(2021) 08 OHC CK 0140

In the Orissa High Court

Case No : Writ Petition (Civil) No.17536 Of 2018

Biswambar Das And Others APPELLANT

Vs

State Of Odisha And Others RESPONDENT

Date of Decision : 27-08-2021

Acts Referred:

Constitution of India, 1950 — Article 226, 229
Odisha Revised Scale of Pay Rules, 2017 — Rule 13(xi), 16
Odisha Service Code, 1959 — Rule 75(b)
Orissa Revised Scales of Pay Rules, 2008 — Rule 2, 3, 5, 6, 6(1), 7
Orissa' Revised Scal.Esof Pay Rules, 1998 — Rule 5(2)

Citation : (2021) 08 OHC CK 0140

Hon'ble Judges : Dr. S. Muralidhar, CJ;B. P. Routray, J

Bench : Division Bench

Advocate : Sameer Kumar Das, M.S. Sahoo

Final Decision : Dismissed

Judgement

Sl.No.,Points of doubt,Clarification

1,2,3

1,"Whether a Government employee can elect

in switch over to the revised pay structure

on the date of availing TBA Scale in the

existing scale in terms of 2nd proviso to

Rule-5 of ORSP Rules, 2008 ?","Yes. For example, the employee who

was in the pre-revised scale of pay of

Rs.4500-7000 and availed TBA scale of

pay or Rs.4750-7500/- during the period

from 1.1.2006 to 24.12.2008 may opt to
come over to the revised scale of pay,
2008 from the date of availing TBA
scale of pay.
In such an eventuality, his pay is to be
fixed in the revised scale of pay of
Rs.9300-34800/- with G.P. of Rs.4200/-
against the pre-revised scale of pay of
Rs.4750-7500/- from the date of
exercising of option.
The option can be exercised in the form
prescribed in the Second Schedule of
Rule-6 (1) of ORSP Rules, 2008
indicating the date of availing TBA.
2.,xx,xx
3.,"Whether one increment in the revised pay
structure will be allowed to the employees
whose date of increment is due on
01.01.2006","No, because the pay of the employee
has been fixed in the revised pay
structure taking into account one
increment already sanctioned on
01.01.2006 in the existing pre-revised
scale.
4.,"Whether an employee who was drawing
more or equal pay in the prerevised scale
than that of his junior immediately before
1.1.2006 or as on 1.1.2006 and subsequently
gets his pay fixed in the revised pay
structure at a stage lower than that of his

junior can step up his pay to the same stage

in the revised pay structure with that of his

junior?","Yes. For example: - â??Aâ?? is an

employee who is senior to â??Bâ?? in

the same grade in the cadre was

drawing equal pay or more than

â??Bâ?? immediately before 1.1.2006.

But, in the revised pay structure the

pay of â??Bâ?? was fixed at a higher

stage than the senior â??Aâ??. In this

case, the pay of the senior â??Aâ??

shall be stepped up in the revised pay

structure as that of his junior.â??

the option for acceptance in respect of the Group-D employees the process of fixation of pay commences.,,

14. It is further pointed out that apart from the above, Pay Fixation Officer and Checking Officer were nominated by this Court as per the instruction of the Government of Odisha on each pay fixation. They",,

undertook the work of pay fixation as per the instructions contained in respective rules in a prescribed Schedule. This was also post-checked at the Government level on each occasion i.e. by the Financial,,

Advisor, Government of Odisha in the Home Department. Accordingly, it is claimed that there could hardly be any chance of any error being committed or there being any whimsical or arbitrary fixation of pay",,

in respect of any of the employees. It is also pointed out that the circulars dated 1st January, 1992 and 17th February, 1992 of the Finance Department as well as the subsequent letter dated 21st October, 2010",,

limit the opportunity of senior employees claiming the enhancement at par with the junior employees to two. It is further pointed out that most of the Petitioners who have pointed out that their pay is less than,,

any particular junior employee have been granted stepping up of pay or ante-dating of annual increment twice i.e. the maximum numbers of chances for removing anomaly in pay between the senior and junior.,,

15. As regards the 3rd RACP under the resolution dated 6th February, 2013 of

the Finance Department, Government of Odisha, reference is made to the resolution dated 6th February 2013 where it was",,

categorically mentioned that â??Financial upgradation under RACPs shall be purely personal to the employees and shall have no relevance to his position of seniority in the grade. As such, there shall be no",,

stepping up of pay/antedation of increment between senior and junior after regulation of pay under RACPsâ??.,,

16. The Opposite Parties 3 and 4 state that there is a similar restriction even under the MACP allowed to Group D employees. Thus, in these cases, the anomaly of the junior employees getting higher pay than",,

the senior cannot be remedied. It is pointed out that all the cases were promptly referred to the Government of Odisha as and when the issue was raised and the Registry is abided by the decisions of the,,

Government of Odisha in that regard.,,

17. Separate counter affidavits have been filed by the Opposite Party Nos. 1 and 2 more or less on the same lines. It is claimed that the State Government is no way responsible for drawal of lesser pay by the,,

Petitioners since the Petitioners have never exercised their option within the time limit prescribed and did not approach the Government of Odisha even before issue of ORSP Rules, 2008 and 2017. They have",,

voiced their grievance nearly 20 years after the pay revision under the ORSP 1998 and after the revision has taken place twice.,,

18. The rejoinder affidavit of the Petitioners reiterates the averments in the writ petition. In an additional affidavit dated 9th October, 2020 the Assistant Registrar (Administration) of this Court has brought on",,

record a copy of the notice dated 22nd March, 1999 issued by this Court on the administrative side whereby all the staff of the Court were directed to exercise their respective option in the prescribed form",,

within three months from the date of issue of the aforesaid notice i.e. w.e.f. 22nd March, 1999 for fixation of their respective pay as required under Rule-5(2) of the ORSP Rules, 1998. It is further pointed out",,

that some of the employees did exercise the option in terms of the above notice.,,

19. When the matter was heard on 12th January, 2021 this Court noted the above position taken in various affidavits filed. Some more time was granted to the Petitioners to file documents to show when they",,

first informed this Court about wanting to withdraw the option earlier exercised. Pursuant there to an additional affidavit has been filed by the Petitioners on 4th

October, April, 2021. On this aspect, it is stated",,

that the Petitioners could not maintain any file to keep all their service records including the representations/ documents/communications in their favour. However after thorough search only 7 out of 25 writ,,

Petitioners (the Petitioner No.6 is dead) could trace out their representations and which were being filed for ready reference and in compliance of the order dated 12th January, 2021.",,

20. A perusal of those representations shows their dates as 3rd October, 2008 and 4th, 5th and 14th November, 2008. There is , however, nothing to indicate whether and when they were actually received by",,

the Registry. Therefore, these documents are really not convincing.",,

21. This Court has heard the submissions of Mr. Sameer Kumar Das, learned counsel appearing for the Petitioners and Mr. M.S. Sahoo, learned Additional Government Advocate for the Opposite Parties.",,

22. Mr. Das, apart from reiterating the submissions in the petition, places reliance on the â??next belowâ?? rule, which postulates that a senior employee cannot be placed at a disadvantage vis-Ã -vis his",,

junior in regard to salary. Reliance is placed on the decisions in D.D. Suri v. Union of India AIR 1979 SC 1596; R.K. Sethi v. Oil and Natural Gas Commission AIR 1997 SC 899; R.L. Gupta v. Union,,

of India AIR 1988 SC 968 and Union of India v. M.V. Mohanan Nair (2020) 5 SCC 421.,,

23. Mr. Sahoo, learned Additional Government Advocate reiterates that the change of option was admissible to the employees in the event at a later stage of service that a junior gets salary higher than a",,

senior. Reference is again made to the Finance Department letter dated 8th April, 2010. It is submitted that if the Petitioners have been given an opportunity to change their option in consonance with the above",,

circular, there will be no grievance of the Petitioners.",,

24. Mr. Sahoo draws attention to Rule 5 of the ORSP Rules, which reads as under:",,

â??(i) save as otherwise provided in these rules, a Govt. servant, shall draw pay in the corresponding revised scale of pay effective from 1st January, 1996.",,

Provided that a Govt. servant may elect to continue to draw pay in the existing scale or until he vacates his post or ceases to draw pay in that scale.,,

Provided that a Govt. servant may elect to continue draw pay in the existing scale until the date in which he earns his next or subsequent increment in the existing scale or until he vacates his post or cease to draw pay in that scale.,,

Provided further that a Govt. servant who prior to commencement of these rules, had elected in pursuance of the provisions of the Odisha Revised Scale of Pay (for Non-Gazetted Officers) Rules 1974 or the Orissa Revised Scale of",,

pay (for Gazetted Officers) Rules, 1974 or the Orissa Revised Scales of Pay Rules, 1981 or the Orissa Revised Scale of Pay Rules, 1985 or the Orissa Revised scale of Pay Rules, 1989 as the case may be, to come over to the existing",,

scale from a date after the 1st Day of January 1996 shall unless he exercises fresh optionâ??.,,

25. He also draws attention to the notes below Rule 5 and in particular Rules 2, 3, 5, 6 and 7 which read thus:",,

â??(2) The option under the first proviso to this Rule shall be exercised in writing in the form appended as Fifth Schedule so as to reach the authority mentioned in Sub-rule (3) within three months from the date of publication of the,,

Orissa Revised Scales of Pay Rules, 1998 or within such further period as may be determined by the Finance Department of the Government in this behalf, or, where an existing scale has been revised or any existing provision",,

regulating fixation of pay has been modified by an order, made subsequent to that date, within three months from the date of such order.",,

Provided that-,,

In the case of a Government servant who, on the date of such publication or, as the case, may be, the date of such order, is on leave, deputation, foreign service or training, as the case may be, the said option may be exercised in",,

writing so as to reach the said authority within the period specified under Sub-rule (2) or within three months from the date of his/her taking charges of his/her post under the State Government, or",,

Where a Government servant is under suspension on the 1st day of January, 1996, the option may be exercised within three months from the date of his/her return to his/her duty if that date is later than the date specified in this",,

Sub-rule, or",,

Where a Government servant has been discharged, dismissed or removed from Government service between the 1st day of January, 1996 and the date of publication of the Orissa Revised Scales of Pay Rules, 1998, the option may",,

be exercised within a period of three months from the date of publication of the Orissa Revised Scales of Pay Rules, 1998, or",,

Where a Government servant died between the 1st day of January, 1996 and the date of publication of the Orissa Revised Scales of Pay Rules, 1998 or where a

Government servant died or dies on or after the date of publication of",,

the Orissa Revised Scales of Pay Rules, 1998 without exercising any option within the time limit, the option shall be deemed to have been exercised for the revised scale with effect from the 1st day of January, 1996 or such later date",,

as is most beneficial to his/her beneficiaries, provided the revised scale is more beneficial, or",,

Where a Government servant retired between the 1st day of January, 1996 and the date of publication of the Orissa Revised Scales of Pay Rules, 1998 or where a Government servant, on the date of publication of the Orissa Revised",,

Scales of Pay Rules, 1998, was, on leave preparatory to retirement, the option shall be deemed to have been exercised for the revised scale with effect from the 1st day of January, 1996 or such later date as is most beneficial to",,

him/her, provided the revised scale, is more beneficial.",,

(3) The option shall be intimated by the Government servant to the Head of Office and where the Government servant is himself/herself the Head of Office, the option shall be intimated to authority competent to sanction his/her",,

normal increment.,,

(4) xx xx xx,,

(5) The option once exercised shall be final, unless the authority referred to in Sub-rule (3) otherwise directs:",,

Provided that such authority shall not give any direction inconsistent with, or repugnant to the provisions of sub-rule(2).",,

(6) The option shall be limited to the date of increment in the existing scale falling due within a period of one year, that is, from 1.1.1996 to 31.12.1996 for the purpose of calculating forty percent benefit over and above the basic pay",,

with reference to Clause (i) of Sub-rule (1) of Rule 7;,,

Provided that a Government servant who, prior to the commencement of these Rules, had enacted, in pursuance of the provisions of the Orissa Revised Scales of Pay (For Non-Gazetted Officers)Rules, 1974, or the Orissa Revised",,

Scales of Pay (For Gazetted Officers) Rules, 1974, or the Orissa Revised Scale of Pay Rules, 1981 or the Orissa Revised Scales of Pay Rules, 1985, or the Orissa Revised Scales of Pay Rules, 1989, as the case may be, to come over to",,

the existing scale after the first day of January, 1996, then his/her option to the revised scale of pay on the said date unless he/she represents in writing to the Head of Office to cancel his/her earlier option within a period of thirty",,

days from the date of publication of these rules.â??,,

26. The corresponding provision of ORSP Rules, 2008 and 2017 are also referred to by Mr. Sahoo. It is submitted that the High Court has been scrupulously following the instructions regarding each pay",,

fixation. A Pay Fixation Officer and Checking Officer have been nominated by the Registry and therefore, there is remote chance of committing any error. Mr. Sahoo, submits that the number of chances for",,

stepping up of pay for an employee is only two and these have been availed by each of the Petitioners. Reliance is placed on the decisions in Rajasthan Rajya Vidyut Vitaran Nigam Ltd. v. Dwarka Prasad,,

Koolwal (2015) 12 SCC 51 and PEPSU RTC v. Aman Deep Singh (2017) 2 SCC 766 and certain observations in Mohanan Nair (supra) in support of the submissions of the Opposite Parties.,,

27. The above submissions have been considered. In service jurisprudence, fixation of pay of a government servant is governed by an elaborate set of rules. Most of the High Courts have, in terms of Article",,

229 of the Constitution, adopted with small changes here and there, the Rules applicable to the employees of the concerned State Government in toto insofar as the employees of the High Court are concerned.",,

28. The position as far as this Court is concerned, is no different. As already noted, this Court endeavors to scrupulously follow the guidelines/circulars/notifications/memorandum issued by the State",,

Government from time to time in regard to pay fixation. All revisions in the Rules beginning from ORSP Rules, 1998 and to its counterpart 2008 and 2017 are strictly adhered to. Being conscious that despite all",,

of that there still be instances of anomaly in the pay fixation, this Court has appointed a Pay Fixation Officer and Officers to specifically verify the anomalies. In other words, they exercised the pay fixation of",,

its employees taken seriously by this Court.,,

29. While it is possible that some of the Petitioners may not have been aware of all the changes in the rules and the implications of not exercising options within the time prescribed, it would not be fair to lay the",,

blame at the doorstep of the Registry of this Court particularly when it has been issuing circulars promptly from time to time for wide publicity by affixing them in the notice boards in the Court and circulating,,

them to various branches for the information of the employees. It is a fact that some of the employees have been diligent in following the same and asking to exercise their options from time to time. These,,

employees belong to Group-D category as well. Copies of the circulars have been enclosed in the additional affidavit. The fact that many of the employees have exercised their option in time has not been,,

disputed by the Petitioners.,,

30. The Petitioners were given an opportunity to place on record the documents to show that they agitated their grievances as soon as they came to know the anomalies. This was because of the stand taken,,

both by this Court in its administrative side as well as the State Government is that the Petitioners had waited admittedly for a long time to ventilate their grievance and after having had the benefit of pay,,

revisions from 1998 onwards. The documents placed on record by the Petitioners with the additional affidavit to substantiate their claim having ventilated their grievances before the Court on the administrative,,

side promptly and diligently do not inspire confidence.,,

31. Nevertheless in the matters of this kind the approach is not go entirely on the issue of the lapses and delay but to examine the merits. It is with that approach that this Court has required the Opposite,,

Parties to file affidavits to explain their actions. As far as the next below rule is concerned, while the legal position as explained by the decisions relied upon by the Petitioners cannot be disputed, equally there is",,

nothing to show that this Court slipped up on promptly informing the Petitioners and other employees of the changes in the Rules and about time limit for the exercise of the option or change of the option so,,

exercised. Even after the Petitioners approached this Court on the administrative side, their cases were taken up with the State Government and this Court went entirely by the position in the Rules in this",,

regard. The Petitioners have not been able to show why the decision of the Government in the Home Department declining their request suffers from arbitrariness or unreasonableness and most importantly,,

why it is contrary to the Rules.,,

32. The exercise for the application of the next below rule cannot be an empty formality. It requires to be applied where the facts and circumstances so warrant. If it is shown, as has been in this case, that the",,

Petitioners failed to apply for change of the option exercised within a reasonable time as provided under the Rules. They appear to have missed the bus not only on the first occasion after the ORSP 1998 Rules,,

but on two successive occasions thereafter in 2008 and 2017. In theÂ circumstances,Â itÂ isÂ difficultÂ forÂ theÂ nextÂ belowÂ ruleÂ toÂ be mechanically applied.",,

33. In this context, the following observations in Mohanan Nair Case (supra) are relevant:",,

â??38. The prescription of Pay Scales and incentives are matters where decision is taken by the Government based upon the recommendation of the expert bodies like Pay Commission and several relevant factors including,,

financial implication and court cannot substitute its views. As held in Haryana Civil Secretariat Personal Staff Association (2002) 6 SCC 72, the court should approach such matters with restraint and interfere only when the court is",,

satisfied that the decision of the Government is arbitrary. Even in a case where the court takes the view that order/Scheme passed by the Government is not an equitable one, ordinarily only a direction could be given to the State",,

Government or the authority for consideration of the matter and take a decisionâ?¦..â??,,

34. Further in Dwarka Prasad Koolwal (supra), the Supreme Court has observed as under:",,

â??58. â?¦.no employee had any inherent right to either demand and extension of the period for exercising the switch over option or claim a right to exercise switchover option at any time prior to his retirement, and no such right has",,

been shown to the Supreme Court.â??,,

Â Â,,

35. The Court is satisfied that in the present case the Registry of this Court has not acted unreasonably or unfairly by not informing the Petitioners of their having to exercise their options or for change of the,,

option so exercised in good time or failing to act upon the Petitionersâ?? representations as prescribed under the Rules as regard the stepping up of pay fixation. It is trite that there are limitations as regards,,

any indulgence being granted to the Petitioners by this Court after they have exhausted all their chances as regards stepping up or pay fixation.,,

36. Sufficient grounds have not been made out warranting judicial intervention under Articles 226 of the Constitution. The writ petition is accordingly dismissed.,,

37. An urgent certified copy of this order be issued as per rules.,,

â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦..,,

