
(2023) 06 OHC CK 0114
In the Orissa High Court
Case No : Writ Petition (C) No. 21231 Of 2015

Dr Surendranath Pradhan

APPELLANT

Vs

Board Of Governors, Represented By Its Director, IGIT,
Sarang & Anr

RESPONDENT

Date of Decision : 27-06-2023

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2023) 06 OHC CK 0114

Hon'ble Judges : Sashikanta Mishra, J

Bench : Single Bench

Advocate : U.K. Sahoo, B.K. Nayak(1), A. Dash

Final Decision : Partly Allowed

Judgement

Sashikanta Mishra, J

1. The petitioner has approached this Court with a twofold grievance- firstly, despite being promoted to the post of Professor w.e.f. 01.01.2004 retrospectively, he was not granted the financial benefits attached to such post and secondly, his pay in the promotional post was fixed erroneously being contrary to the provisions of the Odisha Revised Scale of Pay Rules and Odisha Service Code.

2. The brief facts of the case are that the petitioner was initially appointed as Lecturer in Economics on adhoc basis in Indira Gandhi Institute of Technology, Sarang (IGIT) by order dated 20.01.1983. He joined as such on 27.01.1983. His services were subsequently regularized with effect from the date of his joining. The petitioner was promoted as Senior Lecturer w.e.f. 27.01.1990. Again, the petitioner was eligible to be promoted to the next higher post of Asst. Processor w.e.f. 01.01.1996 but was promoted w.e.f. 19.12.1997. Subsequently, however, such promotion was revised by order dated 29.08.2008 and made effective from 01.01.1996. The petitioner applied for further promotion to the post of Professor

under the Career Advancement Scheme but claims to have been arbitrarily denied. Subsequently also he applied for promotion and faced interview on 23.08.2006 but was disqualified by awarding him less marks than the minimum qualifying. Ultimately, he was promoted as Professor w.e.f. 15.03.2007 even though he was eligible for such promotion w.e.f. 01.01.2004. The petitioner had approached this Court in W.P.(C) No.5343 of 2007 challenging the discrepancies in the marks awarded to him for selection to the post of Professor. Such writ petition was disposed of on 02.12.2010 granting liberty to the petitioner to make a representation to be considered by the authorities. The petitioner submitted a representation on 30.12.2010 but the same was rejected. He approached the Chairman of the Board of Governors by submitting another representation. After considering the relevant facts, the Chairman allowed the representation and issued necessary directions. Pursuant to such intervention by the Chairman, the order dated 21.03.2007 granting promotion to the petitioner w.e.f.15.03.2007 was modified by revising the date of promotion to 01.01.2004 in the scale of pay Rs.16,400-22,400/- without any arrear claim. According to the petitioner, he having been wrongly deprived of promotion, is entitled to all the financial benefits for the period from 01.01.2004 to 15.03.2007 and differential pay. It is his further case that even otherwise, his pay in the promotional post was fixed at Rs.16,400/-, which was less than his existing pay as one increment of Rs.450/- was not allowed. According to the petitioner, the pay should have been fixed at Rs.16,850/- instead of Rs.16,400/- as per Rule 74(b) of the Odisha Service Code. On such facts, the petitioner prays for a direction to the opposite party authorities to grant him arrear pay in the promotional post of Professor w.e.f. 01.01.2004 to 15.03.2007 and for re-fixation of his pay in the promotional post @Rs.16,850/- with consequential revision of the pensionary benefits. It is alleged that the persons similarly situated as the petitioner have been granted financial benefits despite being promoted with retrospective effect.

3. The opposite party authorities have filed a counter. After referring to the undisputed facts, it is specifically stated that none of the teaching staff, who have got promotion under the Career Advancement Scheme has been extended the arrear benefits. On the contrary, the other Professors, who were promoted retrospectively like the petitioner, have not been extended with any such financial benefits retrospectively. It is further stated that the promotion to the post of Professor was granted to the petitioner retrospectively without any arrear claim as per decision of the Finance Committee of the Board of Governors.

4. The petitioner filed rejoinder intending to refute the averments made in the counter. It is stated that though he was granted retrospective promotion w.e.f. 01.01.2004, he was discharging the duties attached to such post much prior to that date as he was the only regular teaching staff of the institution.

5. Heard Mr. U.K. Swain, learned counsel for the petitioner and Mr. A.K. Dash, learned counsel appearing for the opposite parties.

6. Mr. Sahoo argues that the petitioner has been discriminated all through in his

service career by denying him promotion from the due date. This would be evident from the fact that the date of his promotion was revised twice in his career, firstly as Senior Lecturer and secondly as Professor. According to Mr. Sahoo this proves that the authorities had wrongfully denied him promotion and therefore, he is entitled to all the financial benefits attached to the promotional posts. Mr. Sahoo further argues that as per Rule 74(b) of the Odisha Service Code, one increment is to be paid to his existing pay in the lower post and the pay is to be fixed accordingly. In the case of the petitioner, this was not done as his pay was fixed at a lesser scale.

7. Per contra, Mr. A.K. Dash has argued that the promotion is not a matter of right and cannot be claimed by an employee from a particular date. In the instant case, the decision of the authorities to grant promotion to the petitioner w.e.f. 15.03.2007 was modified in view of the direction of the Chairman. Such promotion was therefore, granted specifically without allowing any arrear claim. The petitioner not having worked in the promotional post cannot claim any salary for such period. Mr. Das further contends that the petitioner's pay to the promotional post was rightly fixed as per the decision of the Finance Committee of the Board of Governors and therefore, there is no infirmity therein.

8. There is no dispute that the petitioner was promoted to the post of Professor initially w.e.f. 15.03.2007 but the same was modified and made effective from 01.01.2004. This implies, the date of promotion was fixed notionally. The petitioner claims to have discharged the duties of Professor even prior to the said date but there is not a shred of material in support of such claim. Only because he claims to have been the only teaching staff available does not, ipso facto, imply that he was discharging the duties of Professor. Obviously, the petitioner cannot claim financial benefits attached to a post in which he had actually not worked. His further claim that similarly placed persons were granted the financial benefits retrospectively does not hold much water having regard to the specific denial by the opposite parties in their counter. The petitioner has not stated anywhere in his rejoinder that the contention of the opposite parties in this regard is false. He has simply made a bald statement that his counterparts working in other departments of the college had got their financial benefits/salaries w.e.f. 2004. Obviously, such a statement by itself cannot overcome the specific denial of the petitioner's assertion by the opposite parties. This Court therefore, finds no infirmity much less illegality in the impugned order dated 08.10.2015 (Annexure-8) so as to interfere.

9. As regards the allegation of wrong fixation of pay in the promotional post it would be apposite to refer to Rule-74(b) of the Odisha Service Code, which reads as follows:

"74. Initial pay of a person, other than one already in service of Government.

(a) xx xx xx

(b) Where a Government servant holding a post is promoted or appointed to

another post carrying duties and responsibilities of greater importance than those attached to the post held by him, initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower pay by one increment at the stage at which such pay has accrued:

Provided that where a Government servant, immediately before his promotion or appointment to a higher post, is drawing pay at the maximum of the time-scale of the lower post, his initial pay in the time-scale of the higher post shall be fixed at the stage, next above the pay notionally arrived at by increasing his pay in respect of the lower post by an amount equal to his last increment in the time-scale of the lower post.

Plainly understood, one increment is to be allowed in relation to the pay of the lower post at the time of promotion. According to the petitioner, the calculation sheet given by the opposite parties under Annexure-B to the counter is wrong as he was drawing Rs.16,400/- in the post of Asst. professor as on 31.12.2003 and therefore, one increment amounting to Rs. 450/- ought to have been added to it making the entry level pay scale of the promotional post as Rs.16.800/-. A sum of Rs.450/-was therefore paid less according to the petitioner. The petitioner has not furnished the details of pay scale as on 31.12.2003. If in fact he was in the pay scale of Rs.16,400/- as on 31.12.2003, his pay in the promotional post of professor w.e.f. 01.01.2004 ought to have been fixed by allowing him one increment, which according to the petitioner is Rs.450/-. In the absence of the relevant particulars however, a specific direction cannot be issued by this Court though it is felt that the authorities should re-examine the matter relating to fixation of pay of the petitioner in the promotional post of Professor w.e.f. 01.01.2004 in conformity with the Rules.

10. In the result, the writ petition is allowed in part. While declining to interfere with the impugned order under Annexure-8, this Court directs the opposite party authorities to re-examine the claim of the petitioner as regards improper fixation of his pay in the promotional post of Professor w.e.f. 01.01.2004 keeping in mind the provision of Rule 74(b) of the Odisha Service Code. Since the petitioner is a retired employee, the opposite party authorities should do well to take a decision in the matter as early as possible, preferably within a period of two months. It is needless to mention that if the petitioner's claim is found correct, his pay shall be re-fixed appropriately along with the necessary revision of his pensionary benefits.

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