

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.36267 of 2021

Basudev Padhi

.....

Petitioner

Mr. A. Tripathy, Advocate

Vs.

State of Odisha and another

.....

Opposite Parties

Mr. S.K. Samal, AGA

CORAM:

MR. JUSTICE SANJAY KUMAR MISHRA

ORDER

08.09.2022

Order No.

05.

This matter is taken up through hybrid mode.

2. Heard learned Counsel for the Petitioner, so also learned Counsel for the State.
3. The present Writ Petition has been preferred with a prayer to direct the Opposite Parties to release 100% arrear pay of the Petitioner as per the 7th Pay Commission with all retirement benefits, such as leave salary, gratuity, pension and commutation etc. in favour of the Petitioner
4. The factual matrix leading to filing of the present Writ Petition is that the Petitioner entered into service as Peon in the Directorate of Culture on 24.08.1979 and got TBA scale of pay on 24.08.1999 with fixation of pay under Rule-74(b) of the Orissa Service Code. After introduction of ACP w.e.f. 01.01.2006 under the ORSP Rules, 2008, the Petitioner was allowed the 2nd ACP w.e.f. 01.01.2006 and his pay was fixed adding one increment under ORSP Rules, 2008. Finally, he was allowed the Post of

Despatcher in Class-III service w.e.f. 31.07.2007 and his pay was fixed with one increment in terms of Rule-13 of the ORSP Rules, 2008 in the scale of Rs.5,200-20,200/- with Grade Pay of Rs.1900/- and his pay was fixed in the promotional post fixing his pay at Rs.8190/-+G.P.Rs.1900/-

While the matter stood thus, the Finance Department issued Resolution dated 06.02.2013 allowing Revised Arrear Career Progression Scheme (RACPS) for Government employees allowing three financial upgradation on completion of 10, 20 and 30 years of service in a single cadre in absence of promotion. Basing on the Finance Department Resolution, the O.P. No.2- Director of Culture, Odisha, vide Order dated 14.03.2014, allowed in favour of the Petitioner RACPC 2nd Stage and 3rd Stage on completion of 20 & 30 years of service and accordingly, fixed the pay of the Petitioner at Rs.8500/- with G.P. of Rs.2800/- w.e.f. 01.01.2013 in Pay Band of Rs.5,200-20,200/- and the Petitioner was getting the same.

While the matter stood thus, the O.P. No.2, without any reason and giving opportunity, issued Order dated 07.12.2016 withdrawing RACP benefit granted in favour of the Petitioner vide Order dated 14.03.2014.

5. Being aggrieved by such Order dated 07.12.2016, as at Annexure-2, the Petitioner approached the Odisha Administrative Tribunal, which was registered as O.A. No.2856 of 2016. The said O.A. was allowed vide judgment dated 22.06.2018, in which, the Tribunal was pleased to set aside the impugned Order dated 07.12.2016 holding that the Petitioner is entitled to Grade Pay of

Rs.2400/- w.e.f. 01.01.2013 and directed that the Petitioner be given the said financial benefit within three months.

6. As the said Order of the Tribunal was not complied with and the Tribunal was abolished, the Petitioner was constrained to file W.P.(C) No.31376 of 2020 before this Court, which was disposed of on 23.11.2020, directing the present O.P. No.2 to comply the direction dated 22.06.2018 passed in O.A. No.2856 of 2016 within a period of three months.

7. Thereafter, due to inordinate delay and after almost two years, the Opposite Parties, along with Principal Secretary to Government, Finance Department, approached this Court in W.P.(C) No.14413 of 2020, which was disposed of vide Order dated 09.06.2021 by setting aside the Order of the Tribunal dated 22.06.2018, with the following directions:

“4. In view of the above submission, the impugned order dated 22nd June, 2018 passed by the Odisha Administrative Tribunal, Principal Bench, Bhubaneswar in O.A. No.2856 of 2016 is hereby set aside with the following directions:

(i) The admitted pension of the Opposite Party on the basis of his last drawn pay at the time of his retirement on 30th June, 2020 fixed on the basis of the 6th Pay Commission shall be fixed and released in favour of Opposite Party by the Petitioner not later than 2nd August, 2021.

(ii) The above direction shall be subject to the Opposite Party complying with all the necessary formalities for which a communication will be issued to him by the Petitioners not later than 1st July, 2021.

5. The Writ Petition is disposed of in the above terms.

6. The interim order stands vacated.”

8. When the matter stood thus, the Petitioner, on attaining the age of superannuation, retired from service w.e.f. 30.06.2020. It is the case of the Petitioner that because of compelling circumstances of requiring a substantial amount towards treatment of his son for his Post-Kidney Transplantation, he did not wish to contest the Writ Petition and just before retirement, the Petitioner desired his admissible pension along with other retiral benefits based on the last pay drawn by him in order to avoid financial stringency.

9. Though, admittedly, at the time of retirement, the Petitioner was entitled to the benefit of 7th Pay Commission, which was made effective by the State Government w.e.f. 01.01.2016, yet despite judgment dated 22.06.2018 passed in O.A. No.2856 of 2016, the 7th Pay Commission benefit was not made available to the Petitioner on the plea that the Opposite Parties are contemplating to challenge the said judgment dated 22.06.2018 before this Court by filing Writ Petition, which was registered as W.P.(C) No.14413 of 2020 on 25.06.2020.

10. Though, after disposal of the W.P.(C) No.14413 of 2020, the Petitioner is entitled to get his pay as per the 7th Pay Commission along with 100% arrear pay like similarly placed other persons, who were granted with 7th Pay Commission benefit w.e.f. 01.01.2016, because of the pendency of the litigation before this Court, the Petitioner was debarred from the said benefit.

11. It is further case of the Petitioner that, after disposal of the W.P.(C) No.14413 of 2020, I.A. No.10803 of 2021 was filed by

the Petitioner for modification of the said Order dated 16.09.2021, which was disposed of on 16.09.2021 with the following observations :

“1. This is an application filed by the Opposite Party seeking modification of the order dated 9th June, 2021 passed in the present writ petition.

2. The prayer made in this application is beyond the scope of the original application in which the impugned order dated 22nd June, 2018 was passed by the Odisha Administrative Tribunal, Bhubaneswar Bench, Bhubaneswar. Therefore, there is no scope for granting the relief prayed for in this application.

3. It will be open to the Applicant (Basudev Padhi) to seek other appropriate remedies in accordance with law.

4. The I.A. is disposed of in the above terms.”

12. In view of the said observations made in the Order dated 16.09.2021, in I.A. No.10803 of 2021, the present Writ Petition has been filed seeking for the relief as stated above.

13. Being noticed the Opposite Parties-State has filed a Counter Affidavit on 11.08.2022 and in Paragraph-12 of the Counter Affidavit, it has been averred as follows:

“ 12. That in reply to the averments made in Para-11 of the Writ Petition, it is humbly submitted that recently, Sri Basudev Padhi has filed a W.P.(C) No.36267/2021 before the Hon’ble High Court seeking direction to the Opposite Parties to release 100% arrear pay as per 7th Pay Commission with all his retirement benefits. The Hon’ble High Court in its Order No.1, dated 18.11.2021 has ordered to serve notice on the Opposite Parties to file the counter affidavit. In this regard, it may be stated that had

the Hon'ble High Court directed for fixation of his pay as per 7th pay Commission Report, the Opp. Parties would have no objection to fix his pay under 7th Pay Commission Report as the Petitioner has retired from Govt. service on 30.06.2020 and 7th Pay Commission Report has been effected from 01.01.2016. That the petitioner may take appropriate step to make his claim as per rule."

(Emphasis supplied)

14. Learned Counsel for the Petitioner contended that since there is an admission on the part of the Opposite Parties that the Petitioner retired from Government service w.e.f. 30.06.2020 and the 7th Pay Commission Report has admittedly been effected from 01.01.2016, despite earlier Orders passed by this Court in W.P.(C) Nos.36267/2021 and 14413/2020, the Authority concerned ought to have released the arrear pay and consequential retiral benefits in terms of 7th Pay Commission, as has been admitted in the Counter Affidavit.

15. Learned Counsel for the State submits that since this Court directed for fixation of pay of the Petitioner as per the 6th Pay recommendation even though the Petitioner is entitled to salary and other benefits in terms of 7th Pay Commission Report, the same could not be given to the Petitioner.

16. In view of such stand taken by the State in its Counter Affidavit, so also submission made by the learned State Counsel and the Order dated 16.09.2021 passed by this Court in I.A. No.10803 of 2021 keeping it open for the Petitioner to seek other appropriate remedies in accordance with law, the Petitioner may submit a representation to the Opposite Party No.2 praying for

release of arrear pay as per the 7th Pay recommendation and other consequential retriial benefits, as prayed in the Writ Petition, within seven days hence along with a certified copy of this Order.

17. In view of the averments made in Paragraph12 of the Counter Affidavit, as quoted above, this Court is of the view that the Authority concerned would do well to consider the said representation and release the arrear pay of the Petitioner as per his entitlement in terms of the 7th Pay Commission Report and other consequential/financial benefits, such as leave, gratuity, pension and commutation etc. as due and permissible to the Petitioner in accordance with law, as has been extended in case of similarly placed employees, within a period of six weeks thereafter.

18. Accordingly, the Writ Petition stands disposed of. No order as to the cost.

Urgent certified copy of this Order be granted as per Rules.

(S.K. MISHRA)
JUDGE

padma