

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No.2457 of 2013

Bansidhar Khatua

....

Petitioner(s)

Mr.P.C.Acharya, Advocate

-versus-

State of Odisha & Ors.

....

Opposite Party(s)

Mr.R.K.Samal, Standing
Counsel, S & M.E. Deptt.

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
10.03.2022**

Order No.

1.

1. Heard learned counsel appearing for the parties.

2. This application involves the following prayer:

“The petitioner therefore prays that your Lordships would be graciously pleased to admit this application, call for records from the opp. parties, issue notice to the parties and after hearing the parties allow the same with cost and pass an order and directing the opp. parties to sanction T.B.A. scale with effect from 1.1.96, 2nd ACP from 1.1.06 and 3rd ACP from 1.12.10 in favour of the petitioner or may pass any other order as this Hon’ble court may deem fit and proper’

Or

Direct the opp. party no.1 to take a decision in this matter within a specified period;”

3. Taking this Court to the date chart prepared in terms of the pleading in the application transferred here to be decided in High Court, Mr.Acharya, learned counsel appearing for the petitioner submitted that initially the petitioner was appointed as an Assistant Teacher in Padmalochan High School, Badachuruni on 1.12.1980. While continuing as such, the School involved was entitled to Grant-In-Aid from 1.3.1986. There is consequential improvement in the payment of

the petitioner from such entitlement. In the meantime, petitioner became a B.Ed. degree holder on 7.6.1994. School was taken over and petitioner became a Government employee thereafter. It is for the introduction of Assured Career Progression, in terms of Rule 14 of ORSP Rules, 1998 came into operation. Here, the petitioner claims for introduction of the above, petitioner was entitled to first career advancement on completion of 15 years of service claiming to be counted from 1.12.1980 i.e. at least from 01.01.1996. For making the petitioner entitled to first Career Advancement Progression from 1.11.2013 counting the petitioner's service from the date of his entitlement to higher scale, being aggrieved by such action and the action of the competent authority finding contrary to the provision, petitioner approached by way of this application to the Odisha Administrative Tribunal, Cuttack Bench, Cuttack. On being transferred, the matter is taken up for hearing.

4. Taking to series of development taken place in the meantime, petitioner attempted to the claim benefit involved upon completion of 15 years of service from the date of his initial appointment and as a consequence, the petitioner claims in the meantime, petitioner should have been entitled to the benefit at least from 1.1.1996 and not from 1.11.2013 as decided by the competent authority. It is at this stage of the matter, taking this court to a decision of Division Bench of this Court in the case of **Gopinath Rout Vrs. State of Orissa & Ors** (O.J.C.No.4336 of 1996) decided on 7.2.1997 petitioner claimed application of the judgment to his case and thus attempted to justify his claim for being entitled to the benefit involved from 1.1.1996.

5. In his opposition, Mr.Samal, learned Standing Counsel for School & Mass Education Department appearing for the contesting opposite party no.3 while not disputing that petitioner's initial appointment was on 1.12.1980 but, however, taking this Court to the development taken place since 1.3.1986, the date when the School involved became entitled to Grant-In-Aid, further the School since was taken over in

1994 attempted to justify the entitlement of the petitioner to higher scale from 1.11.1998 and taking into account the continuation of the petitioner in one scale from 1.11.1998 on completion of 15 years, first Career Advancement Progression from 01.11.2013. Mr.Samal, thus contended that the State is justified in fixing the date of entitlement of benefit involving the petitioner from 1.11.2013. It is further taking this Court through the plea in paragraph-7, learned Standing Counsel for the School & Mass Education Department attempted to establish the case of the opposite parties.

6. Considering the rival contentions of the parties, this Court finds undisputedly the rule governing the field remains as follows:

“8(2). Except class-IV employees, Drivers and Junior Engineers as specified in the Second Schedule other categories of employees on completion of 15 years of service in a particular post/grade as on 1.1.96 or thereafter shall be eligible to time bound advancement scale of pay only in the revised scale of pay as specified in Column(4) of the Third Schedule against revised scale shown in Column(3) of the said Schedule.”

7. Further, there also remains no doubt that for the first entitlement of benefit on completion of 15 years, petitioner in the above premises is entitled to next benefit on completion of 25 years and the third one on completion of 30 years. Next question for consideration here is looking to the provision under Rule 8(2) quoted hereinabove, if the consideration of 15 years continuance of the petitioner is from the date of appointment as an Assistant Teacher in a private School or from the date of petitioner's institution entitled to Grant-In-Aid from 1.3.1986 or from the date when the petitioner was entitled to higher scale on 1.11.1998?

8. Considering the prescription in the provision quoted hereinabove, the provision clearly indicates a person will be entitled to first benefit on completion of 15 years of service on his continuance in any post mentioned in the schedule for 15 years. Undisputedly, petitioner is continuing in the post of Assistant Teacher on 1.12.1980. But, however, rule being applicable to Schools under Government control or even

aided for the extension of such provision to aided Schools also, this Court here finds the School where the petitioner was appointed became an aided School with effect from 1.3.1986. For the clear provision and for the petitioner's institution having been brought to the Grant-In-Aid purview since 01.03.1986 for the opinion of this Court, petitioner's 15 years continuance in service as an Assistant Teacher should have been considered taking the date 1.3.1986, when the School became an aided School, claim of State that Petitioner became entitled to such benefit after 15 years of his entitlement to higher scale while continuing as an Assistant Teacher remain immaterial. For the above view of this Court and as the petitioner is continuing in service for 15 years in a particular post, it is required to be calculated since 1.3.1986. In such event the petitioner must be entitled to the benefit after completion of 15 years at least from April, 2001. This Court here finds the decision making the petitioner entitling to T.B.A. scale from 1.11.2013 is erroneous and on wrong implementation of the provision applicable here. Keeping this in view, this Court interfering with the action of the public authority entitling the petitioner T.B.A. scale from 1.11.2013 declaring the same bad, holds that the petitioner is entitled to T.B.A. scale on completion of 15 years in April, 2001. This Court accordingly directs the competent authority to calculate the entitlement of T.B.A. scale involving the petitioner from April, 2001 and release the arrear. In the process, the competent authority shall also consider the petitioner's next entitlement on completion of 25 years further also to consider third entitlement of the petitioner on completion of 30 years. Since the petitioner has already completed more than 30 years of service as an Assistant Teacher in the meantime, entering into whole calculation after deducting payment already made to the petitioner, balance amount be released in favour of the petitioner however also with interest @ 5% per annum allthrough. Petitioner's scale of pay also be accordingly revised keeping in view the revision scale of pay intervened in the meantime. Consequential pensionary re-fixation may also be entered into.

Petitioner be also entitled to interest on arrear on enhanced pension, if any, @ 5% per annum since the date of such entitlement. Entire action shall be completed within a period of three months from the date of communication of certified copy of this order by the petitioner and release the same within a period of fifteen days thereafter. Failure of release of the arrear along with interest within the time stipulated hereinabove, petitioner is entitled to interest @ 10% from the date of entitlement by virtue of this order.

9. The application succeeds with the observation and direction made hereinabove.

(Biswanath Rath)
Judge

Sks

