

ORISSA HIGH COURT: CUTTACK

WPC (OAC) NO. 397 OF 2013

In the matter of an application under Article 226 of the
Constitution of India.

AFR

Rama Chandra Satapathy Petitioner

-Versus-

State of Odisha and others Opp. Parties

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

For Opp. Parties : Mr. M.K. Balabantaray,
Standing Counsel

P R E S E N T:

THE HONOURABLE DR. JUSTICE B.R.SARANGI

Date of hearing and judgment: 23.02.2022

DR. B.R. SARANGI, J. The petitioner, who was working as Junior Engineer, has filed this writ petition challenging denial of two advance increments, which he is entitled to, in view of resolution dated 14.04.2008 of the Government of Orissa in Finance Department for acquisition of higher qualification.

2. The factual matrix of the case, in brief, is that the petitioner, being a Diploma Holder in Civil Engineering, was appointed as Junior Engineer under the Water Resources Department and joined in the said post in October, 1992. The petitioner was initially posted at Kalimela Irrigation Division. Thereafter, the services of the petitioner were placed under the Panchayati Raj Department in the year, 1994. From that date, he was discharging his duty under the Panchayati Raj Department having lien with the Water Resources Department. Therefore, the petitioner is a regular employee of the Water Resources Department. While working at different places as Junior Engineer under the Panchayati Raj Department, the petitioner was posted at Kania under opposite party no.4. The petitioner sought permission on 29.04.2004 for taking admission in B.Tech (Civil Engineering) at OIEM, Angul Study Centre under JRN Rajasthan Vidyapitha (Deemed) University in distance education mode, and also for computer education, which was accepted by the

authority on 02.02.2005. The authorities also permitted the petitioner to go for higher studies. After the petitioner acquired the higher degree, as per the Government of Orissa in Finance Department resolution dated 14.04.2008, he was entitled to get two advance increments for having degree qualification under ORSP Rules, 1998. As per the said resolution, two advance increments will have to be made available from the date of award of such degree or with effect from 01.04.2008 whichever is later. More so, the proposal for grant of advance increments should be disposed of at the level of the concerned Administrative Department. Even though the petitioner acquired the B.Tech (Civil Engineering) from the Deemed University under the University Grants Commission on distance mode, the petitioner has not been extended with two advance increments, as per the resolution passed by the Government. Therefore, he has approached this Court in the present writ petition.

3. Mr. D.N. Rath, learned counsel for the petitioner contended that the petitioner though acquired higher qualification by taking due permission and in terms of the resolution of the Government he is entitled to get two advance increments, but he has been denied such benefits on the plea that he had not received prior permission from the competent authority and as per the clarification of AICTE also the benefit is not admissible to him. It is further contended that the petitioner had been granted permission, vide letter dated 02.02.2005 in Annexure-7, and, as such, there is also no requirement to receive AICTE approval of the institution from which he has prosecuted his studies, in view of the letter dated 17.02.2004 of the Government of India, Ministry of Human Resources Development, Department of Secondary and Higher Education. More so, this question has no more remained *res integra*, in view of the judgment passed by this Court in **Bairagi Charan Nayak v. State of Orissa** (W.P.(C) No.

12566 of 2005 and batch disposed of on 24.09.2012). Therefore, it is contended that denial of benefit of grant of two advance increments, being illegal, arbitrary and contrary to the settled position of law, cannot be sustained. As such, the petitioner seeks direction to the opposite parties to extend such benefit to the petitioner in accordance with law.

4. Mr. M.K. Balabantaray, learned Standing Counsel for the State, relying upon the counter affidavit filed by the State, contended that since the petitioner has not received any permission for prosecuting higher studies, the benefit is not admissible to him and, as such, the institution, from which the petitioner has received the degree qualification, has not been approved by the AICTE. Thereby, the claim made by the petitioner for grant of two advance increments in terms of the resolution issued by the Government cannot also be sustained.

5. This Court heard Mr. D.N. Rath, learned counsel for the petitioner and Mr. M.K. Balabantaray, learned Standing Counsel appearing for the State opposite parties by hybrid mode, and perused the record. Pleadings having been exchanged between the parties, with their consent this writ petition is being disposed of finally at the stage of admission.

6. There is no dispute that the petitioner had possessed diploma qualification in Civil Engineering and subsequently he acquired the higher qualification, i.e. B.Tech (Civil Engineering), while he was in service. Therefore, the sole question to be considered in the instant writ petition is, whether the petitioner, while in service, had been accorded permission by the higher authority to acquire higher qualification; and if such permission was accorded and the petitioner had acquired such higher qualification, whether he is entitled to get the benefit of two advance increments or not; and that the institution, from which the higher degree has been acquired, is required to be recognized by AICTE or not, for

the purpose of grant of such benefits. Furthermore, if similarly circumstanced persons have been extended with such benefit, can the authority deny the same to the petitioner?

7. In view of such position, this Court, having heard learned counsel appearing for the parties and gone through the records, found that the petitioner, while continuing as Junior Engineer at Kania under Panchayati Raj Department, having lien with the Water Resources Department, sought permission, vide letter dated 29.12.2004, to go for higher studies and such permission for admission in B.Tech (Civil Engineering) at OIEM, Angul, Study Centre under JRN Rajasthan Vidyapitha (Deemed) University in distance education mode and also for computer education, was accorded and the petitioner was permitted for higher studies, vide letter dated 02.02.2005 under Annexure-7. The petitioner, having been granted permission by the competent authority, proceeded to prosecute his higher studies

and acquired degree qualification. The course, in which the petitioner got admitted, has been duly recognized and to that effect, a document has been placed under Annexure-8 dated 17.02.2004, which deals with the recognition of courses conducted by the University through Academic Centers/ Study Centers/ Off Campus Centers. In the said Annexure-8, referring to the letter dated 10.02.2004, it has been categorically stated that all degrees/diplomas awarded by the universities established by an Act of Parliament for State Legislature, institutions deemed to be Universities under Section 3 of the U.G.C. Act, 1956 and institutions of National Importance declared under an Act of Parliament, stand automatically recognized for purposes of employment under the Central Government. No formal orders recognizing such degrees/ diplomas are necessary to be issued.

8. In view of such position, the objections raised in the counter affidavit, that the petitioner

has not obtained prior permission from the competent authority, as per the clarification issued by AICTE, for which he has been denied with two advance increments, is absolutely misconceived one and, as such, the same cannot be sustained in the eye of law.

9. In **Bairagi Charan Nayak** (supra), this Court has already held in paragraph-9 of the judgment to the following effect:-

“9. In view of the aforesaid decision of the Supreme Court in Bharathidasan University (supra) and the aforesaid Notification dated 5th April, 2006 issued by the Central Government in the Ministry of Human Resource Development clarifying that it is not required for a ‘Deemed University’ established under Section 3 of the UGC Act to obtain prior approval of AICTE for starting a department or unit as an adjunct to the university itself to conduct/introduce technical education courses or programmes of its choice, the apprehension of the petitioners in these writ petitions do not arise. Therefore, after the decision rendered by the Supreme Court in Bharathidasan University (supra) and aforesaid Notification issued by the Central Government clarifying the matter, it is not necessary on the part of this Court again to issue a direction as sought for in these writ petitions.”

Therefore, grant of prior approval of AICTE for starting a department or unit as an adjunct to the university itself to conduct/introduce technical education courses or programmes of its choice, is of no relevance, in

view of the resolution dated 17.02.2004 issued by the Government of India, Ministry of Human Resources Development Department of Secondary and Higher Education in Annexure-8.

10. In addition to the above, the persons named at Sl. No.8-Ashok Kumar Biswal, Sl. No. 19-Kumuda Chandra Dehury, Sl. No.26- Akshay Kumar Behera and Sl. No. 30-Upendra Patra of Annexure-4 dated 12.11.2012, having acquired similar qualification, have been granted with the benefit of two advance increments, whereas the petitioner, even though stood on similar footing, has been denied such benefit, which violates Article 14 of the Constitution of India. Needless to say, acquisition of higher qualification, while a person is in employment, is beneficial for the institution itself. Therefore, non-consideration of the claim of the petitioner, for grant of two advance increments as due and admissible to him in accordance with the resolution passed by the Government, in its proper

perspective, amounts to arbitrary exercise of power by the authority and hence cannot be sustained in the eye of law.

11. 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 two advance increments in terms of the resolution of the Government, as referred to above, from the date he acquired the higher degree qualification. The same shall be computed by the opposite parties and paid to the petitioner, as early as possible, preferably within a period of four months from the date of communication of this judgment.

12. In the result, the writ petition is allowed. No order as to costs.

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DR. B.R. SARANGI,
JUDGE

Orissa High Court, Cuttack
The 23rd February, 2022, Arun/GDS