IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.23226 of 2022

In the matter of an application under Article 226 & 227 of the Constitution of India, 1950.

.....

Sagar Keshari Nayak .... ***Petitioner***

-versus-

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

For Petitioner : *Mr. D. Panda, Advocate*

For Opp. Parties : *Mr. C.K. Pradhan, AGA*
Mr. S. Nanda, Adv. for O.P.3

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 12.03.2026 and Date of Judgment: 07.04.2026

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.

2. Heard learned counsel appearing for the Parties.

3. The present Writ Petition has been filed *inter alia* challenging order dtd.26.08.2022 so passed by Opposite Party No.1 under Annexure-5. Vide the said order, benefit of promotion extended in favour of the Petitioner to the rank of Asst. Manager under Grade-IV vide office order dtd.23.06.2022, pursuant to the decision taken by the DPC / Appointment Committee of the Bank in its meeting dtd.22.06.2022 was withdrawn and direction was issued to recover the excess salary drawn from the month of June, 2022.

4. Learned counsel appearing for the Petitioner while assailing the impugned order contended that Petitioner while in service under the Opposite Party-Bank as a Senior Asst. in Grade-V, the DPC / Appointment Committee of the Opposite Party-Bank in its proceeding dtd.22.06.2022, resolved and recommended the name of the Petitioner along with others for their promotion to the rank of Asst. Manager Grade-IV in the scale of pay of

Rs.8,960/- to Rs.17,720/- w.e.f 01.06.2022. Pursuant to such decision taken by the Appointment Committee in its proceeding dtd.22.06.2022, Petitioner along with others vide order dtd.23.06.2022 under Annexure-1, was extended with the benefit of promotion to the rank of Asst. Manager in Grade-IV w.e.f. 01.06.2022 and in the said order name of the Petitioner finds place at S.L. No.15.

4.1. Learned counsel appearing for the Petitioner contended that after being extended with the benefit of promotion to the rank of Asst. Manager Grade-IV vide order dtd.23.06.2022 w.e.f. 01.06.2022, in terms of the said order, Petitioner not only joined in the promotional post of Asst. Manager so reflected in order dtd.29.06.2022 under Annexure-2, but also his pay was fixed in the promotional post in the scale of pay of Rs.8,960/- to Rs.17,720/-. Petitioner's pay was fixed at Rs.16,400/- w.e.f. 01.06.2022.

4.2. It is further contended that after being so extended with the benefit of promotion and consequential fixation

of the pay in the promotional post, Petitioner retired from his services, on attaining the age of superannuation on 30.06.2022. But such benefit of promotion extended in favour of the Petitioner vide order dtd.23.06.2022 pursuant to the decision of the Appointment Committee dtd.22.06.2022, was withdrawn vide the impugned order dtd.26.08.2022 under Annexure-5, basing on the decision taken by the self-same Appointment committee in its proceeding dtd.25.08.2022.

4.3. It is contended that since Petitioner basing on the order of promotion was allowed to join in the promotional post with due extension of the scale of pay vide order dtd.29.06.2022 under Annexure-2, such benefit cannot be withdrawn with passing of the impugned order dtd.26.08.2022 under Annexure-5, as the Petitioner by the said date had already attained the age of superannuation, having retired on 30.06.2022.

4.4. It is also contended that since the Petitioner was extended with the scale of pay w.e.f. 01.06.2022 as per order dtd.29.06.2022, in view of the decision of the

Hon'ble Apex Court in the case of ***Rafiq Masih*** so followed in the case of ***Thomos Daniel,*** no recovery can be made from the Petitioner, Petitioner being a retired employee. Hon'ble Apex Court in Para 18 of the judgment in the case of ***Rafiq Masih*** and in Para-18 of the judgment in the case of ***Thomas Daniel*** has held as follows:-

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> ***"18.*** *It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. But that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*
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> *(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).*
>
> *(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.*
>
> *(iii) recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
>
> *(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
>
> *(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.*

> *"**18.** It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*
>
> *(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).*
>
> *(ii) Recovery from the retired employees, or the employees who are due to retire within one year of the order of recovery.*
>
> *(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
>
> *(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
>
> *(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."*

4.5. Learned counsel appearing for the Petitioner further contended that since by the time the benefit of promotion was withdrawn vide the impugned order dtd.26.08.2022 under Annexure-5, Petitioner had already retired on attaining the age of superannuation w.e.f. 30.06.2022, such withdrawal of the benefit cannot be made applicable to the case of the Petitioner and Petitioner should be

treated to have retired in the promotional post and eligible and entitled to get his retiral benefits accordingly.

4.6. It is accordingly contended that the impugned order dtd.26.08.2022 so far as it relates to the Petitioner, needs interference of this Court.

5. Mr. Somanath Nanda, learned counsel appearing for the Opposite Party-Bank on the other hand made his submission basing on the stand taken in the counter affidavit so filed.

5.1. Placing reliance on the stand taken in the counter affidavit, it is contended that even though pursuant to the decision taken by the Appointment Committee in its proceeding dtd.22.06.2022, Petitioner along with the others were extended with the benefit of promotion to the rank of Asst. Manager Grade-IV vide order dtd.23.06.2022, but the subsequent Appointment Committee in its proceeding dtd.25.08.2022, when found that the benefit of promotion pursuant to the recommendation of the previous Appointment Committee

has been made illegally, the said Committee recommended to withdraw the benefit of promotion. Basing on such decision taken by the Appointment Committee in its proceeding dtd.25.08.2022, the impugned order was passed on 26.08.2022 under Annexure-5, wherein the benefit of promotion was withdrawn.

5.2. It is also contended that even though Petitioner was promoted to the rank of Asst. Manager Grade-IV vide order dtd.23.06.2022, but since Petitioner was under probation, it cannot be held that Petitioner has successfully completed the period of probation and accordingly entitled to continue with the benefit of promotion.

5.3. It is contended that since as per the service rule, such order of promotion was extended on probation and the probation period being one year from the date of issue of the order, Petitioner having not completed the probation period, he has got no vested right to continue in the promotional post.

5.4. It is further contended that since the Appointment Committee who took the decision on 22.06.2022, was not authorized to take any decision and such a decision was taken contrary to the provisions contained under Rule-10 of the Staff Service Rules 2003 (in short 'Rules') no illegality or irregularity can be found either with the decision taken by the subsequent Appointment Committee in its proceeding dtd.25.08.2022 or with regard to the impugned order passed on 26.08.2022 under Annexure-5.

5.5. It is further contended that the Opposite Party-Bank is a primary Co-operative Society registered under the provisions of Orissa Co-operative Societies Act. Taking into account the financial position of the Bank at the relevant point of time, Addl. District Magistrate (General), Cuttack who was in-charge of the Administration of the Management of the Opposite Party-Bank, could not have taken such a decision through the Appointment Committee dtd.22.06.2022, in allowing promotion to 109 numbers of employees in different grade including the

benefit of promotion in favour of 37 Grade-V employees to the rank of Asst. Manager, Grade-IV vide order dtd.23.06.2022 under Annexure-1.

5.6. It is contended that subsequent Appointment Committee after taking charge when found that the previous Appointment Committee has taken the wrong decision in allowing the benefit of promotion to the Petitioner and 108 others in different rank, the Appointment Committee in its proceeding dtd.25.08.2022 held the decision taken by the previous Appointment Committee in its proceeding dtd.22.06.2022, as not in accordance with law. Accordingly, basing on the recommendation of the Appointment Committee dtd.25.08.2022, the order of promotion was withdrawn in respect of all the 109 employees, which includes the present Petitioner to the rank of Asst. Manager Grade-V, vide the impugned order dtd.26.08.2022 under Annexure-5.

5.7. It is also contended that such benefit of the promotion in favour of the Petitioner is contrary to the provisions contained under the Staff Service Rules, 2003.

5.8. It is also contended that the then Administrator prior to taking a decision to extend the benefit of promotion in the proceeding of the Appointment Committee dtd.22.06.2022 since, neither took prior approval of the Registrar Co-operative Societies and the Committee so constituted is contrary to Rule-57 of the 2003 Rules, it could not have taken the decision to extend the benefit of promotion in favour of 109 numbers of employees.

5.9. It is also contended that save and except the present Petitioner, none of the affected promotees have challenged the impugned order dtd.26.08.2022.

5.10. It is also further contended that since by the time the benefit of promotion was withdrawn vide the impugned order, the probation period was not over, it

cannot be held that Petitioner was holding the promotional post by the time he retired on 30.06.2022.

5.11. It is also contended that the decision by the Appointment Committee to withdraw the benefit being a policy decision of the Bank, it is not amenable for challenge before this Court in a Writ Petition.

6. In support of the aforesaid submission, reliance was placed to a decision of the Hon'ble Apex Court in the case of ***Government of West Bengal & Ors. vs. Amal Satpathy & Ors.*** Reliance was placed to Para-15 to 21 has held as follows:-

> ***"15.*** *The primary question that arises for our consideration in the present appeal is whether respondent No. 1, who was recommended for the promotion before his retirement but did not receive actual promotion to the higher post due to administrative delays, is entitled to notional financial benefits of the promotional post after his retirement?*
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> ***16.*** *We have perused the pleadings and the records and have given our thoughtful consideration to the submissions advanced by the learned counsel for the parties.*
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> ***17.*** *The relevant provision i.e., Rule 54(1)(a) of the West Bengal Service Rules, is extracted hereinbelow for the sake of ready reference:*
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> *"**Pay on Officiating Appointment- 54(I)(a):** Subject to the provisions of Chapter VII, a Government employee who is appointed to officiate in a post **shall not draw pay higher than* "his substantive pay" in respect of a permanent post, other than a tenure post, unless the officiating appointment involves the assumption of duties and responsibilities of greater importance than those attaching to the post, other than a tenure post, on which he holds a lien, or would hold a lien had it not been suspended:***

Provided that the Governor may specify posts outside the ordinary line of a service the holders of which may, notwithstanding the provisions of this rule and subject to such conditions as the Governor may prescribe, be given any officiating promotion in the cadre of the service which the authority competent to order promotion may decide, and may thereupon be granted the same pay as they would have received if still in the ordinary line."

(emphasis supplied)

18. *Upon a bare perusal of Rule 54(1)(a) of the West Bengal Service Rules, it is clear that promotion cannot be retrospectively granted after retirement, as it requires the actual assumption of duties and responsibilities of the promotional post. In the present case, since respondent No. 1 superannuated before the final approval of his promotion, he could not have formally assume the charge of the promotional post of Chief Scientific Officer. Therefore, although respondent No. 1 was recommended for promotion, Rule 54(1)(a) of the West Bengal Service Rules precludes him from getting the financial benefits of the promotional post without having taken on the responsibilities of the said post i.e. Chief Scientific Officer.*

19. *It is a well settled principle that promotion becomes effective from the date it is granted, rather than from the date a vacancy arises or the post is created. While the Courts have recognized the right to be considered for promotion as not only a statutory right but also a fundamental right, there is no fundamental right to the promotion itself. In this regard, we may gainfully refer to a recent decision of this Court in the case of Bihar State Electricity Board v. Dharamdeo Das[9], wherein it was observed as follows:*

"18. *It is* ***no longer res integra that a promotion is effective from the date it is granted and not from the date when a vacancy occurs on the subject post or when the post itself is created. No doubt, a right to be considered for promotion has been treated by courts not just as a statutory right but as a fundamental right, at the same time, there is no fundamental right to promotion itself****. In this context, we may profitably cite a recent decision in Ajay Kumar Shukla v. Arvind Rai[10] where, citing earlier precedents in Director, Lift Irrigation Corporation Ltd. v. Pravat Kiran Mohanty[11] and Ajit Singh v. State of Punjab[12], a three-Judge Bench observed thus:*

41. This Court, time and again, has laid emphasis on right to be considered for promotion to be a fundamental right, as was held by K. Ramaswamy, J., in Director, Lift Irrigation Corpn. Ltd. v. Pravat Kiran Mohanty in para 4 of the report which is reproduced below:

'4……. There is no fundamental right to promotion, but an employee has only right to be considered for promotion, when it arises, in accordance with relevant rules. From this perspective in our view the conclusion of the High Court that the gradation list prepared by the corporation is in violation of the right of respondent-writ petitioner to equality enshrined under Article 14 read with Article 16 of the Constitution, and the

respondent-writ petitioner was unjustly denied of the same is obviously unjustified.'

42. A Constitution Bench in Ajit Singh v. State of Punjab, laying emphasis on Article 14 and Article 16(1) of the Constitution of India held that if a person who satisfies the eligibility and the criteria for promotion but still is not considered for promotion, then there will be clear violation of his/her's fundamental right. Jagannadha Rao, J. speaking for himself and Anand, C.J., Venkataswami, Pattanaik, Kurdukar, JJ., observed the same as follows in paras 22 and 27:

'Articles 14 and 16(1) : is right to be considered for promotion a fundamental right

22. Article 14 and Article 16(1) are closely connected. They deal with individual rights of the person. Article 14 demands that the 'State shall not deny to any person equality before the law or the equal protection of the laws'. Article 16(1) issues a positive command that:

'there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State'.

It has been held repeatedly by this Court that clause (1) of Article 16 is a facet of Article 14 and that it takes its roots from Article 14. The said clause particularises the generality in Article 14 and identifies, in a constitutional sense "equality of opportunity" in matters of employment and appointment to any office under the State. The word "employment" being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment. Article 16 (1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be "considered" for promotion. Equal opportunity here means the right to be "considered" for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be "considered" for promotion, which is his personal right. "Promotion" based on equal opportunity and seniority attached to such promotion are facets of fundamental right under Article 16(1).

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27. In our opinion, the above view expressed in Ashok Kumar Gupta [Ashok Kumar Gupta v. State of U.P.[13], and followed in Jagdish Lal [Jagdish Lal v. State of Haryana[14], and other cases, if it is intended to lay down that the right guaranteed to employees for being "considered" for promotion according to relevant rules of recruitment by promotion (i.e. whether on the basis of seniority or merit) is only a statutory right and not a fundamental right, we cannot accept the proposition. We have already stated earlier that the right to equal opportunity in the matter of promotion in the sense of a right to be "considered" for promotion is indeed a fundamental right guaranteed under Article 16(1) and this has never been doubted in any other case before Ashok Kumar Gupta [Ashok Kumar Gupta v. State of U.P.], right from 1950.'

20. *In State of Bihar v. Akhouri Sachindra Nath[15], it was held that retrospective seniority cannot be given to an employee from a date when he was not even borne in the cadre, nor can seniority be given with retrospective effect as that might adversely affect others. The same view was reiterated in Keshav Chandra Joshi v. Union of India[16], where it was held that when a quota is provided for, then the seniority of the employee would be reckoned from the date when the vacancy arises in the quota and not from any anterior date of promotion or subsequent date of confirmation. The said view was restated in Uttaranchal Forest Rangers' Assn. (Direct Recruit) v. State of U.P.[17], in the following words:*

'37. We are also of the view that no retrospective promotion or seniority can be granted from a date when an employee has not even been borne in the cadre so as to adversely affect the direct recruits appointed validly in the meantime, as decided by this Court in Keshav Chandra Joshi v. Union of India held that when promotion is outside the quota, seniority would be reckoned from the date of the vacancy within the quota rendering the previous service fortuitous. The previous promotion would be regular only from the date of the vacancy within the quota and seniority shall be counted from that date and not from the date of his earlier promotion or subsequent confirmation. In order to do justice to the promotes, it would not be proper to do injustice to the direct recruits……

38. This Court has consistently held that no retrospective promotion can be granted nor can any seniority be given on retrospective basis from a date when an employee has not even been borne in the cadre particularly when this would adversely affect the direct recruits who have been appointed validity in the meantime."

(emphasis supplied)

20. *In the instant case, it is evident that while respondent No. 1 was recommended for promotion before his retirement, he could not assume the duties of the Chief Scientific Officer. Rule 54(1)(a) of the West Bengal Service Rules, clearly stipulates that an employee must assume the responsibilities of a higher post to draw the corresponding pay, thus, preventing posthumous or retrospective promotions in the absence of an enabling provision.*

21. *While we recognize respondent No. 1's right to be considered for promotion, which is a fundamental right under Articles 14 and 16(1) of the Constitution of India, he does not hold an absolute right to the promotion itself. The legal precedents discussed above establish that promotion only becomes effective upon the assumption of duties on the promotional post and not on the date of occurrence of the vacancy or the date of recommendation. Considering that respondent No. 1 superannuated before his promotion was effectuated, he is not entitled to retrospective financial benefits associated to the promotional post of Chief Scientific Officer, as he did not serve in that capacity".*

6.1. Reliance was also placed to a decision of this Court in the case of ***Rita Priyadarsini Mohanty vs. State of Odisha & Ors.,*** W.P.(C) No.6100 of 2023 decided on 21.10.2024, in addition to the decision in the case of ***Amal Satpathy*** as cited (supra).

6.2. Reliance was placed to a decision of the Hon'ble Apex Court in the case of ***State of Punjab & Ors. vs. Amar Nath Goyal & Ors***., reported in 2005(6) SCC-754. Reliance was placed to Para-25, 26 and 28, which reads as follows:-

> ***"25.*** *The only question, which is relevant and needs consideration, is whether the decision of the Central and State Governments to restrict the revision of the quantum of gratuity as well as the increased ceiling of gratuity consequent upon merger of a portion of dearness allowance into dearness pay reckonable for the purpose of calculating gratuity, was irrational or arbitrary.*
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> ***26.*** *It is difficult to accede to the argument on behalf of the employees that a decision of the Central Government/ State Governments to limit the benefits only to employees, who retire or die on or after 1-4-1995, after calculating the financial implications thereon, was either irrational or arbitrary. Financial and economic implications are very relevant and germane for any policy decision touching the administration of the Government, at the Centre or at the State level.*
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> ***xxx xxx xxx***
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> ***28.*** *Even at that time, interestingly, the benefits were not made admissible from 1-3-1988 i.e. the date of the Average Consumer Price Index of 729.91, but from a much further date i.e. 16-9-1993. The Central Government adopted the same policy while issuing OM dated 14-7-1995. Although, dearness allowance linked to the All India Consumer Price Index 1201.66 (as on 1-7-1993), was treated as reckonable part of dearness allowance for the purpose of calculating the death-cum-retirement gratuity, the benefit was actually made available to the employees who retired or died on or after 1-4-1995. Similarly, the increase in the ceiling of gratuity was a mere*

consequential step, which was also made applicable from 1-4-1995. As we have already noticed, 1-4-1995 was the date suggested by the Fifth Central Pay Commission ("Pay Commission") in its Interim Report. The Central Government took a conscious stand that the consequential financial burden would be unbearable. It, therefore, chose to taper down the financial burden by making the benefits available only from 1-4-1995. It is trite that, the final recommendations of the Pay Commission were not ipso facto binding on the Government, as the Government had to accept and implement the recommendations of the Pay Commission consistent with its financial position. This is precisely what the Government did. Such an action on the part of the Government can neither be characterised as irrational, nor as arbitrary so as to infringe Article 14 of the Constitution".

6.3. Reliance was placed to a decision of the Hon'ble Apex Court in the case of ***State of Tripura & Ors. vs. Anjana Bhatacharjee & Ors***., reported in ***AIR 2022 SC 4019.*** Reliance was placed to Para-9, 10, 13.1, 13.2, 13.3, 15, 16, 18 & 19, which reads as follows:-

"9. *That the writ petition was vehemently opposed by the State. A counter-affidavit was filed opposing the writ petition in which it was specifically submitted on behalf of the State that due to the financial burden on the State, which the State was not in a position to bear the additional burden of revised pension, a policy decision has been taken to grant the benefit of revised pension notionally from 1-1-2006 to 31-12-2008 and to grant the actual benefit of the revised pension from 1-1-2009 only.*

10. *It was vehemently submitted on behalf of the State before the High Court that being a policy decision, the same may not be interfered with in a writ petition under Article 226 of the Constitution of India. It was submitted that it is not normally within the domain of any court to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying, or annulling it, based on however sound and good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law.*

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13.1. *It is submitted that unless it is found that such a policy decision is arbitrary and/or violative of the Constitution, statute or any other provision of law, the High Court is precluded from*

interfering with the policy decision in exercise of powers of judicial review under Article 226 of the Constitution of India.

13.2. *It is further submitted by the counsel appearing on behalf of the State that a detailed affidavit was filed on behalf of the State pointing out the financial constraint and/or the financial burden on the State if the arrears of revision of pension is paid from 1-1-2006. However, the High Court has, without any further discussion and without giving any cogent reasons observed that the rationale of financial crunch on the State exchequer has not satisfied the Court at all.*

13.3. *It is further submitted that the financial burden on the State can be a valid ground to fix a cut-off date for the purpose of payment of revision of pension. Heavy reliance is placed on the decisions of this Court in State of Punjab v. Amar Nath Goyal [State of Punjab v. Amar Nath Goyal, (2005) 6 SCC 754 : 2005 SCC (L&S) 910] and State of Bihar v. Bihar Pensioners Samaj [State of Bihar v. Bihar Pensioners Samaj, (2006) 5 SCC 65 : 2006 SCC (L&S) 913] in this regard.*

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15. *We have heard the learned counsel appearing on behalf of the State at length. We have gone through and considered the impugned judgment and order [Anjana Bhattacharjee v. State of Tripura, 2017 SCC OnLine Tri 271] passed by the High Court. Before the High Court, Rule 3(3) of the Pension Rules, 2009 was under challenge, which is reproduced hereinabove. Rule 3(3) of the Pension Rules, 2009 has been struck down by the High Court by holding that the same is arbitrary and violative of Article 14 of the Constitution of India. Before the High Court, it was the specific case on behalf of the State that because of heavy financial burden and there being financial constraints, the State is not in a position to bear the heavy burden of additional revised pension and therefore, the State formulated a policy decision to the effect that the revised pension shall be paid from 1-1-2006 to 31-12-2008 notionally and actual revision of pension shall be disbursed from 1-1-2009 only.*

16. *A detailed affidavit was filed on behalf of the State justifying the above policy decision providing/granting the revision of pay from 1-1-2009 only and to grant the benefit of revised pension notionally from 1-1-2006 or from the date of retirement till 31-12-2008. Before the High Court on affidavit, it was stated, which is also reproduced by the High Court in the impugned judgment and order [Anjana Bhattacharjee v. State of Tripura, 2017 SCC OnLine Tri 271] , as under : (Anjana Bhattacharjee case [Anjana Bhattacharjee v. State of Tripura, 2017 SCC OnLine Tri 271] , SCC OnLine Tri para 11)*

"11. … 'However, vide Rule 3(3) ibid Financial benefit was made admissible from 1-1-2009 or from the date of superannuation/retirement whichever was later. For all other cases, the pension was computed notionally as per revised rates of scale of pay. Since the petitioner retired on 28-2-2007 so her revised pension up to 31-12-2008 was computed notionally. The claim of the petitioner is to allow her arrears of pension as per revised rates for the period from 1-3-2007 to 31-12-2008. It is a fact that financial condition of the State has been passing through turbulent time since the recommendations of the Twelfth Finance Commission. State Government has to depend on Central

Government funding for meeting up its plan and non-plan expenditure. The funding by the Central Government is based on the recommendations of the Finance Commission. Finance Commission under estimated State's projections of non-plan revenue expenditure which included salaries, pension and interest payment (Non-flexible and committed expenditure). For example, the State Government presented a realistic picture of Rs 3944.79 crores towards meeting up expenditure towards pension as per revised pay scales. Contrary to it, the Finance Commission assessed a cumulative expenditure of Rs 2779.09 crores which was Rs 1165.70 less than the actual assessment by the State Government. 12th Finance Commission calculated pension at Rs 342.01 crores during the year 2008-2009 and Rs 413.83 crores during the year 2009-2010. This is an increase of approximately 9% over 2007-2008 and 21% over 2008-2009. However, as per actual implication, the expenditure during 2008-2009 and 2009-2010 has been Rs 356.43 crores and Rs 559.89 crores respectively which is 14% and 57% higher than that of previous years. Thus, due to under assessment of the State's financial position by the Finance Commission, there has been a shortfall in funding on non-plan revenue expenditure. It was now required to make payment of pension without compromising with the State's finances on development front. As such financial benefit towards payment of pension was considered from 1-1-2009. All other cases of retirement falling within 1-1-2006 to 31-12-2008 were allowed pension fixed notionally. Further, payment of arrears of pension will have a huge impact on the State finances as there are large numbers of retirees during that period. Considering, the constrained financial position of the State, it is not possible to consider further payment of arrears of pension to the similarly situated persons as it would give rise to huge financial burden on the State Exchequer which will disturb the financial equilibrium of the State.' "

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***18.** When specific statistics were provided before the High Court justifying its policy decision and the financial crunch/financial constraint was pleaded, there was no reason for the High Court to doubt the same. As such the findings recorded by the High Court in the impugned judgment and order [Anjana Bhattacharjee v. State of Tripura, 2017 SCC OnLine Tri 271] are contrary to the averments made in affidavit filed on behalf of the State Government. From the affidavit filed before the High Court reproduced hereinabove, we are satisfied that a conscious policy decision was taken by the State Government to grant the benefit of revision of pension notionally from 1-1-2006 or from the date of superannuation till 31-12-2008 and to pay/grant the benefit of revision of pension actually from 1-1-2009, which was based on their financial crunch/financial constraint.*

***19.** Whether the financial crunch/financial constraint due to additional financial burden can be a valid ground to fix a cut-off date for the purpose of granting the actual benefit of revision of pension/pay has been dealt with and/or considered by this Court in Amar Nath Goyal [State of Punjab v. Amar Nath Goyal, (2005) 6 SCC 754 : 2005 SCC (L&S) 910] . In the aforesaid decision, it is observed and held by this Court that financial constraint can be a valid ground for fixation of cut-off date for grant of benefit of*

increased quantum of death-cum-retirement gratuity. In paras 26, 32 and 33 of the said judgment [State of Punjab v. Amar Nath Goyal, (2005) 6 SCC 754 : 2005 SCC (L&S) 910] , it is observed and held as under : (SCC pp. 763 & 765)

"26. It is difficult to accede to the argument on behalf of the employees that a decision of the Central Government/State Governments to limit the benefits only to employees, who retire or die on or after 1-4-1995, after calculating the financial implications thereon, was either irrational or arbitrary. Financial and economic implications are very relevant and germane for any policy decision touching the administration of the Government, at the Centre or at the State level.

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32. The importance of considering financial implications, while providing benefits for employees, has been noted by this Court in numerous judgments including the following two cases. In State of Rajasthan v. Amrit Lal Gandhi [State of Rajasthan v. Amrit Lal Gandhi, (1997) 2 SCC 342 : 1997 SCC (L&S) 512] this Court went so as far as to note that:

'17. … Financial impact of making the Regulations retrospective can be the sole consideration while fixing a cut-off date. In our opinion, it cannot be said that this cut-off date was fixed arbitrarily or without any reason. The High Court was clearly in error in allowing the writ petitions and substituting the date of 1-1-1986 for 1-1-1990.' [Id, SCC p. 348, para 17 (emphasis supplied).]

33. More recently, in Veerasamy [T.N. SEB v. R. Veerasamy, (1999) 3 SCC 414 : 1999 SCC (L&S) 717] this Court observed that, financial constraints could be a valid ground for introducing a cut-off date while implementing a pension scheme on a revised basis [Id, SCC p. 421, para 15] . In that case, the pension scheme applied differently to persons who had retired from service before 1-7-1986, and those who were in employment on the said date. It was held that they could not be treated alike as they did not belong to one class and they formed separate classes."

6.4. With regard to the submission that in absence of the prior approval of the Registrar of Co-operative Societies the Committee could not have taken the decision in its proceeding dtd.22.06.2022, reliance was placed to a decision of the Hon'ble Apex Court in the case of ***Rahas Bihari Das & Ors. vs. State of Orissa & Ors.,*** reported

in ***1994(II) OLR-391***. Reliance was placed to Para-2, 3, 4, 6(i), 8 & 9, which reads as follows:-

> *"2. The petitioners have averred in the writ application that the Orissa Co-operative Housing Corporation Limited (opposite party No. 4) is the apex Society within the ambit of Section 2(a) of the Act. The Committee of the said Society has been superseded since October, 1990, and the Registrar of Cooperative Societies in exercise of his power under Sub-section (1) of Section 32 of the Act has been appointing different persons to manage the affairs of the Society. One Shri Prasant Mohapatra was appointed as the Administrator of the apex Society by the Registrar and the said appointment was assailed in this Court In O.J.C. No. 873 of 1994, inter alia, on the ground that the appointment has been made by the Registrar not in exercise of his statutory power under the provisions of Section 32(1) of the Act, but at the instance of the Chief Minister of the State. This Court by its order dated 12-4-1994 quashed the appointment and directed the Registrar to make a fresh appointment without being influenced by any extraneous consideration. On the very next day of the order of this Court, I.e. on 13-4-1994, the Registrar again appointed the very same person as the Administrator of the apex Society. The subsequent appointment was again challenged by the members of the Jaipur Sub-Divisional House Building Cooperative Society Limited in O.J.C. No. 3025 of 1994 and this Court issued notice in the matter and stayed the appointment of Shri Mohapatra and directed that it would be open to the Registrar to permit the Managing Director to carry on the affairs of the apex Society. Pursuant to the aforesaid observation made by this Court, the Managing Director was permitted by the Registrar to exercise the powers of the Managing Committee of the Society and while exercising the powers of the Committee of Society has passed orders on 16-5-1994 admitting 46 new members to the apex body. It is alleged in the writ application that not only the aging Director could not have taken the decision of admission of members to the body even though by virtue of the deeming provision he exercised the power of me Committee of Society, but also the said decision of the Managing Director is vitiated the elected President. It is further stated that the apex Society being a Society by*

mala fides and it is intended only to get the nominated Director Shri Mohapatra as of Primary of different organizations and persons having no connection with the house-building itself is an example of gross malice. It is further stated that indiscriminate admission of the firms and private limited companies as the members of the apex body without examining the requirement of sound, business of those non-housing primary societies, firms and private limited companies, is contrary to Section 7 of the Act and such decision on the eve of the election notice, election notice having been issued on 17th of May, 1994, and the order admitting new societies having been made on 16th of May, 1994, is nothing but a malicious act on the part of the Managing Director for exposing the cause of Shri Mohapatra who had been installed twice, but has been prevented because of the orders of the Court from functioning as the President of the apex body. The petitioners also have stated that even if these new societies could be admitted as members of the apex body, but in accordance with the provisions of the Act, the Rules and the Bye-laws, they cannot have any voting right and they would be merely nominal members. The petitioners have also stated that prior to 16-5-1994, the apex body had 68 members and on 16-5-1994, the 46 new members were included.

3. Opposite parties 2 and 3 have filed a return stating therein that the power of admitting members to the apex body lies with the Committee of management under Section 28(1) of the Act and the Registrar has no role to play therein. It has been further stated that if there is any inconsistency between the provisions of the Act and the Bye-laws, then the Act would prevail.

4. On behalf of the Managing Director who was exercising the powers of the Committee of Management under Section 32(1) of the Act, a detailed counter-affidavit has been filed. It has been stated therein that any society which is registered under the Orissa Co-operative Societies Act can apply for membership of the apex society and once such societies are admitted they can exercise their electoral rights. It is only the non-cooperative body corporates or other individuals though are eligible to be members of the apex society, but would be nominal members and cannot exercise the electoral rights. Accordingly both 'A' and 'B' categories of

members of the apex body have the electoral rights. It has been further averred that Section 16 of the Act provides as to who can be members of the co-operative Societies and Section 16(1)(b) deals with membership of the Central and apex Societies. So far as the Inclusion of new members to the apex body is concerned, it has been averred that the Managing Director was exercising the powers of the Committee of Management and admitted the members on the basis of their applications as the applicants were found to be eligible and qualified to be the members of the apex body. With regard to the allegation that non-housing co-operative societies have also been members of the apex body, It has been stated that such members were there since 1986 and it is not for the first time that such members have been admitted. According to the counter-affidavit, the 46 members were admitted as per the Resolution dated 16-5-1994, annexed as Annexure-G/4 to the counter-affidavit. It has been averred that admission or refusal of membership is within the powers and functions of the Committee and it needs no approval of the Registrar or the General Body and, therefore, the Managing Director who was exercising the powers of the Committee of the apex body has admitted the members on 16-5-1994. It is to be noticed that though in the writ application several allegations of malice on the part of the Managing Director in the matter of admission of the new members had been made, and the Managing Director himself has filed the return, but no denial to those allegations is there.

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6.(i) Whether a Managing Director exercising the powers of the Committee of Management under Sub-section(1) of Section 32 of the Act and being the Committee itself by virtue of the deeming provisions in Sub-section(2) of Section 32, could admit new members to the apex body, or he was entitled to only discharge the routine matters leaving the question of admission of new members to the elected body itself ?.

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8. Coming to the first question, the power to admit members of a Society vests with the Committee of Society as contained in Section 28(1)(a) (1) of the Act. After supersession of the Committee of Management of a

Society by the Registrar under Sub-section (1) of S.-32 of the Act, when an Administrator is appointed to manage the affairs of the Society, such Administrator exercises all or any of the functions of the Committee of the Society and is entitled to take all such actions as may be expedient in the interest of the Society and he is deemed for all purposes of the Act and the Rules and Bye-laws to be the Committee of such Society, as provided in Sub-section (2) of Section 32. Thus, by virtue of the deeming provision contained in Sub-section (2) of Section 32 of the Act, the Administrator becomes the Committee of such Society.

A crucial question thus arises for consideration as to whether a person who by virtue of a deeming provision of a statute becomes the Committee of Society can or should exercise all the powers of the Committee under the Act or should exercise only day to day administration of the Society until an elected Committee is brought into action. In the case of Padma Charan Samantsinghar vs. The Registrar of Co-operative Societies Bhubaneswar MANU/OR/0050/1981 a Bench of this Court was considering the status of an Administrator appointed under Sub-section (1) of Section 32 of the Act and was examining the question whether such a person can be equated with the Committee defined in Section 2(c) of the Act. Construing Sections 32(1) and 2(c) of the Act, the learned Judges came to hold (at page 151 and 152):--

"..... Sub-section (2) does not have the effect of converting the Committee of Administrators to a Committee in terms of the bye-laws. Sub-section (1) must be confined to the 'Committee' in which under the Act or the Bye-laws, the management of the affairs of the society vests. The Administrator of the Committee of Administrators is not such a Committee. The effect of Sub-section (2) is only in regard to exercise of powers and the deeming provision therein cannot be extended to make the Committee of Administrators a Committee referred to in Sub-section (1) and in terms of the definition in Section 2(c) of the Act.

A somewhat similar question in the context of Sections 28 and 32(2) of the Act came up for consideration in the case of Janarden Rout v. Election Officer, Cuttack Central Co-opera- live Bank Ltd. MANU/OR/0331/1990 1990 (2) OLR 511. The learned Judges came to hold :--

".....Hence, though in the election to the apex or the central body, the co-operative societies who are the members are to be represented by delegates duly authorized in that behalf by their committees, yet so far as either an Administrator or Authorized Officer is concerned, they are subject to the control of the Registrar even in the matter of functioning as Committees of management while sending the delegates. There cannot be any denial of the fact that the Administrators or Authorized Officers are not the Committee of management themselves but are mere substitutes for them by way of a deeming provision which is even absent so far as Section 28(1-a) is concerned....."

In the case of Satyanarayan Patnaik v. State of Orissa (O.J.C. No. 1667 of 1986, disposed of on 29-9-1986), this Court was considering the question as to the person in whom power of a municipal council is vested after dissolution of the municipal council under subsection (5) of Section 401 of the Orissa Municipal Act. In that case it had been observed that discharging the powers of an elected body temporarily does not make the person so discharging the duties, the elected body itself. In a statute when the expression 'deemed to be' is used, it create a fiction and a thing is treated to be that which, in fact, it is not. A (fiction is a legal assumption that a thing is true which is either not true, or what is probably false as true. Therefore, a legal fiction has to be strictly confined to the area in which it operates. When a person is deemed to be something, the only meaning possible is that whereas he is not in reality that something, the Act of Parliament requires him to be treated as if he were. The legal fiction must be limited to the purposes indicated by the context and cannot be given a larger effect. The context is vital. When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be to its logical conclusion or Administrators of the sub-section (1) of Section 32 of the Act to manage the affairs of the Society, by virtue (2) and Bye-laws to be the Committee of such Society. Sub-section (2) of Section 32 further provides that the exercise of power by such deemed committee shall be subject to the control of the

Registrar and to such instructions as he may from time to time give. The appointment of such deemed Committee is also for a specified period and does not exceed the aggregate period of four years. From this it follows that the legislature has created such legal fiction for definite purpose, namely, to manage the affairs of the society till a properly constituted Committee comes into being on being elected. In the case of Bengal Immunity Co. Ltd. v. State of Bihar, MANU/SC/0083/1955 the Supreme Court held that legal fiction is created only for some definite purpose and the same is to be limited for the purpose for which it was created and should not be extended beyond that legitimate field. The Administrator having been appointed for a limited purpose, the legal fiction created for him under sub-section (2) of Section 32 of the Act should not be allowed to operate beyond the limited field of day to day running of the business of the Society. In this view of the matter of a statutory fiction by which an Administrator is deemed to be a Committee of Society under subsection (2) of Section 32 and exercises the power of the Committee, the first question posed, requires answer as to whether the purposes of the Act enjoin upon the Administrator to exercise all the functions of the Committee of Society or merely some functions of the Committee could be exercised by him. The Administrator is appointed when a Committee of Society is under supersession to manage the affairs of the Society as provided in sub-section (1) of Section 32. It would, therefore, be reasonable for us to construe that while the elected body has been superseded by the Registrar and an Administrator is appointed, such Administrator called upon by statute to manage the affairs of the society in the interregnum until a fresh Committee of Society is constituted. Keeping in view the co-operative movement and the object of having co-operative societies under the control of a Registrar, it would not he proper to hold that the Administrator appointed by the Registrar to manage the affairs of a Society though by virtue of the deeming provision is the Committee of Society, can take a policy decision in relation to the society in question. We are of the considered opinion that a Managing Director being appointed as the Administrator of the Committee of Management can only discharge the duties and normal functions of the society white the society is under supersession and is not entitled to take any policy

decision in relation to the society in question which power west on the elected body itself, inasmuch as the Administrator is not the 'society' itself, but by virtue of the deeming provision is deemed to 'be a society'. This being the position, the further question which requires a probe is whether admission of members of a society tantamount to a policy decision or is an ordinary function relating to the affairs of the society. Under section 16-A of the Act, no person shall be eligible for being admitted as a member of the society If he does not satisfy the requirements of the Act and the rules and Bye-laws 'thereunder. Under Section 16(1)(b) of the Act, no person is entitled to be admitted as a member of a society other than a primary society except any society; the State Government; the Central Government, and any other person as may be prescribed. The proviso to the aforesaid clause indicates that an individual may be admitted only as a nominal member. Under the definition of 'apex society' in Section 2(a). only societies can be its members. Under the Proviso to Section 2(a), individuals or body corporates may be taken as nominal or associate membership of the Corporation is open. Thus, whether admission of certain categories its members an contained in Bye-law 2(a) and Bye-law 7(a) provides as to whom the as the society for sot and whether applications being made, the applicants could be refused admission for sufficient reasons, are all in the nature of a policy decision which has to be taken bearing in mind several germane factors and cannot be brought within the expression of "normal affairs of the society and, therefore, an Administrator who has been appointed to manage the affairs of the society though by virtue of the deeming provision contained in Sub-section (2) of Section 32 becomes the Committee of Society. yet is not entitled to decide the question of admission of members to the society. Therefore, in our considered opinion, the decision of the Administrator (dated 16-5-1994 to admit 46 members to the 'apex body cannot be construed to be within the power of the said administrator who has merely become a Committee of Society by a deeming provision and as such the said decision is invalid and inoperative and is liable to be struck down.

9. Coming to the second question posed by us, we are also persuaded to accept the submission of Mr. Acharya for the petitioners that the Administrator admitted 46

persons on 16-5-1994, the day before the election notification for the Committee of Society was notified in a hush-hush manner with unusual haste without application of his mind fully to the relevant materials and without examining the applications of the several applicants and, therefore, such decision must be held to be an abuse of power of the administrator. It is in this context the conduct of the Administrator and the earlier decisions of the registrar assume significance. As has been held by this Court in O. J. C. No. 873 of 1994, the Registrar appointed Shri Prasant Mohapatra as the Administrator not in exercise of his statutory power but at the instance of the Chief Minister and, therefore, that decision was quashed making it clear that it would be open for the registrar to pass a fresh order appointing a proper person as the Administrator of the apex body without being influenced by any extraneous consideration. This order was passed by this Court on 12-4-1994. On 13-4-1994, the Registrar of Cooperative Societies, appointed the self-same person as the Administrator of the apex body and the said decision was challenged in O. J. C. No. 3025 of 1994 and this Court by an interim order stayed the appointment of said Shri Mohapatra and permitted the Registrar, either to revoke the order of appointment or to permit the Managing Director to carry on the affairs of the Corporation or the Registrar may himself manage the affairs of the apex body and it is pursuant to this interim direction, the Managing Director was permitted to exercise the power under Sub-section (1) of Section 32 of the Act. On the face of the aforesaid blatant abuse of power by the Registrar, when the Managing Director was appointed as the Administrator by the Registrar and then that Managing Director admits as many as 46 members to the apex body one day before the notification for election to the-Committee of Society of the apex body was given and such admission having been undertaken by the Administrator without any scrutiny or without any application of mind, as the file produced before us indicates, it can safely be concluded that the impugned decision of the Managing Director is not the outcome of elimination of all relevant and germane materials in the interest of the apex body, but is calculated and is an attempt to support the candidature of said Shri Mohapatra for whom the Registrar has already exhibited his bias, and is a deliberate attempt to push the cause of said Shri Mohapatra in the

forthcoming election to the Committee of society. Such an order of the Managing Director, therefore, must be held to be a grossly malicious action intended to espouse the cause of a particular individual whom the Registrar has been trying to thrust arbitrarily, but has been prevented from so doing because of the Court's intervention. In the aforesaid premise, the order of the Managing Director dated 1194 admitting 46 new members to the apex body cannot be sustained and we, accordingly quash the same.

6.5. Reliance was placed to a decision of the Hon'ble Apex Court in the case of ***Joint Registrar of Co-operative Societies vs. T.A. Kuttappan & Ors.***, reported in ***AIR 2000 SC 2378***. Reliance was placed to Para-1, 2, 3 and 7, which reads as follows:-

*"**1.**These appeals by special leave are against a common order made in OPs Nos. 12184, 14840, 14886, 15700, 17258, 18396 and 20913 of 1997. Section 32 of the Kerala Cooperative Societies Act, 1969 (hereinafter referred to as "the Act") enables the Registrar of Cooperative Societies to supersede the Committee of Management under the circumstances set forth in sub-section (1) thereto. After supersession of the Committee of Management, the Registrar can appoint an administrator or administrators or a committee as provided in Section 32(1)(a) and (b) of the Act. Such committee or administrator or administrators so appointed shall, subject to the control of the Registrar and to such instructions as he may from time to time give, have power to exercise all or any of the functions of the committee or of any officer of the society and take all such action as may be required in the interests of the society. When the administrator appointed on supersession of the Committee of Management of certain cooperative societies wanted to enrol new members to the society the same was objected to and the original petitions under Article 226 of the Constitution were filed before the High Court on the ground that the Registrar is only expected to carry on day-to-day functions of the society and see that election is conducted and a new committee in accordance with the Act, rules and bye-laws of the society is constituted. It was contended before the Court that the earlier decision in George v. Jt. Registrar [1985 KLT 836] is no longer good law in the light of the decision of this Court in K. Shantharaj v. M.L. Nagaraj [(1997) 6 SCC 37] . The Full Bench of the High Court, after referring to the earlier decision of the High Court and the decision of this Court in K. Shantharaj [(1997) 6 SCC 37] held that the*

admission of a member is not mere "function" of the committee, but is a "power" of the committee to admit members or not as provided in bye-laws of the society. The committee can exercise only certain functions and not any powers and, therefore, the administrator or a committee appointed as aforesaid has no power to enrol new members. This order is in challenge in these appeals.

2. *It is now brought to our notice that subsequent to the decision of the High Court, the provisions of Section 32 have been amended so that the administrator or the committee will have power to exercise all or any of the powers and functions of the committee. It is further brought to our notice that in Cherthala Agricultural Rural Development Bank v. Jt. Registrar [(2000) 1 KLJ 291 (FB)] it has been held that the decision in the case before us holding that the administrator has no power to enrol new members would have prospective and not retrospective effect. The scope of neither the amended Section 32 of the Act nor the decision in Cherthala Agricultural Rural Development Bank v. Jt. Registrar [(2000) 1 KLJ 291 (FB)] is required to be considered by us in these proceedings.*

3. *The question whether an administrator appointed during supersession of a Committee of Management of a cooperative society can enrol new members is no longer res integra. When an identical question came up before this Court for consideration in K. Shantharaj case [(1997) 6 SCC 37] this Court held that from the language of Section 30 [which is similar to Section 32(4) of the Act] and Section 30-A of the Karnataka Cooperative Societies Act, 1959, it would be clear that the administrator, subject to control of Registrar exercise all or any of the functions of the society, and the Special Officer, subject to control of the State Government and the Registrar exercise and perform all the powers and functions of the committee of the society and in the interest of the society can take such action as is necessary for proper functioning of the society as per law. He should conduct elections as is enjoined thereunder, that is, he is to conduct election with the members as on the rolls and by necessary implication, he is not vested with the power to enrol new members of the society. In the light of this clear enunciation of law the view taken by the High Court appears to be correct.*

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7. *If we carefully analyse the provisions of the Act, it would be clear that the administrator or a committee appointed while the Committee of Management of the society is under supersession cannot have the power to enrol new members and such a question ought not to be decided merely by indulging in an exercise on semantics in ascertaining the meaning of the expression "have power to exercise all or any of the functions …". Whether an authority is discharging a function or exercising a power will have to be ascertained with reference to the nature of the function or the power discharged or exercised in the background of the enactment. Often we do express that functions are discharged or powers exercised or vice versa depending upon the context of the duty or power enjoined under the law if the two expressions are interchangeable. What is necessary to bear in mind is that nature of function or power exercised and not the manner in which it is done. Indeed this Court, while considering the provisions of*

Section 30-A of the Karnataka Act, which enabled a Special Officer appointed to exercise and perform all the powers and functions of the Committee of Management or any officer of the cooperative society (and not merely functions), took the view that the administrator or a Special Officer can exercise powers and functions only as may be required in the interests of the cooperative society. In that context, it was stated that he should conduct elections as enjoined under law, that is, he is to conduct elections with the members as on the rolls and by necessary implication, he is not vested with power to enrol new members of the society. We may add that a cooperative society is expected to function in a democratic manner through an elected Committee of Management and that Committee of Management is empowered to enrol new members. Enrolment of new members would involve alteration of the composition of the society itself and such a power should be exercised by an elected committee rather than by an administrator or a committee appointed by the Registrar while the Committee of Management is under supersession. This Court has taken the view, it did, bearing in mind these aspects, though not spelt out in the course of the judgment. Even where the language of Section 30-A of the Karnataka Act empowering a Special Officer to exercise and perform all the powers and functions of the Committee of Management of a cooperative society fell for consideration, this Court having expressed that view, we do not think, there is any need to explore the difference in the meaning of the expressions "have power to exercise all or any of the functions of the committee" in the Act and "exercise all or any of the functions of the committee" in the Karnataka Act as they are not different and are in substance one and the same and difference in language will assume no importance. What is of significance is that when the Committee of Management of the cooperative society commits any default or is negligent in the performance of the duties imposed under the Acts, rules and the bye-laws, which is prejudicial to the interest of the society, the same is superseded and an administrator or a committee is imposed thereon. The duty of such a committee or an administrator is to set right the default, if any, and to enable the society to carry on its functions as enjoined by law. Thus, the role of an administrator or a committee appointed by the Registrar while the Committee of Management is under supersession, is, as pointed out by this Court, only to bring on an even keel a ship which was in doldrums. If that is the objective and is borne in mind, the interpretation of these provisions will not be difficult".

6.6. With regard to the submission that Petitioner since was on probation and accordingly had no vested right to continue with the benefit, reliance was placed to a decision in the case of **Dasarathi *Mahapatra vs. State***

of Orissa & Ors. reported in ***AIR, 1969, Orissa, 215***. Reliance was placed to Para-4 to 9, which reads as follows:-

> ***"4.*** *The State of Orissa contends that as the petitioner had been promoted temporarily until further orders to the higher rank of Joint Director, Public Health he had no manner of right to hold the post and as in the higher rank he was found unsuitable, his reversion to his substantive post of Civil Surgeon does not carry with it any stigma and does not entail any penal consequences and as such cannot be construed as a penalty to attract the operation of Article 311.*
>
> ***5.*** *It is now well settled that a reduction in rank may be by way of punishment or it may be an innocuous thing. If the Government servant has a right to the particular rank, then the very reduction from that rank will operate as a penalty for he will then lose the emoluments privileges of that rank. If, however, he has no right to the particular rank, his reduction from an officiating higher rank to his substantive lower rank will not ordinarily be a punishment. But the mere fact that the servant has no title to the post or the rank and the Governmant has by contract, expressed or implied, or under the rules, the right to reduce him to a lower post does not mean that an order of reduction of a servant to a lower post or rank cannot in any circumstances be a punishment. The real test for determining whether the reduction in such a case is not by way of punishment is to find out if the order of reduction also visits the servant with any penal consequences. Thus, if the order entails or provides for forfeiture of his pay or allowance or the loss of his seniority in the substantive rank or stoppage or postponement of his future chances of promotion, then that circumstance may indicate that although in form the Government has purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of employment or under the rules, in truth and reality the Government has terminated the employment as and by way of penalty. The Court, therefore, has to apply the two tests mentioned above, namely, (1) whether the servant had a right to the post or the rank or (2) whether he has been visited with evil consequences referred to above. If the case satisfies either of the two tests, then it must be held that the servant has been punished and if the requirements of the rules and Article 311 have not been complied with, the reduction in rank must be held to be wrongful and in violation of the constitutional right of the servant. (See P.L. Dhingra v. Union of India [A.I.R. 1958 S.C. 36.]).*
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> ***6.*** *Shri R.N. Misra appearing for the petitioner does not dispute that the petitioner has not acquired any right to hold the post of Joint Director and that his appointment was only temporarily made until further orders. He, however, contends that the petitioner's reversion was not occasioned by any want of*

vacancies in the higher cadre, because on his reversion, an officer still junior to him has been promoted to fill up his place, and that in view of this fact and also the fact that officers junior to him in the substantive rank and who were promoted simultaneously with him to the higher cadre, have been allowed to continue in such higher cadre, the petitioner's reversion in the circumstances must be deemed to be by way of penalty. In support of this contention he relies on P.C. Wadhwa v. The Union of India [A.I.R. 1964 S.C. 423.] , M. Ramaiah v. The State of Mysore [A.I.R. 1965 Mysore 164.] , and State of Andhra Pradesh v. X. Chinna Reddi [A.I.R. 1963 A.P. 412.] . The decision in Wadhwa's case proceeded on the basic fact that for members of All India Services like the Indian Police Services to which Wadhwa belonged, promotion was a matter of right and that a person borne on junior scale of pay has a right to hold the post in senior scale depending upon the availability of a post and consequently if a person holding a post in the senior scale, though in an officiating capacity, is found to be unfit to hold that post, action will have to be taken against him as required under Rule 5 of the Discipline and Appeal Rules because his reversion to a post in the lower scale would amount to reduction in rank within the meaning of Article 311. Obviously no such considerations can be applied in the case of the service to which the petitioner belongs. In M. Ramaiah v. The State of Mysore [A.I.R. 1965 Mysore 164.] , the petitioner Ramaiah along with six others, some senior and some Junior to him, in the substantive rank were appointed to officiate in higher posts. Subsequently, the petitioner alone was reverted to his substantive post, the order being that for a period of one year thereafter during which his work would be assessed, he would not have any promotion. In those circumstances, Ramaiah's reversion to his substantive post was held to be a penalty because for a period of one year after his reversion he was not to have any promotion. This meant that there was postponement of his chances of promotion in the substantive rank. In the instant case, there being no such order postponing the petitioner's chances of promotion in future, the decision in Mysore case cannot be of any help to the petitioner. Mr. Misra contends that the petitioner has just about a year to retire and during this period he may not in usual course get any chance of further promotion. That is altogether a different matter and cannot be pressed into service to judge the nature of the impugned order. In State of Andhra Pradesh v. X. Chinna Reddi [A.I.R. 1963 A.P. 412.] , the petitioner who was as Upper Division Clerk in the Collector's office, Guntur was on his application appointed as an Upper Division Clerk in the Andhra Secretariat Service which was in a higher scale of pay. He completed the probation in the latter service and was declared to be an approved probationer. Some time thereafter, be was reverted to his former post in the Guntur Collectorate, and he therefore came to the High Court complaining that this amounted to reduction in rank within the meaning of Article 311. The High Court, on a consideration of the rules on the subject, came to the conclusion that under the relevant rules, an approved probationer can only be transferred to serve in a post borne on the same cadre or class and that he can be reverted only for want of vacancy. Although an approved probationer does not as such acquire the status of a permanent

member of the service, the fact does remain that he awaits appointment as a full member of the service. It is in these circumstances that their Lordships held that the reversion of the petitioner in that case amounted to a penalty attracting the operation of Article 311. None of these cases therefore on which Sri Misra relies can be of any assistance to him. A Division Bench of this Court had occasion to consider the identical question in Baradakanta Misra v. State of Orissa [I.L.R. 1966 Cutt. 503.] . The petitioner in that case was a Subordinate Judge who had been temporarily promoted to the higher rank of A.D.M. (J.). Some time afterwards, he was reverted to his substantive rank of Subordinate Judge. Admittedly at that time an officer (Sri S. Naik) who was junior to him in the rank of Subordinate Judges and who had been promoted to the higher rank of A.D.M. (J.), was allowed to continue as such. The grievance of the petitioner was that the order of reversion passed against him without reverting his junior Sri S. Naik on the principle of "Last come first go" resulted in the loss of his seniority and as such it visited him with penal consequences. Ahmad, C.J. after an elaborate discussion of the law on the subject and the various decisions cited at the Bar over-ruled the contention. His Lordship observed—

"Lastly it has to be noted that when a promotion to a higher post as an officiating hand is not available to be claimed as a matter of right on the basis of seniority alone but is to be made after selection by the authority concerned on the principle of seniority-cumsuitability, situation like this bound to follow, when an officiating employee not having been found suitable on trial is reverted under the rules of service to bis substantive post. It is not uncommon that at a time a number of officers may have been acting as officiating hands in the higher posts. It is true that in such a case if any of them has to be reverted exclusively on the ground of the exigencies of service alone and not for the reason or his being found unsuitable for the post, the usual principle of: "last come first ge" will ordinarily be followed (vide Ramaswamy v. I.G. of Police [A.I.R. 1966 S.C. 175.] . This state of affairs, however, will prevail only so long as reversion is due exclusively to the exigencies of service. But where reversion of an officiating hand is due to the fact that on trial be is found not suitable, the principle of "last come first go" can have no relevancy or applicability. It is quite understandable that in such a case the officer who is reverted on the ground that on trial he has been found not suitable may not be then the juniormost in the higher rank. In that case it will necessarily follow that notwithstanding his seniority he will be reverted while those standing junior to him in that rank will continue to officiate as before. Therefore, that circumstance by itself can be no ground for holding that his reversion resulted in any loss of his seniority in the substantive rank".

7. *The same view was expressed by the Supreme Court in The Divisional Personnel Officer, Southern Railway, Mysore v. Raghavendrachar [A.I.R. 1966 S.C. 1529.] . In that case, the respondent and one James Blazey were promoted from the lower grade of Train Examiners to officiate in the higher grade. The respondent was shown against item no. 2 and Blazey against item no. 3 in the promotion list. The promotion of*

both was purely in provisional basis. Later on, the respondent was reverted to the lower grade while Blazey was retained in the higher grade. The respondent having complained that this circumstance indicated that his reversion was by way of penalty, their Lordships held that the respondent's rank in the substantive post, that is, in the lower grade, was in no way affected by the reversion. In the substantive grade the respondent retained his rank. He was visited with no penal consequences. Once it was accepted that the respondent had no right to the post to which he was provisionally promoted, his reversion did not amount to a reduction in rank.

8. *It was further contended by Sri Misra that Government's view that the petitioner was found unsuitable in the higher post cast a stigma on him and although the order of reversion appeared innocuous on the fact of it, it is clear that petitioner's reversion was ordered by way of penalty. It was also contended with some amount of vehemence that the Government's action reverting the petitioner was mala fide. It may be noticed that in the order reverting the petitioner to his substantive post, the Government indicated no reasons. It is only in answer to the writ, petition that Government in their counter stated that the petitioner was given ad hoc promotion to the post of Joint Director, Health on trial basis and since he was not found suitable after trial, he was reverted to his substantive post of Civil Surgeon. It was further stated that the services of the petitioner were placed at the disposal of the Labour Department for appointment as Administrative Medical Officer for a period of not exceeding one month. But as the petitioner was not found acceptable to the Labour Department, the Administrative Department, namely, the Health Department had to review his case and they found him unsuitable for the post of Joint Director, Health to which he was promoted on ad hoc basis and therefore he was reverted. During hearing, Sri Misra for the petitioner has attacked this action of Government as mala fide, although no such allegation was made in the writ petition itself. It may be noticed that the order of reversion did not indicate any reason and there is nothing in the order to oast any stigma on the petitioner. For every order of discharge or reversion, there is always a reason and once it is found that the right exists with the Government under the terms of the contract or the rules to revert the petitioner, the motive operating in the mind of the Government is wholly irrelevant. If there is no stigma on the face of the order, one cannot look into the background to discover whether any such stigma can be inferred. See Champaklal v. Union of India [A.I.R. 1964 S.C. 1254.] and N. Saksena v. The State of Madhya Pradesh [A.I.R. 1967 S.C. 1264.] . In dealing with this aspect of the matter, the real character either of termination of service or of reduction in rank must be determined by reference to the material facts that existed prior to the order. If in a case where a temporary servant attacks the validity of his discharge on the ground of mala fides on the part of the authority, the latter to resist the plea of mala fides refers to certain facts justifying the order of discharge and these facts relate to misconduct, negligence or inefficiency of the said servant, it cannot logically be said that in view of the plea thus made by the authority long after the order of discharge, it should be held that the order of discharge was the result of*

considerations set out in the said plea. That is not even the case here because mala fides on the part of the Government have not been pleaded in the petition. We have pointed out relying on B.K. Misra's case referred to above that the authority concerned has the right to revert an officer, if found unsuitable, although it may so happen that his juniors in the substantive cadre are allowed to continue to officiate in the higher post.

9. *Mr. Misra lastly contends that right from the time of the promotion, the petitioner was working in the Labour Department to which his services had been lent and that he was tried not for a single day in the post of Joint Director of Health under the Health Department to which he was promoted and that in such circumstances, the plea of the Government that he was found unsuitable in the post of Joint Director cannot be accepted. This argument can hardly be accepted. As rightly contended by the learned Government Advocate it may be that Government in considering the case of the petitioner for a promotion to the higher rank was of opinion even initially that he was not suitable for appointment in any of the posts of Joint Directors under the Health Department, but wished to try him in the post of Administrative Medical Officer under the Labour Department which is generally meant for officers of the cadre of Joint Directors and after trial having found him unsuitable even in the post of Administrative Medical Officer decided to revert him. It may also be, as contended by the learned Government Advocate, that after the Labour Department found him to be unsuitable, Government considered whether be was suitable to be appointed as one of the Joint Directors under the Health Department and came to the conclusion that he was not suitable. Whether it is the one or the other, that is exclusively a matter for the decision of Government and it would not be open to the Court to question that decision. In the result, therefore, the petition must fail and is dismissed. But in the circumstances of the case, there will be no order as to costs".*

6.7. Reliance was placed to a decision of the Hon'ble Apex Court in the case of ***Parshotam Lal Dhingra vs. Union of India***, reported in ***AIR 1958 SC-36***. Reliance was placed to Para-36 to 38, which reads as follows:-

"36.It does not, however, follow that, except in the three cases mentioned above, in all other cases termination of service of a Government servant who has no right to his post, e.g., where he was appointed to a post, temporary or permanent, either on probation or on an officiating basis and had not acquired a quasi-permanent status, the termination cannot, in any circumstance, be a dismissal or

removal from service by way of punishment. Cases may arise where the Government may find a servant unsuitable for the post on account of misconduct, negligence, Inefficiency or other disqualification. If such a servant was appointed to a post, permanent or temporary, either on probation or on an officiating basis, then the very transitory character of the employment implies that the employment was terminable at any time on reasonable notice given by the Government. Again if the servant was appointed to a post, permanent or temporary, on the express condition or term that the employment would be terminable on say a month's notice as in the case of Satish Chander Anand v. Union of India MANU/SC/0097/1953: [1953]4SCR655, then the Government might at any time serve the requisite notice. In both cases the Government may proceed to take action against the servant in exercise of its powers under the terms of the contract of employment, express or implied, or under the rules regulating the conditions of service, if any be applicable, and ordinarily in such a situation the Government will take this course. But the Government may take the view that a simple termination of service is not enough and that the conduct of the servant has been such that he deserves a punishment entailing penal consequences. In such a case the Government may choose to proceed against the servant on the basis of his misconduct, negligence, Inefficiency or the like and inflict on him the punishment of dismissal, removal or reduction carrying with it the penal consequences. In such a case the servant will be entitled to the protection of Art. 311(2).

37. The position may, therefore, be summed up as follows: Any and every termination of service is not a dismissal, removal or reduction in rank. A termination of service brought about by the exercise of a contractual right is not per se dismissal or removal, as has been held by this Court in Satish Chander Anand v. The Union of India (supra). Likewise the termination of service by compulsory retirement in terms of a specific rule regulating the conditions of service is not tantamount to the infliction of a punishment and does not attract Art. 311(2), as has also been held by this Court in Shyam Lal v. The State of Uttar Pradesh MANU/SC/0134/1954: (1954) IILLJ139SC. In either of the two abovementioned cases the termination of the service did not carry with it the penal consequences of loss of pay, or allowances under r. 52 of the Fundamental Rules. It is true that the misconduct, negligence,

Inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists, under the contract or the rules, to terminate the service the motive operating on the mind of the Government is, as Chagla C.J. has said in Shrinivas Ganesh v. Union of India (supra), wholly irrelevant. In short, if the termination of service is founded on the right flowing from contract or the service rules then, prima facie, the termination is not a punishment and carries with it no evil consequences and so Art. 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to punishment and the requirements of Art. 311 must be complied with. As already stated founded on misconduct, negligence, inefficiency or other disqualification, then it of the servant has got a right to continue in the post, then, unless the contract of employment or the rules provide to the contrary, his services cannot be terminated otherwise than for misconduct, negligence, Inefficiency or other good and sufficient cause. A termination of the service of such a servant on such grounds must be a punishment and, therefore, a dismissal or removal within Art. 311, for it operates as a forfeiture of his right and he is visited with the evil consequences of loss of pay and allowances. It puts an inedible stigma on the officer affecting his future career, A reduction in rank likewise may be by way of punishment or it may be an innocuous thing. If the Government servant has a right to a particular rank, then the very reduction from that rank will operate as a penalty, for he will then lose the emoluments and privileges of that rank. If, however, he has no right to the particular rank, his reduction from an officiating higher rank to his substantive lower rank will not ordinarily be a punishment. But the mere fact that the servant has not title to the post or the rank and the Government has, by contract express or implied, or under the rules, the right to reduce him to a lower post does not mean that an order of reduction of a servant to a lower post or rank cannot in any circumstances be a punishment. The real test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for the

reduction also visits the servant with any penal consequences. Thus if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion, then that circumstance may indicate that although in form the Government had purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of employment or under the rules, In truth and reality the Government has terminated the employment as and by way of penalty. The use of the expression "terminate" or "discharge" is not conclusive. In spite of the use of such innocuous expressions, the court has to apply the two tests mentioned above, namely, (1) whether the servant had a right to the post or the rank or (2) whether he has been visited with evil consequences of the kind hereinbefore referred to. If the case satisfies either of the two tests then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service or the reversion to his substantive rank must be regarded as a reduction in rank and if the requirements of the rules and Art. 311, which give protection to Government servant have not been complied with, the termination of the service or the reduction in rank must be held to be wrongful and in violation of the constitutional right of the servant.

38. Applying the principles discussed above it is quite clear that the petitioner before us was appointed to the higher post on an officiating basis, that is to say, he was appointed to officiate in that post which, according to Indian Railway Code, r. 2003(19) corresponding to F.R. 9(19), means, that he was appointed only to perform the duties of that post. He had no right to continue in that post and under the general law the Implied term of such appointment was that it was terminable at any time on reasonable notice by the Government and, therefore, his reduction did not operate as a forfeiture of any right and could not be described as reduction in rank by way of punishment. Nor did this reduction under Note 1 to r. 1702 amount to his dismissal or removal. Further it is quite clear from the orders passed by the General Manager that it did not entail the forfeiture of his chances of future promotion or affect his seniority in his substantive post. In these circumstances there is no escape from the conclusion that the petitioner complain that the requirements of Art. 311(2) were not complied with, for those 311(2) do not come into

play at all. In this view of the matter the petitioner cannot complaint that the requirements of Art.311(2) were not complied with, for those requirements never applied to him. The result, therefore, is that we uphold the decision of the Division Bench, although on somewhat different grounds. This appeal must, therefore, be dismissed with costs.

Vivian Bose, J."

6.8. Reliance was placed to a decision in the case of ***R. Vishwanatha Pillai vs. State of Kerala & Ors***. reported in ***AIR 2004 SC-1469***. Reliance was placed to Para-16 & 17, which reads as follows:-

*"**16.** In Ishwar Dayal Sah v. State of Bihar [1987 Lab IC 390 : 1987 BBCJ 48 (Pat)] the Division Bench of the Patna High Court examined the point as to whether a person who obtained the appointment on the basis of a false caste certificate was entitled to the protection of Article 311 of the Constitution. In the said case the employee had obtained appointment by producing a caste certificate that he belonged to a Scheduled Caste community which later on was found to be false. His appointment was cancelled. It was contended by the employee that the cancellation of his appointment amounted to removal from service within the meaning of Article 311 of the Constitution and was therefore void. It was contended that he could not be terminated from service without holding departmental inquiry as provided under the Rules. Dealing with the above contention, the High Court held that if the very appointment to the civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily follow that no constitutional rights under Article 311 of the Constitution can possibly flow. It was held: (Lab IC pp. 394-95, para 12)*

If the very appointment to civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily follow that no constitutional rights under Article 311 can possibly flow from such a tainted force. In such a situation, the question is whether the person concerned is at all a civil servant of the Union or the State and if he is not validly so, then the issue remains outside the purview of Article 311. If the very entry or the crossing of the threshold into the arena of the civil service of the State or the Union is put in issue and the door is barred against him, the cloak of protection under Article 311 is not attracted.

***17.** The point was again examined by a Full Bench of the Patna High Court in Rita Mishra v. Director, Primary Education, Bihar [AIR 1988 Pat 26 : 1988 Lab IC 907 : 1987 BBCJ 701 (FB)] . The question posed before the Full Bench was whether a public servant was entitled to payment of salary to him for the work done despite the fact*

that his letter of appointment was forged, fraudulent or illegal. The Full Bench held: (AIR p. 32, para 13)

"13. It is manifest from the above that the rights to salary, pension and other service benefits are entirely statutory in nature in public service. Therefore, these rights, including the right to salary, spring from a valid and legal appointment to the post. Once it is found that the very appointment is illegal and is non est in the eye of the law, no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise. In particular, if the very appointment is rested on forgery, no statutory right can flow from it."

6.9. With regard to the permissibility, to recover the excess payment, reliance was placed to the decision of this Court in the case of ***Binapani Patnaik vs. State of Odisha & Ors.,*** reported in ***2024 (1) OLR-827***. Reliance was placed to Para-6.1 to 7.2, which reads as follows:-

"6.1. It is contended that even though petitioner was sanctioned with family pension at a lower rate as reflected in Para-6 of the counter so filed by Opp. Party No.2, but the bank wrongly released higher amount w.e.f 28.10.2008. When the said fact was brought to the notice of the bank by Opp. Party No.2 vide his letter dt.04.08.2020 under Annexure-2, a sum of Rs.8,300/- was recovered from the monthly pension of the petitioner w.e.f August, 2020 till July, 2023. Pursuant to the interim order passed by this Court, no further recovery has been made after July, 2023. Learned counsel for the bank contended that since Petitioner was sanctioned with the family pension at the rate indicated in para 6 of the counter so filed by Opp. Party No.2, and the Petitioner was released with higher pension amount wrongly by the bank which is not disputed, no reality is there on the part of the bank to recover the amount so paid in excess w.e.f 8.10.2008, as it is public money, which has been wrongly paid.

4.2. It is also contended that similar Issue was issue before the High Court of Karnataka in W.P(C) No.20321 of 2021. High Court of Karnatak taking into account the fact that petitioner therein has been paid

in excess, which is public money, directed for recovery of a sum of Rs.4,000/- per month from the family pension of the Petitioner. The stand taken by the High Court of Karnatak in Para 10 & 11 of the order dt. 27.10.2022 is reproduced hereunder.

"10. Pension, trite, not a bounty or a gratis that is granted to the Pensioner or the spouse of the Pensioner as a family pension, for the Bank to deal with it as its whim and fancy. It is to be noticed that the husband of the Petitioner is not an employee of the Bank, He has only his account in the bank. Pension is deposited rightly in the CPPC. The State Government has not paid any excess pension to the husband of the Petitioner. It is the irresponsibility of the Officers of the Bank, which has led to such over payment. Therefore, to generate a balance in the facts and circumstances becomes necessary. The amount that is deposited into the account of the husband of the Petitioner is neither the money belonging to the callous officers nor the money that belonged to the husband of the Petitioner. It is "public money". Therefore, I deem It appropriate to permit recovery of the amount in equal monthly instalments of Rs.4,000/- (Rupees four thousand only) from the hands of the Petitioner.

11. For the aforesaid reasons, I pass the following:

ORDER

(1) Writ Petition is allowed.

(II) A mandamus shall issue to the respondent/Bank to re-credit the amount that is recovered l.e. Rs.6,40,000/- or whatever, from the account of the Petitioner, within two weeks from the date of receipt of a copy of this order and also pay appropriate pension without any deductions on this issue.

(III) The Bank is at liberty to recover Rs.4,000/- every month from the family pension of the Petitioner till the alleged excess amount deposited in the account of the husband of the Petitioner gets cleared."

7. Having heard learned counsel appearing for the parties and after going through the materials available on record, this Court finds that on the death of the Petitioner's husband, she was sanctioned with the family pension with the rate as indicated in Para-6 of the counter so filed by Opp. Party No.2. Petitioner does not dispute the amount so sanctioned in her favour as indicated In Paragraphs-6 of the counter affidavit.

7.1. Since on the face of the amount sanctioned toward family pension, Petitioner admittedly has received higher amount because of the fault committed by bank, this Court is of the view that the Petitioner is required to pay back the amount to the bank as it amounts to receipt of excess amount which was never sanctioned by the Government. The amount so received in excess by the Petitioner and indicated in Annexure-2 being public money, no Illegality can be attributed to Opp. Party No.2 and 4 in recovering the excess payment.

7.2. In view of the same, this Court placing reliance on the decision of the Karnataka High Court as cited supra is not inclined to Interfere with the request made by Opp. Party No.2 to recover the excess payment as Indicated in Annexure-2. Taking into account the fact that a sum of Rs.2,73,000/- has already been recovered from the family pension of the petitioner, it is observed that the bank from this month onwards will recover a sum of Rs.1,000/- per month from the monthly pension of the Petitioner till the amount is so recovered or till Petitioner is alive, whichever is earlier.

Learned counsel appearing for the Petitioner also fairly accept the view of this Court with regard to recovery of sum of Rs.1,000/- per month from the monthly pension of the petitioner from this month onwards.

With the aforesaid observation and direction, the Writ Petition is disposed of."

6.10. Making all the submissions, learned counsel appearing for the Opposite Party-Bank contended that

since by the time the benefit of promotion extended vide order dtd.23.06.2023 was withdrawn with passing of the impugned order dtd.25.08.2022 under Annexure-5, Petitioner was under probation, Petitioner had no vested right to continue with the benefit.

6.11. It is also contended that since the decision of the Bank to withdraw the benefit is a policy decision of the Bank, the same cannot be interfered with, in exercise of the power conferred on this Court under Article-226 of the Constitution of India.

6.12. It is also contended that since the Committee who took the decision in its proceeding dtd.22.06.2022, was not a Committee constituted in accordance with law, the decision taken by the said Committee being illegal, benefit extended basing on such decision of the Committee cannot be allowed to continue.

7. To the submission made by Mr. S. Nanda, learned counsel appearing for the Opposite Party-Bank, learned counsel appearing for the Petitioner contended that since

Petitioner after getting the benefit of promotion retired on 30.06.2022, Petitioner had no occasion to complete the probation period, if any.

7.1. It is also contended that in the order of promotion so issued under Annexure-1, there is no such stipulation that such benefit is under probation.

7.2. It is also contended that since benefit of promotion was duly implemented with extension of the scale of pay so admissible to the promotional post and by the time, the impugned decision was taken on 26.08.2022 to withdraw the benefit, Petitioner had already retired w.e.f. 30.06.2022, such benefit cannot be withdrawn so far as it relates to the Petitioner. It is accordingly contended that the impugned order needs interference of this Court.

8. Having heard learned counsel appearing for the Parties and considering the submissions made, this Court finds that Petitioner while continuing as a Grade-IV employee under the Opposite Party-Bank, basing on the decision taken by the Appointment Committee in its

proceeding dtd.22.06.2022, Petitioner along with 108 others were extended with the benefit of promotion to different rank including to the rank of Asst. Manager in Grade-IV vide order dtd.23.06.2022 under Annexure-1. Basing on such order of promotion, Petitioner not only joined in the promotional post of Asst. Manager, Grade-IV but also he was extended with the benefit of the scale of pay so applicable to the promotional post as per order dtd.29.06.2022 under Annexure-2.

8.1. However, it is found that such benefit of promotion, extended vide order dtd.23.06.2022 was withdrawn vide the impugned order dtd.26.08.2022 under Annexure-5, basing on the subsequent decision taken by the self-same Appointment Committee in its proceeding dtd.25.08.2022.

8.2. Considering the materials available on record, it is the view of this Court that, since by the time the subsequent Committee in its proceeding dtd.25.08.2022 resolved and recommended to withdraw the benefit of promotion, so acted upon by the Opposite Party-Bank

with issuance of the impugned order dtd.26.08.2022 under Annexure-5, Petitioner had already retired from his services on attaining the age of superannuation on 30.06.2022, neither the decision taken by the Appointment Committee in its proceeding dtd.25.08.2022 be made applicable to the case of the Petitioner nor the impugned order passed by the Opposite Party-Bank vide order dtd.26.08.2022 under Annexure-5.

8.3. Not only that since by the time such benefit was withdrawn, Petitioner had already retired while holding the promotional post with extension of the scale of pay so applicable to the promotional post vide order dtd.29.06.2022 under Annexure-2, it is the view of this Court that Petitioner is not liable to refund the excess payment if any in view of the decision of the Hon'ble Apex Court in the case of ***Rafique Masiha*** so followed in the case of ***Thomos Daniel*** so cited (supra).

8.4. It is also the view of this Court that since by the time the benefit was withdrawn vide order dtd.26.08.2022, Petitioner had already retired while

holding the promotional post on 30.06.2022, Petitioner is eligible and entitled to get all such benefits so admissible to the promotional post including his retiral benefits. In view of the same, the decisions relied on by the learned counsel for the Opp. Party -Bank is quite distinguishable and not applicable to the facts of the present case.

8.5. In view of the aforesaid analysis, this Court while quashing the impugned order dtd.26.08.2022 so issued by Opposite Party No.1 under Annexure-5, so far as it relates to the Petitioner, directs the Opposite Party-Bank to extend all the benefits as due and admissible in favour of the Petitioner in the promotional post of Asst. Manager including his retiral benefits.

9. Accordingly, the Writ Petition stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 7th April, 2026/ Subrat

Signature Not Verified
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Reason: Authentication
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Date: 08-Apr-2026 17:09:06