(2021) 06 OHC CK 0090

In the Orissa High Court

Case No : Writ Petition (Civil) No. 9633 Of 2016

Bijaya Kumar Beura APPELLANT

Vs

State Of Orissa & Other RESPONDENT

Date of Decision : 21-06-2021

Acts Referred:

Citation : (2021) 06 OHC CK 0090

Hon'ble Judges : S. K. Mishra, J;Savitri Ratho, J

Bench : Division Bench

Advocate : Pami Rath, A.R. Dash

Final Decision : Dismissed

Judgement

S.K.Mishra, J

1. In this writ application, the sole petitioner assails the final order passed by the Orissa Administrative Tribunal, Bhubaneswar in O.A. No.913/1998

on 10.05.2007 rejecting his prayer by the opposite parties to grant him scale of pay of Rs.1400-2300/- as that of Accountant of the District Sports

office. The petitioner had earlier approached the Tribunal by filing O.A. No.2334/1997, which has been disposed of with certain observations and

direction to the opposite parties to consider his case. The observations made therein have been relied on by the petitioner-applicant for grant of the

relief he has prayed for in the O.A. in question.

2. The applicant joined Government service as Junior Clerk-cum-Typist in the Tourism Information Bureau, Konark on 07.06.1973. In due course, he

was promoted to the post of Accountant and posted to the District Tourist office at Sambalpur on 23.03.1979. At the time of filing of the original

application before the Tribunal, he was working as Accountant in the Department of Tourism, Sports and Culture. The Department of Tourism was a

part and parcel of the erst-while Home (P.R.) Department till 23.11.1973. At that time, the Department of Cultural Affairs was created and the

Department was reorganized and renamed as the Department of Tourism, Sports and Culture w.e.f. 10.06.1980. A separate department of Tourism

was created w.e.f. 02.01.1991. Again the Department was reconstituted as Department of Tourism and Culture w.e.f. 30.12.1995. These different

organizations, namely, Tourism, Sports and Culture were under the administrative control of separate Directors, but all of them function under one

Secretary. Each organization had district offices for which some separate staff has been sanctioned. Initially, the Ministerial Officers of the District

Tourist office constituted one Accountant, and one Junior Clerk-cum-Typist. The District office was in-charge of Tourist Officer, who besides being

head of the office is also drawing and disbursing officer. The district office relating to culture and sports organization do not have ministerial staff and

the most of ministerial staff required for those offices are being provided by the respective Collectors.

The Culture and Sports Organization had no head office and no separate officers were posted as in the case of Tourist Organization. It was only in

the Tourist Organization at the district level, which is being headed by a Tourist Officer, who is a Class-II Gazette officer. The Tourist officer being

the head of the office is the drawing and disbursing officer. The post of Accountant, which has been created by the Government on 14.08.1973, has

been posted in difference offices. The duty of the Accountant is to deal with cash book, office contingencies and preparation of pay bills of the staff

working in the Tourist Office. Besides the above, his duty is to prepare T.A. bills and bills relating to the Tourist organization and as such the

Accountant of the District Tourist Office has been functioning as a full-fledged Accountant discharging the duties of the Accountant of a regular

office.

During the year, 1981 on the recommendation of the pay Rationalisation Committee, the post of Accountant working in the District Tourist office was

re-designated as Junior Accountant. According to the applicant, there is no post of Accountant or Senior Accountant in the district office and in

absence of such post re-designating the Accountant as Junior Accountant is arbitrary and discretionary. It is contended that the re-designated Junior

Accountant had no promotion avenue in the district office. Thus, according to the applicant, this situation should have been considered by the

Government at the time of re-designating the Accountant and there is no logic behind designating the existing posts of Accountant as Junior

Accountant especially when there is no difference in the nature and volume of duties performed by the Accountant of the Tourist office and

Accountant working in other office of the Government. In the meanwhile, the Sports Organization, which was a part and parcel of the Composite

Department of Tourism, Sports and Culture, Government in order No.720 dated 29.01.1986 (Annexure-2), created 13 posts of Accountants in the

scale of pay of Rs.1005-1830/- and there is no reasonable ground nor any logic behind the creation of post of Accountant for the Sports Organization

at a higher scale of pay as the nature and duties of the Accountant of the Sports Organization was no way higher in nature than the erstwhile

Accountant of the Tourist Organization.

It is submitted that the officer in-charge of the Sports Organization was never declared as Head of Office nor he was drawing and disbursing officer.

Therefore, the Accountant of the office of Sports Organization at the district level is never entrusted with any onerous duty. The Tourist Officer is the

drawing and disbursing officer with regard to the staff placed under his administrative control and is also the appointing authority with regard to certain

section of Class-III and Class-IV employees and the duties of the Accountant are more onerous than the accounts of the Sports Officer under the

Sports Organization. According to the applicant, the very reason which weighed with the higher authority to create the post of Accountant at a higher

scale of pay for the Sports offices should have been applied to the erstwhile Accountants of the Tourist office.

The applicant being aggrieved by such decision of the Government has submitted a representation to the higher authority for consideration of his case

for grant him scale of pay admissible to the Accountant of the District Sports office under the Sports Organization. As the Government did not

consider his representation, he approached the Tribunal in O.A. No.2334/1997. The Tribunal vide order dated 24.11.1997 directed the Government to

dispose of the representation of the applicant within three months from the date of receipt of the order.

The further case of the petitioner is that the Department of Tourism and Culture to whom the representation of the applicant was addressed, was

satisfied that the claim of the applicant was genuine and accordingly sought for the views of the Finance Department to accord approval to the

proposal for giving appropriate scale of pay to the applicant. But, the Finance Department advised the Respondent No.1 to reject the representation of

the applicant and accordingly his representation was rejected vide order No.4613, dated 04.05.1998 i.e. Annexure-4 to the O.A. Hence, he

approached Tribunal on the same ground.

3. The opposite parties-respondents appeared in the case and filed counter affidavit. They claim that the responsibility assigned to the Accountant of

the Tourist office is considered less than those assigned to the Accountants in the District Sports office. As a result of which, there is a difference in

the scale of pay. The claim of the applicant to get equal scale of pay with the Accountant or his designation should be revised to that of the

Accountant was of no merit. Their further case is that in the matter of determination of scale of pay against any particular post, the Finance

Department is the appropriate authority to have the right of final view, irrespective of the views taken by the Administrative Department. The opposite

parties though admit that the Administrative Department forwarded the representation of the applicant to the Finance Department, ultimate view taken

by the Finance Department will have overriding the effect on the view of the Administrative Department. Hence, the opposite parties averred that the

application of the applicant was rejected on the view of Finance Department and the allegation of non-application of mind is incorrect. Hence, they

prayed that the O.A. may be dismissed.

4. Respondent no.3 filed separate counter refuting the allegations made in the O.A. and his case is that on 29.01.1986, 13 posts of Accountant were

created for 13 districts Sports office in the scale of pay of Rs.1005-1830/- the corresponding revised pay under ORSP Rules, 1989 is 1400-2300/-. On

the other hand, the post of Accountant for the Tourist Bunglow, Sambalpur was created on 07.04.1976 in the scale of Rs.300-410/- which corresponds

to U.D. Clerk scale in the District Office and the same was revised to Rs.320-550/- under OSRP Rules, 1981, 840-1345/-, under ORSP 1985 and

1200-2040 under ORSP 1989, under OSRP 1981 and the post of U.D. Clerk was re-designated as Senior Clerk and the post of Accountant was re-

designated as Junior Accountant under ORSP Rules, 1981. Accordingly, the Tourism Department had issued an office order to that effect on

18.08.1982. Keeping in view the re-designation of Accountant, subsequently three posts of Junior Accountant were created in the Tourist Office at

Konark, Baripada and Dhenkanal on 12.06.1991 in the scale of Rs.1200-2040/-. Thus, the post of Accountant created on 07.04.1976 for Sambalpur

Tourist Office Bunglow and three posts of Junior Accountant on 12.06.1991 for the Tourist Office at Konark, Baripada and Dhenkanal on 12.06.1991

in the scale of pay of Rs.1200-2040/-. But, when the posts of Accountant were created for Dist. Sports Office on 29.01.1986 in the scale of pay

Rs.1005-1830/- the scale corresponds to the scale of Senior Assistant of Heads of Department, Secretariat which is 1400-2300/- under ORSP 1989.

The work of Accountant prior to 1981 and that of the Junior Accountant (Accountants re-designated as Junior Accountants with effect from 01.01.

1981) with effect from 01.01.1981 relates to sphere of activities which are confined to isolated Tourist Bunglow or Tourist Office but not always to

District Tourist Office. On the other hand, the work and responsibility of the Accountant of District Sports Officers cover the activities at the district

level. The post of Accountant prior to 1981 or the post of Junior Accountant with effect from 01.01.1981 was created in the scale corresponding to

Senior Clerk of the District Office. Keeping in view the nature of duty, level of responsibility and work load, the posts of Accountant in the District

Sports office have been created at a higher scale which corresponds to the scale of pay of Senior Clerk of the Head of the Department and

Secretariat. Thus, according to the Respondent No.3, when the post of Junior Accountant for the Tourist Office and the Accountant for the District

Sports Office have been created with a different scale of pay, the Junior Accountant of the Tourist Office cannot claim the same scale of pay as

applicable to the Accountants of the District Sports Office.

It is further submitted that on 12.06.1991 the post of Junior Accountant has been created in the scale of pay of Rs.1200-2040/- under the O.R.S.P.

Rules, 1989 whereas the post of Accountant has been created for the District Sports office on 29.01.1986 in the scale of Rs.1005-1930/- under ORSP

Rules, 1985 with corresponds to Rs.1400-2300/- under ORSP Rules, 1989. The difference scale of pay has been prescribed taking into account the

sphere of activities, overall work load, level of responsibilities and all other related issues. Hence, according to the respondent no.3, prayer of the

applicant, merit no consideration.

5. The applicant has filed a rejoinder to the counter filed by the opposite party-respondent nos. 1 to 3 refuting the pleas raised by them.

Taking into consideration the grounds taken in O.A. No.913/1998, the Tribunal took into consideration the following undisputed facts:-

(i) In the year, 1981, on the recommendation of the Pay Committee the Government re-designated the post of Accountant working in the Tourist Office as Junior

Accountant.

(ii) The Tourism Department in its counter stated that it forwarded the representation of the applicant to the respondent no.2.

(iii) There is a noting in the file of Tourism department that the duties and responsibilities of the Junior Accountant in the Tourism Department are no way less than

those of the Accountants of the Sports and Culture Department.

(iv) The Finance Department did not agree with the recommendation of the Tourism Department that the pay scale allowed to the Accountants in the pre-revised

scale of pay Rules, 1974, revised scale of 1974, 1981, 1985 and 1989 are higher than the pay scales allowed in favour of the Accountant/UDC in those revised scale.

(v) The posts of Junior Accountant in the Tourist Office and the Accountants for the District Sports Office have been created with different scales of pay. However,

taking into consideration the noting of the Tourism Department and there is no plea that the Junior Accountant of the Tourism Department are entrusted with more

work than that the Accountant of the Sports Department has not been controverted, the Tribunal earlier directed the respondent no.3 to reconsider the case of the

applicant in the light of observation made therein.

6. Pursuant to the order of the Tribunal, the matter was reconsidered by the State, especially the Finance Department and it was rejected vide order

dated

19. 11.2008 i.e. Annexure-9 to the O.A. The applicant-petitioner thereafter filed O.A. No.1573/2008 challenging the said rejection. The grounds of

challenge were almost same as in the earlier original application. The matter was heard by the Tribunal on 13.02.2013 and the application was rejected

on 25.02.2013. The Tribunal in the 2nd O.A. held that such a plea is not a reason to direct the State functionary to bring parity in the scale of pay of

Junior Accountant of the Tourist Bunglows with that of the Accountant of the District Sports office. The Tribunal relied upon the ratio decided by the

Honâ??ble Supreme Court in the cases of Union of India and others vs. Dinesoan K.K., AIR 2008 S.C. 1026, State of Haryana and Another vs.

Charanjit Singh and others, 2006 (9) SCC 321 and State of Haryana and others vs. Jasmer Singh and others, 1996 (11) SCC 77. Therefore, the

Tribunal rejected the subsequent application to give a specific direction to the opposite party nos. 2 and 3 to equal pay of the petitioner with that of the

Accountant of the Sports Department.

7. Assailing the findings and the observations made by the Tribunal, while disposing of the O.A., Miss. Pami Rath, learned counsel appearing for the

sole petitioner would argue that once the Tourism Department has noted and recommended that the functions and duties of the Junior Accountant of

the Tourist Office, Department is no way less than duties and responsibilities of the Accountant of the District Sports Office, it was improper and

arbitrary on the part of the Finance Department to reject his claim and, therefore, the Tribunal committed error on record by not allowing the

application of the petitioner. The learned counsel for the petitioner would further argue that once the Tribunal had given certain observations and

directed the opposite parties to consider the case of the petitioner on that basis, it was not proper on the part of the Tribunal to take a different view in

the subsequent review application. Therefore, it was contended by the learned counsel for the petitioner that the petition should be allowed and the

prayer of equity in the pay scale of the petitioner as granted to the post of Junior Accountant in the Tourism Department should be equated to that pay

of the Accountant of the Sports Office.

Sri A.R. Dash, learned Addl. Government Advocate appearing for the State would submit that pay fixation is a complex activity requiring expertise in the field of finance, account and such orders of the State Government on the pay committee recommendation should not be interfered with lightly

either by the Tribunal or the High Court by exercising its writ jurisdiction. He would also argue that equal pay for equal work is not an abstract

doctrine and can be enforced in a court of law. But, it can be enforced in very rare cases. In the earlier application, the Tribunal did not pass a positive

order but directed to consider the case of the applicant. So, it was within the realm of the executive to consider the case and take a decision.

8. Having given anxious thought to the entire matter, we take note of the case of Union of India and others vs. Dinesoan K.K., (supra) and come to

the conclusion that the equation of post and pay structure is a complex matter and generally left to the executive bodies, pay commission etc. As has

been held in that case, a carefully evolved pay structure ought not to be disturbed by the Court as it may upset the balance and cause avoidable ripples

in other cadres as well. We also take note of the observations of the Honâ??ble Supreme Court in the case of State of Haryana and Another vs.

Charanjit Singh and others (supra) that doctrine of equal pay for equal work is not an abstract doctrine and is capable of being enforced in a court of

law, but the same can be done in specific cases. We also take note of the case of Orissa University of Agriculture and Technology and another vs.

Manoj Kumar Mohanty, (2003) 5 SCC 188 that the responsibility of equalizing scale of pay should be left to the discretion of the executive to take a

decision in the matter. In such case, the Court should be slow in exercise of its jurisdiction of judicial review.

9. Moreover, having considered the entire facts of the case, we are of the opinion that in this case, the Finance Department considered the sphere of

activities, workload, level of responsibility and other related issues of a Junior Accountant of the District Tourist office and Accountant of a District

Sports office and arrived at the conclusion. Moreover, Tourism Department i.e. Tourism and Culture Affairs (Tourism) had only the opportunity and

assess the responsibilities of the Junior Accountant or other Accountant of the Tourist Department. It does not appear to have any verifiable data

regarding the responsibility and staff work load etc., of the Accountant of the other Department i.e. Sports Department.

10. We are of the considered opinion that in such a case where the Tourism Department takes a view and makes a noting and thereby makes

recommendation to the Finance Department, it has the opportunity of examining its employees and their responsibility without having any assessment

of the responsibility of any other Department. The matter would have been different had the Tourism Department considered the responsibilities and

duties etc. of other department employees, made a comparison and then recommended as it did. However, in this case, the evidences do not show that

the Tourism Department did in fact assess the responsibilities of the Junior Accountant of its department with that the Accountant of the Sports

Department. At least, there is no material to show that there has been such a comparison of duties and responsibilities and staff work load. So, it was

well within the discretion of the Finance Department to arrive at a different conclusion and we do not find arbitrariness in such a decision taken by the

Finance Department. So, on that ground, the application of the applicant has rightly been rejected.

11. We are of the opinion that the issuance of writ of certiorari is not a matter of course. The Court has the power to refuse the writ if it is satisfied

that there is no failure of justice. The writ jurisdiction being discretionary, it is not issued merely because it is lawful to do so. Where the errors of law

cannot be said to be errors apparent on the face of the record, the High Court should not interfere in the matter of any final order passed by the

Tribunal as if it is sitting as a court of appeal. But, in a case of any error of jurisdiction or the excise of jurisdiction with material impropriety, the Court

should interfere with the final order of the Tribunal exercising certiorari jurisdiction. Similarly, in a case where the Tribunal has come to the conclusion

without considering materials on record like documentary evidence, in drawing inference or any considered documents in evidence, the writ of

certiorari should be issued. It is not the case of the petitioner that in this case there has been any jurisdictional error on the part of the Tribunal in any

manner. It is also not demonstrated that the Tribunal ignored any admissible evidences while arriving at the final conclusions.

12. Hence, there is no merit in the writ petition and the orders passed by the Tribunal do not suffer from any patent and perverse findings requiring

interference of this Court.

The writ application is dismissed. There shall be no order as to costs. As the restrictions due to resurgence of COVID-19 are continuing, the learned counsel for the parties may utilize a printout of this judgment available in the High Courtâ??s website, at par with certified copy, subject to attestation

by Miss Pami Rath, Advocate, in the manner prescribed, vide Courtâ??s Notice No.4587, dated

25th March, 2020 as modified by Courtâ??s Notice No.4798 dated 15.04.2021.

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