

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C)(OAC) No.2351 of 2015

Binaya Kumar Basantray Petitioner

-versus-

State of Odisha & Ors. Opposite Parties

**CORAM:
JUSTICE BIRAJA PRASANNA SATAPATHY**

**ORDER
27.06.2022**

Order No

- 01.** 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. The original application at the instance of the Petitioner bearing O.A. No.2351 of 2015 being transferred to this Court is re-registered as WPC(OAC) No.2351 of 2015. 3. Short background involved in this case is that on 18.02.1964 the Government of Odisha accepting a recommendation of the Government of India for grant of one advance increment to the Instructors, who have passed the National Trade Certificate Test in more than one allied trade, issued appropriate circular as appearing at Annexure-1. While the matter stood thus, on 16.09.1992 the Government of India in Industry Department clarified that the advance increment granted to the Instructors shall form part and parcel of the basic pay of an employee, which is always taken for fixation of pay, in the event the scale is revised by the Government. The Government in Industry Department again clarified that the advance increment so sanctioned is neither an incentive nor any type of allowance, but the

same shall form part and parcel of basic pay and will also count for D.A., A.D.A, H.R.A & other consequential benefits sanctioned by the Government of Odisha from time to time.

Pursuant to the above development, it appears, on consideration of the request of the Petitioner, who had already obtained two National Trade Certificate in his favour, the Government by its order dated 15.03.2000 vide Annexure-4 allowed one advance increment i.e. equal to the amount of increment drawn on 24.10.2007 in favour of the Petitioner. In grant of such increment it was also clarified that the advance increment so granted shall neither be an incentive nor any type of allowance, but shall form as part and parcel of basic pay and the same will also be count for D.A., A.D.A, H.R.A & other consequential benefits. It is alleged that while the matter stood thus and when the Petitioner was in enjoyment of the additional increment already added to basic the scale of pay, communications dated 11.03.2015 vide Annexure-5 and dated 30.04.2015 vide Annexure-6 were issued not only directing therein for withdrawal of such benefit but also directing for recovery of the benefit already granted in favour of the beneficiaries. It appears, both the recalling and recovery orders vide Annexures-5 & 6 respectively were issued directing therein that the same will be applicable on basis of the Finance Department Circular dated 27.04.1998 vide Annexure-7.

4. Mr. Mallick, learned counsel for the Petitioner referring to the order vide Annexure-7 i.e. the circular indicated hereinabove, contended that for the benefit already granted to the parties and since it has been included as part and parcel of the basic scale of pay, such benefit should not have been withdrawn. Secondly there is no question of recovery of such amount. Drawing the attention of this Court to the contents in the order vide Annexure-6 and

referring to the order vide Annexure-7 being the foundation of passing of the order vide Annexure-6, Mr. Mallick, learned counsel for the Petitioner submitted that the direction through the resolution vide Annexure-7 involves grant of advance increment to the Government servant in Class-II service. Mr. Mallick, learned counsel for the Petitioner therefore contended that since the circular covers the specific class of employees, it was otherwise not applicable to the Petitioner, who is in Class-III cadre. It is, in this view of the matter, Mr. Mallick, learned counsel for the Petitioner requested this Court for allowing the present application by setting aside the orders vide Annexure-5 & 6.

5. Mr. Panigrahi, learned Additional Standing Counsel, on the other hand, in his opposition to the submission made by Mr. Mallick, learned counsel for the Petitioner attempted to justify the orders vide Annexures-5 & 6 and referring to the development through the resolution dated 27.04.1998 vide Annexure-7 and further drawing the attention of this Court to the averments made in the paragraph nos.5 & 6 of the counter affidavit, submitted that there is no illegality in the impugned orders requiring to be interfered with.

6. Considering the rival contentions of the parties, taking into account the development through the orders vide Annexures-1, 2 & 3 and for the clear indication from time to time that grant of such benefit shall form part & parcel of the basic pay of an employee, this Court is of the opinion that grant of such benefit confers a right created in favour of the Petitioner and such right under no circumstances can be taken away. It is, at this stage, on reading of the order vide Annexure-7 this Court finds, in the resolution vide Annexure-7 the reference has been made:

“The scheme for grant of advance increments to Government servants in Class-II service for acquiring post graduate or any other substantially higher qualification than the minimum prescribed for the post either in the form of advance increments or one time lump sum payment hitherto is in force in accordance with the instructions indicated under reference. It is, however, noticed that the above decisions were taken at a time when there was dearth of highly qualified personnel. Now with the passage of time picture of growing unemployment reveals that highly qualified personnel in adequate number are available in open market.”

7. On reading of the aforesaid scheme, this Court finds, the scheme was applicable only to the Class-II employees. Therefore, the resolution vide Annexure-7 has no application to the Class ‘III’ employees in the Government establishment and the orders vide Annexures-5 & 6 are all passed on mechanical exercise of mind. It is, on both accounts this Court finds, the orders vide Annexures-6 & 7 are not sustainable in the eye of law. This Court, therefore, interfering with the orders vide Annexures-5 & 6 so far as the Petitioner is concerned, sets aside the same.

8. The writ petition succeeds. No cost.

(Biraja Prasanna Satapathy)
Judge

Sneha