

IN THE HIGH COURT OF ORISSA AT CUTTACK
WPC(OAC) No.4641 of 2016

Bhaskar Chandra Behera

....

Petitioner

Mr. Subasish Satapathy, Advocate

State of Odisha & Others

....

Opposite Parties

Mr. M.K. Khuntia, AGA

CORAM:

JUSTICE M.S. RAMAN

ORDER

23.12.2022

Order No.

- 02.** 1. The Petitioner, Class-IV employee in the work-charged establishment under the Executive Engineer, Mayurbhanj Irrigation Division, Baripada in the district of Mayurbhanj, aggrieved by withdrawal of Grade pay and DA on minimum pay scale prescribed under Odisha Revised Scale of Pay Rules, 2008 and consequential recovery, approached the learned Odisha Administrative Tribunal.
2. At the time of hearing today, Mr. Subasish Satapathy, learned counsel for the Petitioner submits that in identical case namely, ***Dibakar Nayak and Others vs. State of Odisha & Others*** (OA No. 4339(C) of 2014, etc, learned Odisha Administrative Tribunal held as follows:-

“8. So far as order of recovery as shown in the abstract vide Annexure-10, learned counsel for the applicants referring to the decision of the Hon’ble Apex Court in the case of State of Punjab and Others vrs. Rafiq Masih, etc. (Civil Appeal No. 11527/2014), submitted that the order at Annexure-10 is illegal hence no recovery can be made from the applicants.

9. Before deciding that the applicants were not entitled to D.A. Which was being disbursed to them earlier and subsequent action not to extend such benefits to them opportunity ought to have been given to them to show

cause has not been done. Further it is seen that the applicants were getting the pay on the basis scale of pay and D.A. etc., which is ordered to be withdrawn as per Annexre-9. Instruction issued to calculate the emoluments of the applicants without taking into account the grade pay and D.A. is contrary to the decisions taken by the State-respondents earlier. Further non-inclusion of D.A., in the emoluments of the applicants cannot be sustained in the eye of law as discussed above.”

3. This Court in Dibakar Jena Vrs. State of Odisha, WPC(OAC) No. 4146 of 2014 vide order dated 21st October, 2022 referred to aforesaid order of the Odisha Administrative Tribunal and allowed the petition in favour of the petitioner therein.

4. Learned counsel for the Petitioner submitted that the aforesaid case is similar to the present case and, therefore, present petition is required to be allowed in favour of the Petitioner.

5. After going through the said order of this Court as also the learned Administrative Tribunal, the learned counsel for the State submitted that he has no objection.

6. The writ petition is disposed of in the same terms as contained in the orders dated 21st October, 2022 (Dibakar Jena Vrs. State of Odisha) and dated 05th April, 2016 of the Tribunal in Dibakar Nayak Vrs. State of Odisha, O.A. No.4339 (C) of 2014.

(M.S. Raman)
Judge

Aks