

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OA) No. 2326 of 2019

Shiba Prasad Swain

....

Petitioner

Mr. T.K. Pattanayak, Advocate

-Versus -

**Addl. Chief Secretary to
Govt., S & ME Dept. & Ors.**

....

Opposite Parties

Mr. R.N. Acharya,
Standing Counsel for SM& E

CORAM:

JUSTICE SASHIKANTA MISHRA

**ORDER
28.07.2022**

**Order No.
10.**

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioner and learned Standing Counsel for School and Mass Education Department.
3. The petitioner joined as Asst. Teacher on 01.08.1984 in Kulasarichhuan High School under the District Education Officer, Cuttack. He was subsequently promoted as Senior SES (H.M.) on 09.11.2011. He retired from service on attaining the age of superannuation on 31.08.2016. The School was taken over by the Government on 03.06.1994. Consequent upon grant of Revised Assured Career Progression Scheme (RACPS) vide letter dated 28.10.2016, the petitioner's pay was fixed in terms of the Finance Department Resolution No. 3560/F dated 06.02.2013 with Grade Pay of Rs.5400/-. This was said to be the 3rd RACP benefit. At the time of retirement, the petitioner was allowed substantive pay in the pay band of Rs.19,570/-, Grade Pay of Rs.5400/-, D.A. Rs.32,960/- and HRA Rs.1219/-. By order dated 21.02.2018, the Government in School & Mass Education Department directed to count the service of the employees of the taken over Schools as 2:1

basis to that of original Government High School T.G. Teacher. The Director of Secondary Education Odisha vide order dated 05.11.2018, which is enclosed as Annexure-7 to the writ petition, modified the 3rd RACP by directing the District Education Officer, Jagatsinghpur to revise the grade pay of the petitioner from Rs.5400/- to 4800/-. Challenging the aforesaid order, the petitioner approached the erstwhile Odisha Administrative Tribunal in O.A. No. 2326 (C) of 2019 seeking the following relief:

- “i) The Hon’ble Tribunal Kindly admit and allow this Original Application.*
- ii) The Hon’ble Tribunal kindly pass order directing the S & ME Deptt. Letter No.3901 dated 21.02.2018 as nonest in the eye of law.*
- iii) The Hon’ble Tribunal may kindly quash the impugned order passed by Respondent No.2 dated 05.11.2018 Annexure-7.*
- iv) The Hon’ble Tribunal kindly grant any other relief/reliefs in favour of the applicant as deem fit necessary for ends of justice.”*

The said O.A. has since been transferred to this Court and registered as the instant writ petition.

4. A counter affidavit has been filed by the District Education Officer, Jagatsinghpur (opposite party no.3) justifying the revision of the benefit granted to the petitioner as per impugned order. It is basically stated that the petitioner had not completed 30 years of continuous service as on 01.01.2013 taking the date of inter se seniority on 04.07.1989 as per G.O. No. 03901/SME dated 21.02.2018. As such, he is not eligible for 3rd RACP with grade pay of Rs.5400/- on 01.01.2013. It is further stated that had the petitioner continued in service up to 04.07.2019, he would have been eligible to avail 3rd RACP benefit with grade pay of Rs.5400/- on completion of 30 years of service.

5. Heard Mr. T.K. Pattanayak, learned counsel for the petitioner and Mr. R.N. Acharya, learned Standing Counsel for School and Mass Education Department.

6. Though several contentions have been raised in the writ petition to challenge the impugned order, Mr. Pattanayak has confined his arguments to the fact that the impugned order was passed without granting any opportunity of hearing to the petitioner. Since the impugned order is in the nature of an adverse order taking away monetary benefit already granted to a government servant, it was obligatory for opposite party authorities to grant him an opportunity of hearing in keeping with the principles of natural justice. Mr. Pattanayak has relied upon a decision of this Court in the case of **Sakrajit Das & Ors. Vs. State of Orissa & Ors.** reported in 2019 (II) ILR-CUT-128.

It is alternatively contended by Mr. Pattanayak that even otherwise, the amount allegedly drawn in excess of entitlement being meagre, i.e. less than Rs.35,000/-, it would be iniquitous on the part of the State to recover the amount from the petitioner as it was not obtained by him by practicing fraud or misrepresentation etc.

In this regard Mr. Pattanayak has relied upon a decision of the Apex Court in the case of **State of Punjab v. Rafiq Masih (White Washer)** reported in (2015) 4 SCC 334].

7. Per contra, Mr. R.N. Acharya, learned Standing Counsel for School and Mass Education has contended that the benefit was granted by adopting principle of 1:1, whereas the admitted case is that the School in which the petitioner was working was taken over only in the year 1994. Further, the petitioner had not completed 30

years of continuous service as on 01.01.2013 taking the date of inter se seniority on 04.07.1989 and therefore, he would be eligible for 3rd RACP only on 04.07.2019, had he continued in service till then.

8. It would be profitable to refer, at the outset to the case law relied upon by Mr. Pattanayak. In the case of **Sakrajit Das** (Supra) this Court referring to the law laid down by the Apex Court in the case of **BBPP Mazdoor Sangha Vs. N.T.P.C.**, reported in AIR 2008 SC 336 held as follows:

“In view of the law discussed above, once the right has been accrued in favour of an employee, the same cannot be taken away without complying with the principles of natural justice.”

9. Having considered the rival submissions as also after taking note of the ratio of the case relied upon by learned counsel for the petitioner, this Court has no hesitation in holding that the impugned order under Annexure-7 cannot be sustained in the eye of law, since no opportunity of hearing was given to the petitioner and the benefit granted to him was taken away unilaterally

10. Even otherwise, in the case of **Rafiq Masih** (surpa) the Apex Court held as follows:

“7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under [Article 142](#) of the Constitution of India.

Repeated exercise of such power, "for doing complete justice in any cause" would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court."

Having regard to the ratio of the above case, this Court is of the considered view that the action of the authorities in seeking to recover the so called excess amount from the petitioner, who is a retired employee, is entirely unjustified.

11. In the result, the writ petition is allowed. The impugned order under Annexure-7 is hereby quashed.

12. Issue urgent certified copy as per Rules.

(Sashikanta Mishra)
Judge

A.K. Rana

