

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No. 934 of 2017

Pranabandhu Bhurubhuri

.....

Petitioner

Mr. L.K. Mohanty, Adv.

Vs.

State of Odisha and others

.....

Opposite Parties

Mr. R.C. Pattnaik, Standing Counsel S&ME

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

26.08.2022

Order No.

01.

This matter is taken up through hybrid mode.

2. Heard Mr. L.K. Mohanty, learned counsel for the petitioner and Mr. R.C. Pattnaik, learned Standing Counsel for School and Mass Education Department.

3. The petitioner has filed this writ petition seeking direction to the opposite parties to revise his pension by granting 2nd TBA from December, 2005 and 3rd ACP from December, 2010 along with arrears. He further seeks direction to refund the withheld amount of gratuity of Rs.11,760/- with 18% interest till actual payment is released by quashing the order dated 30.12.2011 under Annexure-5 and further seeks direction to the opposite parties to calculate and release the arrears as due and admissible within a stipulated time.

4. Mr. L.K. Mohanty, learned counsel for the petitioner contended that the petitioner was appointed as Assistant Teacher on 15.12.1980 by the D.I. of Schools, Boudh and posted to Chhapara, L.P. School. While continuing as such, the petitioner passed C.T. examination on 02.09.1986 and became trained graduate. As per Rule-8(2) of ORSP Rules, 1998, which was notified by the State Government w.e.f. 01.01.1996, an employee

on completion of 15 years of service in one post/grade without any promotion shall be entitled for time bound advancement scale @ one increment. The petitioner was granted with said benefit w.e.f. 01.01.1996 and accordingly his pay was revised. After introduction of ORSP Rules, 2008, the pay of the petitioner was revised accordingly. While revising his pay, the benefit of TBA dated 01.01.1996 was modified w.e.f. 01.11.2002, vide order dated 21.01.2009, issued by the D.I. of Schools, Boudh. The petitioner was entitled for 2nd TBA w.e.f. December, 2005 on completion of 25 years of service. But till his retirement on 31.03.2011, the said benefit was not extended to him by the opposite parties without any cogent reason. The petitioner is also entitled to get 3rd ACP, as per ORSP Rules, 2008 w.e.f. December, 2010. As such, instead of extending such benefit after his retirement, the benefit granted as TBA w.e.f. 01.01.1996 was withdrawn and amount of Rs.11,760/- was withheld/recovered from the gratuity of the petitioner, vide order dated 30.12.2011 under Annexure-5. It is contended that the amount in question cannot be recovered from the petitioner, in view of the judgment of the tribunal in the case of **Shyam Sundar Panda v. D.P.I.**, reported in 2001 (2) ATT (HC) 175, as well as the decision rendered in the case of **Gopinath Rout**. It is contended that against the notice of recovery, similar matter had come up for consideration before the tribunal in O.A. No. 200 of 2012 (**Rusav Kumar Pradhan v. State of Orissa**) and in turn the tribunal quashed the said order of recovery. Against the said order though the State preferred W.P.(C) No. 22715 of 2013, but the same was dismissed by this Court holding that the clarification made in the

Finance Department Office Memorandum dated 29.01.2002 cannot supersede the statutory rules. Relying on the said decision of this Court, in various cases, it has been held that the untrained period shall be taken into account towards TBS/ACP. By so observing in the original application, the tribunal has quashed the order dated 21.01.2015 and directed the opposite parties not to recover any amount pursuant to the order and on the other hand directed to disburse the pension and all other retiral benefits in favour of the applicant including DCRG with statutory interest as due and admissible within a period of two months. Thus, it is contended that the petitioner having stood in the same footing, is entitled to the benefit in terms of the said judgment. Reliance has also been placed on the order dated 04.04.2022 passed by this Court in W.P.(C) No. 23931 of 2017 (***State of Orissa v. Ashok Kumar Mohapatra***), which was preferred by the State Government challenging the order passed by the tribunal and, as such, the said writ petition was dismissed with a direction to the opposite parties to extend the benefit to the applicant.

5. Mr. R.C. Pattnaik, learned Standing Counsel for School and Mass Education Department contended that petitioner is not entitled to the benefit, as claimed in the writ petition. Therefore, the order of recovery so passed by the authority is well justified and, as such, the same does not warrant any interference of this Court.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that initially the petitioner was appointed as Assistant Teacher, vide order dated 15.12.1980, and by the time he was appointed, he was untrained.

Subsequently, he acquired the qualification on 02.09.1986 and, as such, taking into consideration the service rendered by him for 15 years, he was extended with the benefit.

7. Similar question had also come up before this Court for consideration in the case of **Satyaranjan Das and others v. State of Orissa and others**, 2022 (I) OLR 9, where one of us (Dr. Justice B.R. Sarangi) was a member, and also in the case of **Sanjay Pradhan v State of Odisha and others** (WPC (OAC) No. 4298 of 2015 decided on 01.07.2021). In **Satyaranjan Das** (supra), this Court referred the principle decided in the case of **State of Punjab v. Rafiq Masih (White Washer) etc.**, AIR 2015 SC 696 to the extent that recovery of excess payment made from an employee, who has retired from service, or close to his retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer, that a retired employee or an employee about to retire, is a class, apart from those who have sufficient service to their credit before their retirement. By so saying, the apex Court held that it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year of the date of his retirement on superannuation. Similar view has also been taken by this Court in **Sanjay Pradhan** mentioned supra.

8. Therefore, this Court is of the considered view that the benefit granted to the petitioner cannot be withdrawn by virtue of the circular issued by the Finance Department. As such, the direction given for recovery of the amount vide Annexure-5

cannot be sustained in the eye of law. Consequentially, the order dated 30.12.2011 under Annexure-5 is quashed. The writ petition stands disposed of in terms of the judgment of the tribunal in the case of ***Shyam Sundar Panda v. D.P.I.***, reported in 2001 (2) ATT (HC) 175 and order dated 24.01.2014 passed by this Court in the case of ***State of Orissa v. Rusav Kumar Pradhan*** (W.P.(C) No. 22715 of 2013).

Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

Ashok

