

ORISSA HIGH COURT: CUTTACK

WPC (OA) No.2018 of 2017

(An application under Articles 226 and 227 of the Constitution of India)

Subarnalata Panda **Petitioner**

-Versus-

State of Odisha & others **Opp. Parties**

Advocate(s) appeared in this case:-

For Petitioner : M/s. S.N. Pattnaik,
U.K. Patanaik, C.S. Panda,
K.C. Panigrahy, S. Mohapatra.

For Opp. Parties : Mr. H.K. Panigrahi,
Additional Standing Counsel

CORAM
JUSTICE SASHIKANTA MISHRA

JUDGMENT
19th April, 2022

SASHIKANTA MISHRA, J. Feeling aggrieved by the order passed by opposite party no.2 in withdrawing the RACP

benefit granted in her favour, the petitioner has filed the present writ application with prayer to quash the same and for a direction to the authorities to continue to pay the benefit as per her pay fixation done earlier.

2. The brief facts of the case are that the petitioner joined as Library Assistant in H.K.M. State Library, Bhubaneswar on 10.05.1991. As per the erstwhile Tourism, Sports and Culture Department Resolution No. 8341 dated 22.08.1989, guidelines and qualifications for appointment to the post of Librarians was issued as per which, the post of Librarian Class-II was to be filled up through OPSC. The existing six numbers of vacant posts of Librarian Class-III were to be filled up through direct recruitment by candidates having degree in Library Science with five years experience with preference being given to candidates possessing higher qualification and experience. Departmental candidates were also allowed to apply for the said post. The future vacant posts of the newly created Librarian Class-III were to be filled up from

amongst Asst. Librarians by way of promotion. The post of Asst. Librarian was to be filled up by the candidates having degree in Library Science with the stipulation that 50% of such posts are to be filled by way of promotion from eligible departmental candidates.

The petitioner acquired qualification in B. Library and Information Science and M.A. in History examination as an in-service candidate and thus, was qualified for appointment to the post of Asst. Librarian. It is stated that the post of Library Assistant is the feeder post for promotion to the post of Asst. Librarian as per the Resolution No. 22.08.1989. After coming into force of the Revised Assured Career Progression Scheme (RACPS) by the Government in Finance Department Resolution No. 35560/F dated 06.02.2013, the petitioner was granted the benefit in two stages as per the recommendation of the duly constituted screening committee vide order dated 05.11.2014 by raising her grade pay to Rs.4600/- with effect from 01.01.2013. Surprisingly, vide order

dated 27.11.2017 issued by opposite party no.2, the said benefit was withdrawn by downgrading the grade pay of the petitioner from Rs.4600/- to Rs.2200/-. It is further stated that the 2nd RACP benefit was rightly extended to the petitioner as she had completed 27 years of continuous service in one grade in a cadre without being considered or given promotion to the next higher post. Thus, the order dated 27.11.2017, which is enclosed as Annexure-7, is impugned in the present writ petition.

3. A counter affidavit has been filed by the opposite parties no. 1 and 2, wherein it is stated that Librarian Class-II is not a promotional post of Librarian Class-III, rather it is a direct recruit post, which is being filled up by OPSC. The averment in the writ petition that 50% of the vacant posts of Asst. Librarian in H.K.M. State Library shall be filled up by way of direct recruitment and rest 50% by promotion from amongst the departmental candidates was specifically denied on the ground that the resolution dated 22.08.1989 does not prescribe so. It is

further pleaded that the post of Library Assistant is not the feeder post of Asst. Librarian. The decision to downgrade the grade pay vide Annexure-7 is sought to be justified by stating that as per FD clarification dated 20.01.2014, RACP is confined to a cadre only and since the post of Library Assistant does not have any cadre rule, the petitioner should have been given grade pay of Rs.2000/- and Rs.2200/- on completion of 10 years and 20 years of service, but was wrongly allowed grade pay of Rs. 4200/- and Rs.4600/-. It is further stated that the scale of pay of Librarians continuing in Government Colleges under Higher Education Department cannot be made applicable to Librarians under other departments. Since the grade pay was wrongly fixed, it was rightly downgraded in order to recover the excess payment made thereby.

4. Heard Mr. S.N. Pattnaik, learned counsel for the petitioner and Mr. H.K. Panigrahi, learned Addl. Standing Counsel appearing for the State.

5. Mr. Pattnaik has contended at the outset that during pendency of the writ petition, the petitioner has already been promoted to the post of Asst. Librarian. It is further submitted that one Amiya Kumar Dhal, who is similarly placed as the petitioner and had been promoted along with the petitioner to the post of Asst. Librarian, had challenged the reduction of his grade pay granted towards 2nd RACP before the erstwhile Odisha Administrative Tribunal in O.A. No. 600 of 2017. The said O.A. along with batch of cases was allowed by order dated 26.04.2018, whereby, the learned Tribunal held the applicants therein to be entitled to the grade pay of Rs.4600/- towards 2nd RACP w.e.f. 01.01.2013. The said order being challenged by the State before this Court in W.P.(C) No. 8798 of 2018 was confirmed by order dated 21.08.2019, Mr. Pattnaik submits that the case of the petitioner is squarely covered by the decision of the Tribunal as upheld by this Court. Mr. Pattnaik has also referred to another decision rendered by this Court in the

case of **Ashis Kumar Pattanaik and others vs. State of Odisha and another** (in WPC(OAC) No. 2981 of 2018 decided on 09.03.2022) wherein it was held that clarification issued by the Government in Finance Department memo dated 20.01.2014 nowhere prescribes that the benefits under the RACP scheme cannot be granted without a cadre rule. Mr. Pattnaik contends that the petitioner's case is also squarely covered by the ratio laid down in the aforesaid decision.

6. Per contra, Mr. H.K. Panigrahi has argued that firstly, the post Library Assistant cannot be treated as the feeder post for promotion to the post of Asst. Librarian and secondly, the Librarians working in the Higher Education Department have their own cadre rules and therefore, they stand on a different footing altogether. Since admittedly, there is no cadre rule in so far as the librarians working in the H.K.M. State Library are concerned, the RACP benefit as claimed cannot be granted.

7. As it appears by order dated 05.11.2014 passed by the opposite party no.2, enclosed as Annexure-5, the petitioner was granted the benefit of first and second RACP by raising her grade pay to Rs.4200/- and Rs.4600/-. A perusal of the impugned order under Annexure-7 reveals that grade pay of the petitioner was refixed to Rs.2200/- from 01.01.2013 with the further stipulation that the excess amount already drawn due to wrong fixation of pay shall be recovered in equal monthly installments subject to maximum of 20 months or depending on her length of her superannuation.

8. In the case of **Amiya Kumar Dhal** (supra) a Division Bench of this Court has held that even if it is a mistake, the procedure is required to be followed before withdrawal of the benefit granted to a government employee. Undisputedly, no such procedure was followed before issuance of the impugned order. Secondly, the reason for refixation of the pay of the petitioner has not been mentioned in the impugned order. The opposite

parties in their counter affidavit have attempted to justify the issuance of the impugned order on the ground that in the absence of cadre rule, the petitioner is not entitled to RACP benefits granted to her vide order under Annexure-5.

9. This Court in the case of **Ashish Kumar Pattanaik** (supra) has already held that non-availability of the cadre rule cannot be the ground to deprive the eligible employees from the RACP benefits.

10. In so far as the ground that there are no promotional avenues for the Library Assistant in the S.K.M. State Library, this Court finds that the learned Tribunal in its order passed in the case of Amiya Kumar Dhal and batch held that there is promotional avenue for the Library Assistant against 50 % quota to fill up the post of Asst. Librarian and Librarian Class-III and thus, the contention of the State that there are no promotional avenues, was not accepted. The said order of the Tribunal, as already stated, was confirmed by a Division

Bench of this Court.

11. From the forgoing discussion therefore, it is clear that the impugned order under Annexure-7 in refixing the pay of the petitioner by downgrading her grade pay as granted under RACP w.e.f. 01.01.2013 cannot be sustained in the eye of law.

12. Resultantly, the writ petition is allowed. The impugned order under Annexure-7 is hereby quashed. It is held that the RACP benefits already granted to the petitioner by order under Annexure-5 are required to be continued.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack
The 19th April, 2022/ A.K. Rana