
(2011) 02 OHC CK 0036
In the Orissa High Court
Case No : O.J.C. No. 3501 of 1994

Brundaban Sahu

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 18-02-2011

Acts Referred:

Citation : (2011) 1 OLR 1054

Hon'ble Judges : S.K. Mishra, J; L. Mohapatra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

L. Mohapatra, J.—The Petitioner, who retired as a Senior Stenographer while working in the Court of the District Judge, Phulbani, has filed this writ application praying for a direction to the opposite parties to give him the benefit of the upgradation of the post from the date the Petitioner was appointed as Senior Stenographer, i.e., from 11.4.1984.

2. The case of the Petitioner is that a policy decision was taken by the Government of Orissa on 21.5.1980 to upgrade the post of Grade-I Stenographers to that of Personal Assistants in the Heads of Departments in the pay scale of Rs. 2,000/- to Rs. 2,500/-. Initially this policy decision was made applicable to the Grade-I Stenographers working in the Heads of the Department specified in the Appendix to the said policy decision. Subsequently this benefit was also extended to other Heads of the Department from time to time. The District and Sessions Judge who is also recognized as Heads of the Department under the Orissa Service Code was not included in the list as a result of which the Grade-I Stenographers working in the Court of the District and Sessions Judges did not get the benefit of the said upgradation. The Petitioner along with some others working in same posts in other districts approached this Court in O.J.C. No. 1340 of 1990. The said writ application was allowed on 7.5.1992. In paragraph-8 and 9 of the judgment, the following observations were made and directions were issued.

8. We may add here that ordinarily 15 persons were before us of whom 13 were senior stenographers attached to 13 District and Sessions Judges of the State and the remaining two were senior Stenographers to Special Judges at Sambalpur and Bhubaneswar. Subsequently one Sri Ajoy Chandra Ray was allowed to be impleaded as Petitioner No. 16 in this case. He, however, is a stenographer in the civil Court. As Special Judges are also recognized as Heads of Department as stated in the aforesaid Appendix, the upgradation has to be made available to these Stenographers also. In so far as Petitioner No. 16 is concerned, we do not think if he could take the benefit of upgradation.

9. The petition is accordingly allowed. The Registrar (Administration) shall take steps as ordered immediately, and thereafter the Government shall upgrade the posts within a period of six months. This long time is being allowed at the prayer of Shri Nayak.

The State of Orissa challenged the said judgment in appeal before the Hon"ble Supreme Court in SLP No. 166 of 1992 but the same was dismissed on 7.12.1992. In the meantime, the Petitioner retired on superannuation on 31.10.1992. The Petitioner after retirement went on representing to the authorities to give him the benefit of the said judgment and his prayer ultimately having been turned down by the Home Department, this writ application has been filed. It is the case of the Petitioner that after dismissal of the SLP by the Hon"ble Supreme Court, a decision was taken by the State Government to upgrade the posts of Senior Stenographers to that of Personal Assistants in the judgeships including the judgeship of District and Sessions Judge, Phulbani where the Petitioner was working. The upgradation having taken effect from 11.4.1984, the Petitioner is entitled to the benefit thereof.

3. A counter affidavit has been filed by opposite party No. 4 and it is stated in the counter affidavit that as per the judgment of this Court quoted earlier, the State Government upgraded the post of Senior Stenographer to the post of Personal Assistant on 2.4.1993 and by the time the said decision was taken, the Petitioner had already retired on superannuation. Therefore, the Petitioner is not entitled to the claim. State has not filed any counter in this case.

4. There is no dispute about the fact that the policy decision had been taken on 21.5.1980 to upgrade the post of Grade-I Stenographers to that of Personal Assistants of the Heads of the Departments, the list of which had been attached to the said policy decision as appendix. Subsequently other Heads of Departments were also included in the list but the district and Sessions Judges as well as Special Judges who are considered as Heads of Departments were not included. Because of the judgment of this Court in O.J.C. No. 1340 of 1990, the Courts of District and Sessions Judges as well as Special Judges were included in the list and upgradation was allowed by the State Government in its letter dated 2.4.1993 annexed to the counter filed by opposite party No. 4 as Annexure-A/4. By the time the said letter was issued, the Petitioner had already retired on superannuation on 31.10.1992. Therefore, the sole question for consideration is

as to whether the Petitioner is entitled to the claim, he having retired prior to the decision taken by the State Government to extend the benefit of upgradation to the Senior Stenographers working in different judgeships. In the letter dated 2.4.1993, the Registrar of this Court was informed that upgradation of three posts of Senior Stenographers attached to the District Judges of Keonjhar, Kalahandi and Phulbani to that of Personal Assistants has been sanctioned by the Governor from the date on which the posts are actually filled up until further orders. It is, therefore, clear that an incumbent of the said post shall be entitled to upgradation the day he assumed the charge of Senior Stenographer and it has got nothing to do with the date of retirement. The Petitioner was promoted to the post of Senior Stenographer with effect from 11.4.1984 and by that time the policy had already come into existence. Therefore, even in terms of Annexure-A/4, the Petitioner is entitled to the benefit of the upgradation from 11.4.1984 till his retirement on superannuation. Reliance was placed by the learned Counsel for the Petitioner on the judgment of Punjab and Haryana High Court in the case of Dr. S.S. Kabotra v. State of Haryana and Anr., reported in 1989 (3) SLR 537. The learned Single Judge of the said High Court held that even if pay against a post is revised after retirement of an incumbent of the said post but with effect from the date when he was in service, such incumbent shall be entitled revised pay and pension on the basis of enhanced pay.

5. For the reasons stated above, we allow this writ application and direct the opposite parties to grant the benefit of upgradation to the Petitioner from 11.4.1984 till he retired on superannuation.