. State of Odisha, W.P.(C) No.13158 of 2013, etc., vide Judgment dated 21.11.2017, which was rendered*

in the context of appointment of 4<sup>th</sup> peon and non-payment of arrear salary. This Court held as follows:

*“12. In the Judgment in the above case [Narayan Dash Vrs. State of Odisha, W.P.(C) No.19969 of 2015, vide Judgment dated 18.10.2017], this Court has specifically observed that as per direction of the Hon’ble Supreme Court read with the direction of this Court, the direction of the Hon’ble Supreme Court cannot be lost sight of even if the Office Order dated 07.05.2008 is made prospective inasmuch as the said Office Order cannot be allowed to contravene the direction of the Hon’ble Supreme Court to comply same within three months from the date of recommendation. **Similarly situated employees should get the benefit of the order of the Hon’ble Supreme Court.***

*13. **The Government Order dated 07.05.2008 cannot be considered as prospective but should be retrospective by paving way of the order of the Hon’ble Supreme Court and this Court to be complied as the same are binding on both parties. On the other hand, the petitioners are entitled to continuance to the post of 4<sup>th</sup> peon from the respective period they are approved as such by the order of this Court passed in their respective earlier writ petitions and by the aforesaid order of the Hon’ble Supreme Court.***

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*17. Thus, the opposite parties are hereby directed to calculate the arrear salary of the petitioners for the period they asked for in their respective writ petitions and after due calculation, make payment of the same to the petitioners within a period of four months from today failing which the same shall be paid with interest at the rate of 9% per annum. \*\*\*”*

5.14. Pertinent here to refer to the following observation of this Court rendered in the case of *Bairagi Charan Sahoo Vrs. State of Odisha*, 2022 SCC OnLine Ori 3474:

**“10. Be that as it may, this Court reiterates that if the School is found to have met the criteria relating to roll strength as per the 1981 yardstick, the ratio in the case of *Rajendra Kumar Das (supra)* would apply in full force. Consequently, one of the three Class-III employees could be given promotion as Daftary and the vacancy so created, can be adjusted by the so called 4<sup>th</sup> Peon and his service can be duly approved. A perusal of the impugned order reveals that Opposite Party No. 1 has simply held that the post of 4<sup>th</sup> Peon is not available in the standard yardstick without rendering a specific finding as to if the 1981 yardstick was applicable or not. Moreover, no effort seems to have been made by Opposite Party No. 1 to examine the applicability of the ratio decided in the case of *Rajendra Kumar Das (supra)* to the facts of the case.”**

5.15. In identical fact-situation as that is obtained in this case, in the case of *Sarat Ku. Kachhia Vrs. State of Odisha*, W.P.(C) No. 15649 of 2010, vide Order dated 01.03.2021, this Court made the following observation and direction:

**“\*\*\* This writ petition has been filed by the petitioner seeking direction to the Managing Committee of Ramnath Ucha Bidyapitha, Chalanpada under Kalahandi Education Circle to give promotion to the senior most peon Sri Lingaraj Behera to the post of Duftary and to adjust him in the consequential vacancy as peon and accordingly send the proposal to opposite parties No.1 to 3 for due approval of service of the senior most peon as Duftary and his service as peon in the consequential vacancy. \*\*\***

*The brief fact of the case, in hand, is that Ramnath Ucha Bidyapitha at Chalanpada in the district of Nuapada was notified as an aided educational institution as per Section 3(b) of the Orissa Education Act with effect from 01.06.1994. When the school was an un-aided educational institution as per the yardstick dated 08.07.1981, the managing committee vide resolution dated 07.12.1990 resolved to appoint a 4th peon in the school and thereafter an advertisement was issued by the managing committee for filling up of the said post. Pursuant to such advertisement, the petitioner being an eligible candidate submitted application and after following due procedure, he was selected and accordingly he was issued with an appointment order on 09.02.1991. Thereafter, the petitioner joined as 4th peon in the school on 13.02.1991 and from the date of his initial joining, he has discharged his duty satisfactorily. Thereafter, the school became aided one and the staff position of the school was submitted by the Managing Committee of the school for due approval of the teaching and non-teaching staff of the school to enable them to receive grant-in-aid with effect from 01.06.1994. As such, the Inspector of School, Kalahandi Circle vide Office Order dated 03.08.1996 approved the services of the petitioner as 4th peon of the school w.e.f. 01.06.1994 and released the grant-in-aid in favour of the petitioner from the said date. \*\*\* But all of a sudden, the Inspector of School, vide letter dated 21.10.1999, without assigning any reason, stopped the salary of the petitioner along with other 4th peons of the Circle. Therefore, the petitioner has approached this Court by filing the present writ petition.*

*When the matter was so pending, being aggrieved by the order of this Court in the case of one Rajendra Kumar Das Vrs. State of Orissa, wherein direction has been given for approval of his post who is a 4th peon in Dolagobinda High School, Dhobagadia under Balasore Education Circle, the State Government preferred SLP (C) No. 7032 of 2000, which was subsequently numbered as Civil Appeal No.6844 of 2033, wherein the Apex Court vide Order dated 29.08.2003 while allowing the appeal directed the*

*management of the concerned institution to move the concerned authorities for approval to the promotional appointment of a Class-IV employee, as Duftary. Simultaneously, it can also recommend for appointment to the class-IV post, in case of approval is accorded to the recommendation for appointment of 'Duftary' on promotion.*

*As it appears, the petitioner has also made grievance with regard to promotion of senior most peon and consequentially in the vacancy he should be given appointment so that the petitioner can get the benefit of scale of pay admissible to the post and, as such, due to non-consideration of the same, the petitioner approached this Court. \*\*\**

*In Srikanta Sahoo mentioned supra [WP(C) No.13158 of 2013, disposed of on 21.11.2017], claiming arrear salary, the petitioners approached this Court and this Court disposed of the said writ petition directing the opposite parties to calculate the arrear salary for the period they asked and after due calculation, make payment of the same to the petitioners within a period of four months, failing which the authority has to pay interest at the rate of 9% per annum.*

*Applying the aforesaid ratio decided by this Court as well as the Apex Court to the present case, this Court is of the considered view that the benefit admissible to the petitioner should have been extended by giving promotion to the senior most persons to the post of 'Duftary' and the consequential vacancy should be given to the petitioner and, as such, non-consideration of the same cannot sustain in the eye of law. \*\*\*"*

- 5.16. It also be relevant to take note of following observation of this Court in the case of *Narayan Dash Vrs. State of Odisha, W.P.(C) No.19969 of 2015, vide Judgment dated 18.10.2017:*

*“It will not be out of place to mention that the petitioner has been already appointed as 4<sup>th</sup> peon with due approval of the State Government. It is only submitted by the learned Standing Counsel for the School and Mass Education Department that the approval of the erstwhile Inspector of Schools to the appointment of the petitioner as 4<sup>th</sup> peon is not operative does not hold good as the said order has been passed in pursuance of the order of this Court in OJC No.5108 of 1996. Moreover, the Hon’ble Supreme Court have also directed for introduction of Daftary system and consequently the concept of appointment of 4<sup>th</sup> peon in the manner as observed above. So, the petitioner is working as 4<sup>th</sup> peon from 02.05.1988 and continuing as such. When the Hon’ble Supreme Court by modifying the order of this Court directed for fresh recommendation and the same is also complied in the manner as stated above there is no logic to deny his continuance in the post of 4<sup>th</sup> peon for the period from October, 2002 to March, 2009. \*\*\*”*

5.17. Drawing parity of fact with that of the afore-discussed cases of similarly circumstanced persons, it is irresistible to conclude that the petitioner, namely Mahadev Behera, was appointed in the post of 4<sup>th</sup> peon in accordance with the yardstick dated 8<sup>th</sup> July, 1981 and whose post was duly approved by the Inspector of Schools, Cuttack, *vide* Letter dated 11<sup>th</sup> January, 1996 acknowledging his appointment with effect from 16<sup>th</sup> December, 1991, and, he is entitled to get the same benefit as has been extended to other similarly situated persons.

5.18. As the yardstick provides for a post, *i.e.*, Daftary, and such post is admissible considering the roll strength, the opposite parties are required to consider the appointment of

petitioner by giving promotion to one of the peons as “Daftary”. In view of *Bairagi Charan Sahoo (supra)*, *Rajakishor Pradhan (supra)*, creation of the post being mere formality, the proposal of the Managing Committee cannot be turned down only on the ground that the post had not been created.

5.19. Facts unfurled in the case leads to show that the petitioner has rendered service for more than three decades and, this Court, on the basis of aforesaid factual and legal position, holds that the Petitioner is entitled to get salary, arrears as well as current. In spite of clear direction by this Court *vide* Order dated 1<sup>st</sup> October, 2002 for payment of the salary to the petitioner, it is alleged by Mr. Soubhagya Chandra Dev Dash, learned Advocate that the petitioner has not been paid.

***Conclusion and directions:***

6. In view of Office Order dated 7<sup>th</sup> May, 2008 issued in compliance of the directions in *Rajendra Kumar Das (supra)* and *Dipak Kumar Sahoo (supra)*, the post of the “Daftari”, being a promotional post, the appointment of petitioner by the Managing Committee as approved by the Inspector of Schools, Cuttack, acknowledging him as ‘4<sup>th</sup> Peon’ with effect from 16<sup>th</sup> December, 1991 *vide* Letter No.916, dated 11<sup>th</sup> January, 1996, is held to be valid.

- 6.1. As held in *Rajakishor Pradhan (supra)* and *Prasanna Kumar Rout (supra)* and other cases referred to *supra*, that the Office Order dated 07.05.2008 cannot be held to be prospective in nature, and in view of provisions as enshrined under Article 14 of the Constitution of India, the petitioner is entitled to the same relief as has been granted to the similarly circumstanced person/employee appointed against so called post of 4<sup>th</sup> peon.
- 6.2. It is for the Management to promote any one among the employees in the post of Peon to the post of Daftary by moving necessary proposal before the competent authority and extend all the benefit to the petitioner as has been done by the Government of Odisha in Department of School and Mass Education *vide* Office Order No.9087-IX-SME(HC)-19/06(Pt.1)/SME, dated 7<sup>th</sup> May, 2008.
- 6.3. The opposite parties shall take appropriate steps expeditiously by extending the benefits and entitlements as stated above within a period of three months from the date of production of certified copy/downloaded copy of this Judgment.
- 6.4. The opposite parties are directed to calculate and disburse arrear salary of the petitioner. It is made clear that disbursement of arrear salary is to be made within aforesaid period, failing which the petitioner is entitled to be paid

simple interest at the rate of 9% per annum on such arrear salary.

- 6.5. The opposite parties are directed to pay current salary.
- 6.6. The Petitioner is entitled to be granted all consequential service and financial benefits.
7. Since the petitioner is stated to have been working in Nandini Bidyaniketan, Sidho, Cuttack, since 1991 and this matter has been waiting since 1999 for justice to be meted out to the petitioner, it is hoped that the opposite parties shall grant the reliefs as directed within the period so stipulated above.
8. In view of the factual scenario unfolded and for the discussions made with reasons assigned in the foregoing paragraphs, in the result, the writ petition stands allowed with the above observations and directions.
9. In the circumstances, there is no order as to costs.

**(MURAHARI SRI RAMAN)**  
**JUDGE**

Laxmikant