

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.C. (O.A.) No.160 of 2016

Dr. Jagannath Panda

....

Petitioner

Mr. K. C. Sahu, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. Prasanna Kumar Mohanty,
Additional Standing Counsel

CORAM:

JUSTICE M.S. RAMAN

ORDER

18.07.2022

Order No.

01. 1. This matter is taken up through virtual/physical mode.
2. The Original Application No.160 of 2016 was filed before the State Administrative Tribunal, Odisha Bhubaneswar. After its abolition, the same has been transferred to this Court which is renumbered as WPC (OA) No.160 of 2016.
3. The Petitioner claiming to be serving as Ayurvedic Medical Officer at Government Ayurvedic Dispensary, Sorana in the district of Khurda approached by way of writ petition with a prayer to extend the benefit of Revised Assured Career Progression Scheme benefit with effect from 01.01.2013 on completion of 20 years of service. It is brought to the notice of this Court that Government of Odisha in Health & Family Welfare Department, Government of Odisha vide letter No.HFW-AYUR-AYURM-0039-2015-21167 dated 23.09.2015, addressed to the Director, AYUSH, Odisha, Bhubaneswar, specifically mentioned that since the Finance Department would take a policy decision on this score, it shall have the uniform applicability to all similarly situated cases

and in the said letter, it has been clarified by the Under Secretary to Government that the Director is requested to await final decision in this regard.

4. The Odisha Administrative Tribunal vide order dated 27.01.2016 though issued notice directing for filing counter affidavit, as yet no counter affidavit has come to be filed by the Opposite Parties. Since the matter has been pending since 2016, no fruitful purpose would be served to further adjourning the matter. However, a Division Bench decision of this Court vide judgment dated 29.10.2021 in the case of ***State of Odisha and others –v- Bikash Ranjan Dash and another***, reported in ***2021 SCC OnLine Ori 1839*** has been cited at the bar with regard to entitlement of Revised Assured Career Progression vis-a-vis upgradation of the posts in the Government from Class-II to Class-I. It has been clarified, inter alia, as follows:-

“XX XX XX XX

(vi) (vi) The benefits granted to the employees of TBA under the ORSP Rules, 1998 or the ACP granted under the ORSP Rules, 2008 cannot be conflated with the entitlements in terms of the RACPS. The objective of introducing the RACP Resolution dated 6th February 2013 as reflected in para-1 of the scheme attached to the Resolution is to overcome the situation created by the continuance of an employee for a long period in his entry grade in a single cadre “in absence of promotion”. Therefore, the authorities are precluded from interpreting the RACPS Resolution by comparing its scope of applicability with some other service/financial benefit. The financial benefits granted in shape of TBA & ACP under the different pay revision rules are statutory in nature and do not constitute a bar for availing the benefit of RACPS.

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34. Upon carefully examining the resolution dated 6th February 2013, it is seen the above upgradation effected in 2009 as a result of restructuring of the cadre cannot be construed to be an upgradation which would deny the benefit of the RACPS which in any event was not in force at the relevant point in time. For the same reason, the TBA granted earlier in 2005 cannot be considered to be as an upgradation which would deny the Opposite Parties the benefit of the RACPS. In other words, merely because the employee had availed a TBA or ACP prior to 2013, he cannot be denied to the benefit of the RACPS. Unless a person

has already got a promotion within time period of 10, 20 and 30 years in the manner indicated, he cannot be denied the RACPS benefit.”

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In view of the Division Bench decision of this Court, which came in the year 2021, it would be mete and proper to direct the Petitioner to approach the Opposite Party No.1- Principal Secretary, Health & Family Welfare Department, Odisha, Bhubaneswar along with certified copy of this order within a period of four weeks from today. In the event the Petitioner approaches the Opposite Party, the said authority shall take a decision in the light of the judgment of this Court in the case of ***State of Odisha and others –v- Bikash Ranjan Dash and another*** (supra) and reasoned order shall be communicated to the Petitioner forthwith.

5. The entire exercise is required to be concluded within a period of three months from the date of production of certified copy of this order.

6. With the aforesaid observation and direction, the writ petition is disposed of.

Issue urgent certified copy as per rules.

(M.S. Raman)
Judge

Jyostna