
(2007) 07 OHC CK 0045
In the Orissa High Court

K.P. Mohapatra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 31-07-2007

Acts Referred:

Orissa Lokpal and Lokayuktas Act, 1995 — Section 3, 5(5)

Citation : AIR 2008 Ori 17 : (2007) CLT 219 Supp : (2007) 2 OLR 577 Supp

Hon'ble Judges : B.P. Das, J;A.K. Samantaray, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.P. Das, J.—The writ petitioner, a retired Judge of this High Court, was appointed as the Lokpal u/s 3 of the Orissa Lokpal and Lokayuktas Act, 1995 (Orissa Act 8 of 1995) and he assumed the said office on 16-2-1997. He has been constrained to approach this Court for redressal of his grievance. The petitioner in this writ petition prays to quash the letter dated 12-2-2001 issued by the State Government in Public Grievance and Pension Administration Department, vide Annexure-5, wherein it was clarified that the relief extended to Justice S.K. Ray, ex Lokpal, pursuant to the decision of this Court in O. J. C. No. 10896 of 1998 (reported in 90 (2000) CLT 362 : Justice S.K. Ray v. State of Orissa), cannot be made available to the petitioner since his case is not similarly situated with that of Justice S.K. Ray, ex Lokpal. The claim of the petitioner is that he has not been paid the enhanced salary and allowances as admissible to the Chief Justice of the High Court.

2. The Lokpal is appointed under the Orissa Lokpal and Lokayuktas Act, 1995. Sub-sections (4) and (5) of Section 5 of the Act, which are relevant for the present purpose, read as under:

(4) There shall be paid to the Lokpal and the Lokayuktas such salaries as are specified in the Second Schedule.

(5) The allowances and other conditions of service of the Lokpal or a Lokayukta

shall be such as may be prescribed:

Provided that -

(a) in prescribing the allowance and other conditions of service of the Lokpal, regard shall be had to the allowances and other conditions of service of the Chief Justice of the High Court of Orissa;

(b) in prescribing the allowances and other conditions of service of the Lokayukta regard shall be had to the allowances and other conditions of service of a Judge of the High Court of Orissa:

Provided further that the allowance and other conditions of service of the Lokpal or Lokayukta shall not be varied to his disadvantage after his appointment.

3. In this regard the learned Counsel for the petitioner submits that the petitioner was holding the office of the Lokpal from 16-2-1997 till 15-2-2002 and though the salaries of the Chief Justice and Judges of the High Court were enhanced with effect from 1-1-1996 to Rs. 30,000/- and Rs. 26,000/- respectively, the benefit of such enhancement has not been extended to the petitioner even if he has approached the State Government in this regard during his tenure.

4. A counter-affidavit has been filed by O. Ps. 1 to 5. In paragraph 14 of the counter it is stated:

14. That in respect of the submission made in para-9 of the writ application, it is submitted that the interpretation of subsection 5(a) of Section 5 intimating that the allowance and other conditions of service of Lokpal shall be at par with the Chief Justice of Orissa High Court is not correct. The provisions specifically indicates that while prescribing the allowance and other conditions of service of the Lokpal regard shall be had to the allowance and other conditions of service of the Chief Justice of the High Court of Orissa.

5. Learned Counsel for the petitioner submits, and it is not controverted by the opposite parties, that in the meantime the salary of the Lokpal has already been revised and the benefit of such revision, which has been claimed by the petitioner, has been extended to his successor with effect from 29th August, 2003. Annexure-7 to the additional affidavit filed by the petitioner confirms the same. According to the learned Counsel for the petitioner, though a decision was taken by the Government in Lokpal File No. 15/1998 regarding revision of salary of the petitioner, due to change in the Government, the same was not implemented, but such benefit was however given to his successor. According to the petitioner, the action of the State Government in not extending the benefit of revised salary to the petitioner, which has been done subsequently by bringing an amendment to the Lokpal and Lokayuktas Act, 1995 is discriminatory because the Statement of Objects and Reasons leading to the amendment of the Second Schedule to the Act reveals that the same is in pursuance of the amendment to the High Court Judges (Conditions of Service) Act, 1954 by the Central Act 18 of

1998. The Statement of Objects and Reasons leading to the aforesaid amendment is extracted hereunder:

Sub-section (4) of Section 5 of the Orissa Lokpal and Lokayuktas Act, 1995 (Orissa Act 8 Of 1995) provides that the Lokpal and Lokayuktas shall be paid salaries specified in the Second Schedule of the Act. The salaries of Lokpal and Lokayuktas have been specified as Rs. 9,000/- and Rs. 8,000/- per month respectively which was equivalent to the salaries of the Chief Justice and Judges of High Court. In the meanwhile, the salaries of the Chief Justice and Judges of High Court have been revised to Rs. 30,000/- and Rs. 26,000/- respectively with effect from the 1st January 1996 by amendment of the High Court Judges (Conditions of Service) Act, 1954 by the Central Act 18 of 1998. It is, therefore, considered expedient to enhance the existing salaries of the Lokpal and Lokayuktas specified in the Second Schedule to the Act to Rs. 30,000/- and Rs. 26,000/- respectively with effect from the 29th August, 2003, being the date from which the present Lokpal has been holding office. The revised salary as so proposed shall, however, be subject to reduction to the extent of pension received as specified in the existing proviso to Second Schedule to the Act.

The Bill seeks to achieve the above objective.

6. A bare perusal of the aforesaid Statement of Objects and Reasons would indicate that the salaries of Lokpal and Lokayuktas had been specified in the Second Schedule to the Act as Rs. 9,000/- and Rs. 8,000/- per month respectively, which were equivalent to the salaries of the Chief Justice and Judges of the High Court. The salaries of the Chief Justice and Judges of the High Court have been revised to Rs. 30,000/- and Rs. 26,000/- respectively with effect from 1-1-1996 by virtue of the amendment, as indicated above. It was, therefore, as stated in the aforesaid Statement of Objects and Reasons, considered expedient to enhance the salaries of the Lokpal and Lokayuktas specified in the Second Schedule to the Act (Orissa Act 8 of 1995) and in order to achieve the aforesaid objective, the amendment was made. The objective of the amendment was to keep the salaries of the Lokpal and Lokayuktas equivalent to the salaries of the Chief Justice and Judges of the High Court as revised by virtue of the amendment to the High Court Judges (Conditions of Service) Act, 1954. The amendment being to achieve the objective as indicated above, we find no reason to deprive the petitioner of the aforesaid benefit. The action of the opposite parties in not extending the aforesaid benefit is certainly discriminatory. A similar question fell for consideration before this Court in the case of Justice Prafulla Kishore Mohanti, a retired Judge of this High Court, who was appointed as the Chairperson of the Orissa State Commission for Backward Class, and was denied the benefit of revised salary and allowances. This Court by its judgment dated 30-7-1999 rendered in O. J. C. No. 6207 of 1997 (Justice Prafulla Kishore Mohanti v. State of Orissa) directed the opposite parties to pay him the salary of Rs. 26,000/- and other allowances as admissible to a sitting High Court Judges from 1-1-1996 till 14-9-1996 along with other financial benefits as were available

to a sitting Judge of the High Court.

7. So far as the claim of the petitioner for refund of the amount of pension deducted from his salary which he was getting as a retired Judge of this Court, is concerned, we may refer to the decision of this Court in Justice S.K. Ray v. State of Orissa 90 (2000) CLT 362, wherein it was held that petitioner's salary in respect of his service as Lokpal was not liable to be reduced by the amount of pension which he was getting as a retired Chief Justice. The aforesaid judgment of this Court was challenged in the Apex Court by the petitioner since some other reliefs, as claimed, were not granted by this Court and the decision of the Apex Court is reported in Sri Justice S.K. Ray Vs. State of Orissa and Others, and the Apex Court did not interfere with the direction of this Court and the relevant observation of the apex Court is as follows:

Shri Raj Kumar Mehta, learned Counsel appearing for the appellant, submitted that the view taken by the High Court insofar as refund of the amount of pension deducted from the salary of the appellant for the period from 17-8-1989 to 16-7-1992 as well as payment of encashment of value of unutilized leave accrued to him during the said period is in order and that part of the order is not in challenge. The State also has not filed any appeal in respect of that part of the order.

8. Considering the aforesaid decisions and the facts narrated in the writ petition as well as in the counter-affidavit filed by the opposite parties, we have no hesitation to say that the petitioner has been discriminated. Accordingly, we allow this writ petition by quashing Annexure-5 and directing the opposite parties to fix the salary of the petitioner at Rs. 30,000/- per month and pay the differential part of it during the period from 16-2-1997 till expiry of his tenure as Lokpal, i.e., 15-2-2002. The deduction made from, the salary of the petitioner towards the pension be also refunded to him. The aforesaid exercise shall be completed within a period of two months from the date of communication of the judgment.

There shall be no order as to cost.

A.K. Samantaray, J.

9. I agree.