

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No. 15 of 2019

Shishir Kumar Jena

.....

Petitioner

Mr. L.K. Mohanty, Advocate

Vs.

State of Odisha and others

.....

Opposite Parties

Mr. S. Jena, SC, S&ME Deptt.

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

28.09.2022

Order No.

02.

This matter is taken up through hybrid mode.

2. Heard Mr. L.K. Mohanty, learned counsel for the petitioner and Mr. S. Jena, learned Standing Counsel for School & Mass Education Department.

3. The petitioner has filed this writ petition seeking direction to the opposite parties to grant financial benefits for the period from 26.03.1993 to 30.11.2011 as has been extended to one Rabindranath Panigrahi under Annexure-4 dated 16.11.2015. The petitioner further seeks direction to calculate and release the arrear of differential salary for the said period.

4. Mr. Mohanty, learned counsel for the petitioner contended that through the benefit has been extended to the petitioner notionally, but he wants the actual benefit since the same has been extended to similarly placed person namely, Rabindranath Panigrahi under Annexure-4 dated 16.11.2015.

5. Mr. S. Jena, learned Standing Counsel for School & Mass Education Department contended that for the self same relief, the petitioner and others had earlier approached the Tribunal by filing O.A. No. 1481 (C) of 1993 which was dismissed vide order dated

04.08.2010. However alleging that the tribunal has not taken into consideration the decision of the larger bench in *Surendranath Pal v. State of Orissa*, again approached the tribunal by filing T.A. No. 28 of 2011 with a prayer to grant him promotion to the post of Headmaster of UGME School w.e.f. 26.03.1993, i.e. the date his juniors were promoted. But it is alleged by the petitioner that the said original application was filed with a prayer to grant notional benefits, instead of all financial benefits from the date his juniors were promoted. However after due adjudication of the same, tribunal relying upon the larger Bench decision in the case of *Surendranath Pal v. State of Orissa*, allowed the case of the petitioner vide order dated 22.11.2015 and directed to grant notional benefit to the petitioner. The order of the tribunal has been complied with by the order of the opposite parties on 21.05.2018 with effect from 26.03.1993. Therefore, for the self same relief, the petitioner cannot approach this court by filing the present writ petition and as such, the present writ petition cannot sustain in the eye of law.

6. Having heard learned counsel for the parties and after going through the records, if the petitioner has already asked for notional benefit with effect from 26.03.1993 by approaching the tribunal by filing original application and the said benefit has already been extended, for the self same relief the petitioner cannot come to this court again by filing the present writ petition. Therefore, this writ petition suffers from principle of *res judicata*.

7. In that view of the matter, this writ petition merits no consideration and the same stands dismissed.

Arun

(DR. B.R. SARANGI, J.)