

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 36579 of 2021

Subas Chandra Behera

.....

Petitioner

Ms. A.K.Dei, Advocate

-Versus-

State of Odisha & Others

.....

Opposite Parties

State Counsel

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

28.01.2022

Order No.
05

This matter is taken up through video conferencing mode.

2. Heard learned counsel for the parties.

3. The petitioner has filed this application seeking direction to the opposite parties to give him promotion to the post of Asst. Engineer/Asst. Manager (Electrical) from 29.12.2018, i.e. the date from which his immediate juniors got such promotion, and to grant all consequential service and financial benefits including further promotion within a stipulated time.

4. Moot question involves if a promotion of employee can be withheld for indefinite period on the premises of pendency of criminal proceeding over a period of decades.

5. This Court considering such situation has already settled the position of law keeping the sealed cover promotion aspect in view of pendency of the Disciplinary Proceeding and/or Criminal Proceeding for decades becomes bad.

6. Fact involving the case reveals that there is a disciplinary proceeding against the petitioner besides the criminal proceeding pending in the court of learned J.M.F.C., Buguda in Buguda P.S. Case No. 84 (4) of 2010. Involving the allegation against the petitioner, it appears the Criminal Proceeding initiated in the year 2010. However the said criminal case is yet to be disposed of. Pleading also further made clear that Disciplinary Proceeding is initiated against the petitioner. In this background of case an allegation is made that promotion of the petitioner taking effect from 29.12.2018 has been kept in sealed cover only on

the premises that a criminal proceeding involving the petitioner is pending since 2010. For the settled position of law, this Court in disposal of the writ petition observes, petitioner cannot suffer for the long pendency of the criminal proceeding. It is also not known when the Criminal Proceeding initiated in the year 2010 will come to end. It is keeping in this view, this Court in disposal of the writ petition directs the Chief Executive Officer, TPSODL, KAMAPALLI Corporate Office, Court peta, Berhampur, Ganjam-O.P. No.2 to give promotion to the petitioner to the rank of Asst. Engineer/ Asst. Manager (Electrical) from the date of his juniors and batchmates got such promotions. However the promotions of the petitioner as per direction of this Court shall be subject to the ultimate outcome in the Criminal Proceeding. Further it is also clarified that the promotion given to the petitioner to the rank of Asst. Engineer/ Asst. Manager (Electrical) shall not confer equity in the event, he will ultimately lose the Criminal Proceeding. Entire exercise shall be completed within four weeks from the date of communication of this direction. It is also clarified that upon promotion, petitioner shall also be entitled to all consequential benefits.

7. With the above observation, the writ petition thus stands disposed of

8. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No. 4798 dated 15th April, 2021 and Court's office order circulated vide Memo Nos. 514 and 515 dated 7th January, 2022.

Ashok

(DR. B.R. SARANGI)
JUDGE