

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) Nos. 3396,3398,3399,3402,3404,3410,3620,
3621,3622,3623,3624,3625, 3626,3627,3628, 4294,
4295,4296, 4300, 4301, 4302, 4303,4304,4305,4309,
4310 & 4311 of 2013.

WPC(OAC) No.3396 of 2013

In the matter of an application under Section 19 of the
Administrative Tribunal's Act, 1985.

Narayan Senapati

.....
....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

For Petitioner :

M/s. Manoj Kumar Mishra,
Sr. Counsel, D.K. Pattanaik,
Advocate

For Opp. Parties :

M/s. M.K. Balabantaray
Standing Counsel

PRESENT:

THE HON'BLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 01.04.2022 and Date of Judgment: 12.05.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. Manoj Kumar Mishra, learned Senior Counsel along with Mr. D.K. Patnaik appearing on behalf of the Petitioner and Mr. M.K.Balabantaray, learned Standing Counsel appearing for the State-Opp. Parties.

3. Since similar issue has been raised in all these batch of Writ Petitions, all were taken up simultaneously for hearing and disposed of vide this common order.

4. All these Writ Petitions have been filed with a prayer to quash the order dated 19.7.2013 under Annexure-10 and for a direction to the Opp. Parties to allow the scale of pay attached to a Class-III post as per the ORSP Rules, 2008.

5. It is submitted that all the Petitioners while working in the establishment of Executive Engineer, Bhubaneswar (R & B), Divn No.-1, they were brought over to the regular establishment in Works Department and they joined in the said establishment from the date of issuance of the order of regularization as Work Sarkar. It is submitted that subsequently on introduction of the ORSP Rules, 1998, the Scale of Pay of Work Sarkar which is of a Class-III scale, was fixed at Rs.2650-4,000/-. It is also submitted that on coming into force of the O.R.S.P. Rules, 2008, the Scale of Pay of Work Sarkar working in the different Departments of the Government was fixed at Rs.4440-7440 with Grade Pay of Rs.1650/- which was the corresponding Pay Scale of Rs.2650-4000/-, which was paid under O.R.S.P. Rules, 1998. It is further submitted that while the matter stood thus, Work Sarkars working in the Housing and Urban Development Department

(hereinafter referred to as “the H & U.D Deptt.”), Govt. of Odisha approached the learned Industrial Tribunal in I.D. Case No.45 of 1992 claiming the scale of pay allowed in favour of Junior Clerk in the Government Department. Learned Tribunal vide award dated 30.11.2000 directed the H & UD Deptt. to allow the scale of pay applicable to the post of Junior Clerk in favour of the workmen working in the said Deptt. in the post of Tax Collector/Licence Moharir/Law Moharir/Work Sarkar/Amin. It is submitted that the award passed by the learned Tribunal in I.D. Case No.45 of 1992 was challenged before this Court in W.P.(C) No.15593 of 2007 and this Court vide order dated 24.9.2009 dismissed the said Writ Petition and thereby confirmed the award passed by the learned Tribunal. It is further submitted that the State in the H & UD Deptt. thereafter challenged the same before the Hon’ble Apex Court in SLP (C) No.19218 of 2011. But, the Hon’ble Apex Court also dismissed the said Special Leave Petition vide order dated 28.11.2011 under Annexure-4.

6. Mr. Mishra, learned Sr. Counsel submitted that after confirmation of the order passed by the learned Tribunal in I.D. Case No.45 of 1992 by this Court as well as by the Hon’ble Apex Court, the Work Sarkars working in the H & U.D. Deptt. were allowed the Scale of Pay of Rs.5,200-20,200/- with G.P of Rs.1900 vide order at Annexure-5. Mr. Mishra, learned Senior counsel appearing for the Petitioner further submitted that taking into

account the benefit of the Scale of Pay allowed in favour of the Work Sarkar working in the H. & UD Deptt., the Petitioners in all these cases moved the Works Deptt. with a prayer to allow them the Scale of Pay as allowed in favour of the Work Sarkars working in H & UD Deptt. The Work Sarkars Union also submitted representation on 18.5.2012 under Annexure-6 with a request to allow the Scale of Pay of Rs.5,200-20,200 with G.P of Rs.1900 in favour of the Work Sarkars working in the Works Deptt. of the Government. It is further submitted that on receipt of such representation, Opp. Party No.1 vide his letter dated 14.12.2013 under Annexure-6 requested Opp. Party No.2 to examine the demands of the Work Sarkars of the Works Deptt. in connection with anomaly in their scale of pay. It is also submitted that in spite of the claim raised by the Petitioners and the request made under Annexure-8, when the grievance of the Petitioners was not considered by allowing the scale of pay as allowed in favour of the Work Sarkar working in H & UD Deptt., the Petitioners approached the learned Tribunal. It is submitted that learned Tribunal when directed Opp. Party No.1 to consider the claim of the Petitioners vide order dated 13.3.2013 Government-Opp. Party No.1 without proper appreciation of the said claim and the admitted anomaly in the scale of pay of Work Sarkar working in H & U.D. Department vis-à-vis Works Deptt., rejected the said claim vide the impugned order dated 19.7.2013 under Annexure-10.

Mr. Mishra, accordingly submitted that since similarly situated Work Sarkar working in H & U.D. Deptt. were allowed the Scale of Pay of Rs.5,200-20,200/- with G.P of Rs.1900, the rejection of the claim of the Petitioners who are similarly situated Work Sarkar working in the Works Deptt., is prima facie illegal and violative of Article 14 & 16 of the Constitution of India. It is also submitted that the post of Work Sarkar as admitted by the Opposite Parties is a Class-III post and the said admission is reflected in the information provided under R.T.I vide Annexure-3 series and Annexure-4. It is also submitted that the Work Sarkars working in different Departments of the Government were getting similar Scale of Pay in terms of the O.R.S.P Rules, 1998 and their pay scale was fixed to Rs.4,400-7,440 with Grade Pay of Rs.1650/- as per O.R.S.P Rules, 2008. But, in view of the award passed by the learned Tribunal in I.D. Case No.45 of 1992, which was confirmed by this Court as well as by the Apex Court, the Work Sarkars working in H & U.D. Department were allowed the Scale of Pay of Rs.5,200-20,200 with Grade Pay of Rs.1900/- as provided in O.R.S.P Rules, 2008 and the said scale is applicable to a Class-III post.

7. In view of such submissions made by Mr. Mishra, learned Senior Counsel, he prayed for interference of this Court with regard to illegal rejection made by Opp. Party No.1 in his order dated 19.7.2013 under Annexure-10.

8. Mr. Mishra, in support of his aforesaid stand relied on a decision of the Hon'ble Apex Court reported in the case of ***State of Punjab & Others Vs. Senior Vocational Staff Masters Association and Others***, reported in **(2017) 9 S.C.C 379**. Mr. Mishra, learned counsel appearing for the Petitioner submitted that the Hon'ble Apex Court in the said reported decision taking into account the provision contained in Article 14-18 of the Constitution of India as well as the Principles of Equality contained in Articles 38,39,39-A, 43 & 46 of the Constitution held that no orders causing civil consequences can be passed without observing the Rules of natural justice. Hon'ble Apex Court in the said reported decision held as follows:-

“23. *It is a cardinal principle of law that government has to abide by rule of law and uphold the values and principles of the Constitution. Respondents herein alleged that creating an artificial distinction between the persons in the same cadre would amount to violation of Article 14 i.e. equality before law and hence, such an act cannot be sustained. The doctrine of equality is a dynamic and evolving concept having many dimensions. Articles 14-18 of the Constitution, besides assuring equality before the law and equal protection of the laws, also disallow discrimination which lacks the object of achieving equality, in matters of employment. It is well settled that though Article 14 forbids class legislation but it does not forbid reasonable classification. When any rule of statutory provision providing classification is assailed on the ground that it is contrary to Article 14, its validity can be sustained if it satisfies two tests, namely, that the classification was to be based on an intelligible differentia which distinguishes persons or things grouped together from the others left out of the group, and the differentia in question must have a reasonable nexus to object sought to be achieved by the rule or statutory provision in question. In*

other words, there must be some rational nexus between the basis of classification and the object intended to be achieved by the Statute or the Rule.

24. It is evident that at the time of initial appointment, both the degree holders and the Diploma holders were appointed by a common process of selection where for the engineering trade a degree was required and for the non-engineering trade a diploma was considered as the appropriate qualification. A common advertisement was issued and a common process of selection led to the appointment of all persons who were designated as Vocational Masters. They were appointed on a pay scale higher than the general lecturers. They continued to draw a higher scale till the year 1978 when the pay scale of the general lecturers was brought at par with the pay scale of the Vocational Masters. It is only in the year 1995 that an effort was made by the State Government to create a distinction between the degree holders as vocational lecturers and diploma holders as vocational masters.

26. The principle of equality, is also fundamental in formulation of any policy by the State and the glimpse of the same can be found in Articles 38, 39, 39A, 43 and 46 embodied in Part IV of the Constitution of India. These Articles of the Constitution of India mandate that the State is under a constitutional obligation to assure a social order providing justice- social, economic and political, by inter alia, minimizing monetary inequalities, and by securing the right to adequate means of livelihood and by providing for adequate wages so as to ensure, an appropriate standard of life, and by promoting economic interests of the weaker sections. Meaning thereby, if the State is giving some economic benefits to one class while denying the same to other then the onus of justifying the same lies on the State specially in the circumstances when both the classes or group of persons were treated as same in the past by the State. Since Vocational Masters had been drawing same salary as Vocational Lecturers were drawing before the application of 4th pay commission, any attempt to curtail their salary and allowances would amount to arbitrariness which cannot be sustained in the eyes of law if no reasonable justification is offered for the same.

27. We are conscious of the fact that a differential scale on the basis of educational qualifications and the nature of duties is permissible. However, it is equally clear to us that if two categories of

employees are treated as equal initially, they should continue to be so treated unless a different treatment is justified by some cogent reasons. In a case where the nature of duties is drastically altered, a differential scale of pay may be justified. Similarly, if a higher qualification is prescribed for a particular post, a higher scale of pay may be granted. However, if the basic qualifications and the job requirements continued to be identical as they were initially laid down, then the Court shall be reluctant to accept the action of the authority in according a differential treatment unless some good reasons are disclosed. Thus, the decisions relied upon by learned senior counsel are clearly distinguishable and are not applicable to the facts of the present case.

29. It is by now well settled that no orders causing civil consequences can be passed, without observing rules of natural justice as it was held in *Bhagwan Shukla vs. Union of India & Ors.* AIR 1994 SC 2480 wherein it was held as under:

“3. We have heard learned counsel for the parties. That the petitioner's basic pay had been fixed since 1970 at Rs. 190 p.m. is not disputed. There is also no dispute that the basic pay of the appellant was reduced to Rs. 181 p.m. from Rs. 190 p.m. in 1991 retrospectively w.e.f. 18.12.1970. The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not, even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There, has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the concerned to notice and giving him a hearing in the matter. Since, that was not done, the order (memorandum) dated 25.7.1991. which was impugned before the Tribunal could not certainly be sustained and the Central Administrative Tribunal fell in error in dismissing the petition of the appellant. The

order of the Tribunal deserves to be set aside. We, accordingly, accept this appeal and set aside the order of the Central Administrative Tribunal dated 17.9.1993 as well as the order (memorandum) impugned before the Tribunal dated 25.7.1991 reducing the basic pay of the appellant From Rs. 190 to Rs. 181 w.e.f. 18.12.1970."

9. Mr. Mishra, learned counsel appearing for the Petitioner also relied on a decision of the Hon'ble Apex Court in the case of ***Randhir Singh Vs. Union of India and Others***, reported in ***A.I.R 1982 S.C 879*** which deals with the question of equal pay for equal work. Hon'ble Apex Court in the said decision, in Para 6-8 held as follows:-

6. *No doubt, equation of posts and equation of pay are matters primarily for the Executive Government and expert bodies and not for the courts, but where all things are equal that is, where all relevant considerations are the same, persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments. Of course, if officers of the same rank perform dissimilar functions and the powers, duties and responsibilities of the posts held by them vary, such officers may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature is the same.*

7. *There can be and there are different grades in a service, with varying qualifications for entry into a particular grade, the higher grade often being a promotional avenue for officers of the lower grade. The higher qualifications for the higher grade, which may be either academic qualifications or experience based on length of service, reasonably sustain the classification of the officers into two grades with different scales of pay. The principle of equal pay for equal work would be an abstract doctrine not attracting Article 14 if sought to be applied to them.*

8. *Construing of Articles 14 and 16 in the light of the Preamble and Article 39(d), it is clear that the principle "equal pay for equal work" is deducible from those Articles and may be properly applied to cases of unequal 300 scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer."*

10. Mr. Mishra, accordingly submitted that the Petitioners are eligible and entitled to get the benefit of Scale of Pay as was allowed in favour of the Work Sarkar working in H & U.D. Deptt. i.e. the pay scale of Rs.5,200-20,200 with G.P of Rs.1900/-.

11. Mr. M.K. Balabantaray, learned Standing Counsel made his submission relying on the stand taken in the counter affidavit. But, though Mr. Balabantaray did not dispute the award passed by the learned Tribunal in I.D. Case No.45 of 1992 and the confirmation of the same by this Court as well as by the Hon'ble Apex Court and the extension of the benefit of Scale of Pay vide order dated 16.3.2012 under Annexure-5, but submitted that vide the said order under Annexure-5, through the aforesaid scale of pay was allowed in favour of the Work Sarkar working in the H & U.D Deptt., but it was indicated that the said extra financial burden will be borne by the concerned urban local bodies. But in case the claim of the petitioners will be allowed, who are working in the Works Deptt., the Govt. will be directly burdened with the extra demand that has to be borne by it. It is further submitted that the Petitioners only after coming to know that the scale of pay of work Sarkar working in the H & U.D. Department has been enhanced to Rs.5,200-20,200 vide order under Annexure-5, which was allowed in terms of award passed by the learned Industrial Tribunal, they claimed similar benefit . Accordingly, it is submitted that the

claim of the present petitioners has been rightly rejected vide impugned order dated 19.7.2013 under Annexure-10 and no interference is called for by this Court in the said order.

12. Mr. Balabantaray further submitted that creation and abolition of a post are clearly executive function and this Court cannot arrogate itself the power of the executive or the legislative. It is also submitted that this Court is not competent to issue any direction to pay any salary component to its regular employees as these are purely executive functions.

13. Mr. Balabantaray in support of his aforesaid submission relied on a decision of the Hon'ble Apex Court passed on 16.11.2006 in the case of **Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs Pharmaceuticals Ltd.**

14. Heard learned counsel for the parties. Perused the materials available on record.

15. It is not disputed that the workmen working in different Department of the Government were allowed the Scale of Pay of Rs.2650-4000/- as provided under O.R.S.P. Rules, 1998. It is also not disputed that the scale of pay of Rs.2650-4000/- was fixed in the Pay Scale of Rs.4,440-7440/- with Grade Pay of Rs.1650/- under O.R.S.P. Rules, 2008. It is also not disputed that the post of Work Sarkar is a Class-III post. Therefore, in view of the order passed by the Govt. in the H & U.D. Department on 16.3.2012 allowing the scale of pay of Rs.5,200-20,200 with G.P. of Rs.1900/- in favour of the similarly situated Work Sarkar in the Government in the said Department, the order dated 19.7.2013 vide Annexure-10 amounts to non-compliance of the provision under Article 14 & 16 of the Constitution of India as well as the provisions of equality

contained in Article 39 of the Constitution of India. The said action is also contrary to the principle of equal pay for equal work as held by the Hon'ble Apex Court in the case of Randhir Singh (supra). The decisions relied on by the learned Standing Counsel is not applicable to the facts of the present case as the said case relates to regularization of temporary employees who are working as D.L.Rs.

16. Therefore, in view of the facts narrated above and the decisions relied on by Mr. Mishra, learned Senior Counsel appearing for the Petitioner, this Court is of the considered opinion that Opp. Party No.1 illegally rejected the claim of the Petitioners to get the benefit of the scale of pay of Rs.5,200-20,200/- with Grade Pay of Rs.1900/- vide impugned order 19.7.2013 under Annexure-10.

17. This Court accordingly while quashing the same, directs the Opp. Parties to extend the benefit of the scale of pay of Rs.5,200-20,200/- with G.P of Rs.1900/- in favour of the Petitioners herein. This Court further directs the Opp. Parties to sanction and disburse the differential salary as due and admissible in favour of the Petitioners within a period of three months from the date of receipt of this order.

18. All the Writ Petitions are accordingly disposed of with the aforesaid observations and directions.

19. There shall be no order as to costs.

20. Photocopy of this order be placed in the connected cases.

(Biraja Prasanna Satapathy)
Judge