

(2018) 03 OHC CK 0005

In the Orissa High Court

Case No : W.P.(C) No.15202 of 2010, 1638, 1639 and 3023 of 2003, 2478 and 2479 of 2005, 407, 18311, 33083, 33084, 33085, 33086 and 33087 of 2011, 6003 and 21222 of 2012, 930 of 2015

Rabindra Kumar Sethi

APPELLANT

Vs

State of Orissa represented through its Secretary to
Government Public Enterprises Department and others

RESPONDENT

Date of Decision : 12-03-2018

Acts Referred:

Road Transport Corporations Act, 1950 — Section 34
Constitution of India, 1950 — Article 13(3)(a), 21, 309

Citation : (2018) 03 OHC CK 0005

Hon'ble Judges : DR. D.P. CHOUDHURY

Bench : Single Bench

Advocate : K.K.Nayak, B.B.Das, B.D.Sahoo, B.D.Sahoo, G.C.Moahapatra, K.K.Nayak, B.B.Das, N.K.Acharya, R.Jena, Amit Ku. Pattnaik, Ashok Ku. Mohanty, H.K.Tripathy, J.P.Patra, P.K.Sahu, P.K.Jena, N.Nanda, D.P.Mohapatra, U.C.Mohanty, T.Sahoo, S.K.Biswal

Final Decision : Disposed of

Judgement

'''

Dr. D.P.Choudhury, J."'''

1.These writ petitions have been filed challenging the inaction of the opposite parties for non-sanction of revised arrear scale of pay and grant of'''

dearness allowance (DA) to the petitioners in W.P.(C) No.15202 of 2010, W.P.(C) Nos.1638, 1639 and 3023 of 2003, W.P.(C) Nos.2478 and 2479 of'''

2005, W.P.(C) Nos.407, 18311, 33083, 33084, 33085, 33086 and 33087 of 2011, W.P.(C) Nos.6003 and 21222 of 2012 who have retired from service"'''

either under Voluntary Retirement Scheme or attaining the age of superannuation and the superannuation of petitioner's husband in W.P.(C)'''

No.930 of 2015.,,,

2. Since the above writ petitions have got common question of law, they are being taken up together for disposal by this common judgment.",,,

3. The factual matrix leading to the writ petition is that petitioners in W.P.(C) No.15202 of 2010, W.P.(C) Nos.1638, 1639 and 3023 of 2003, W.P.(C)",,,

Nos.2478 and 2479 of 2005, W.P.(C) Nos.407, 18311, 33083, 33084, 33085, 33086 and 33087 of 2011, W.P.(C) Nos.6003 and 21222 of 2012 and the",,,

petitioner's husband in W.P.(C) No.930 of 2015 were the employees of Orissa State Road Transport Corporation (hereinafter called as "the",,,

Corporation"). It is also averred that the service conditions of the employees of the Corporation are regulated under the provisions of Orissa State",,,

Road Transport Corporation Employees (Classification, Recruitment and Condition of Service) Regulation, 1978 (hereinafter called as "the",,,

Regulation, 1978"), which came into force with effect from 01.03.1978. The Regulation, 1978 was framed under Section 34 of the Road Transport",,,

Corporations Act, 1950 (in short "the Act, 1950") under which the Corporation became a statutory Corporation.",,,

4. Be it stated that the Corporation has adopted the scale of pay for its employees from the date of its inception as has been sanctioned by the State",,,

Government from time to time. So, the Corporation has adopted Orissa Revised Scale of Pay Rules of 1974, Revised Scale of pay Rules, 1981 and",,,

Revised Scale of pay Rules, 1989. The employees of the Corporation got the benefit of these revised scale of pay rules.",,,

5. So far as Orissa Revised Scale of Pay Rules, 1998 (hereinafter called as "the ORSP Rules, 1998") is concerned, the Corporation did not",,,

implement the same from the date when the State Government implemented. Rather, the same was implemented by the Corporation for its employees",,,

with effect from 16.02.2009.,,,

6. It is further stated that the DA, as applicable to the State Government employees as per the ORSP Rules, 1998, was not made applicable to the",,,

employees of the Corporation. But, in the meantime, the Corporation introduced Voluntary Retirement Scheme (in short "VRS") as floated by the",,,

Public Enterprise Department of Government of Orissa. So, the petitioners in W.P. (C) No.15202 of 2010, W.P.(C) Nos.1638, 1639 and 3023 of 2003,",,,

W.P.(C) Nos.2478 and 2479 of 2005, W.P.(C) Nos.407, 33083, 33084, 33085,

33086 and 33087 of 2011 and W.P.(C) Nos.6003 and 21222 of 2012",,,
 have opted for their retirement under VRS and got retired before 18.02.2009 when the ORSP Rules, 1998 was made applicable to the Corporation.",,,
 The petitioner in W.P.(C) No.18311 of 2011 and the petitioner's husband in W.P.(C) No.930 of 2015 have already retired from service on,,,
 attaining the age of superannuation before such date of ORSP Rules, 1998 made applicable. After the ORSP Rules, 1998 is made applicable to the",,,
 Corporation, they made representation to the Managing Director of Corporation and when no action has been taken on their representation, the",,,
 present writ petitions have been filed challenging the inaction of the opposite parties in not granting differential arrear salary.,,,
 7. Be it stated that the DA to the Public Sector Undertakings was allowed by the State Government with effect from 01.07.1997 as per Public,,,
 Enterprise Office Memorandum dated 07.01.1998. But, the Corporation, instead of granting the DA as per said notification of the P.E. Department of",,,
 State Government, accepted the DA as made available under Revised scale of pay Rules 1989 with effect from 20.06.2006. Except petitioner in W.P.",,,
 (C) No.18311 of 2011 and the husband of the petitioner in W.P.(C) No.930 of 2015, rest of the petitioners were allowed to retire under VRS, but they",,,
 were only paid the dues as per ORSP Rules, 1989 and DA @ 104% instead of payment of dues according to ORSP Rules, 1998 and DA at the rate",,,
 of 148% as applicable to the State Public Sector Undertakings as per the decision of the State Government. Since the representations have been,,,
 rejected, they claim the differential dues under ORSP Rules, 1998 and the revised DA at the rate of 148% as applicable to the employees of the",,,
 Corporation at the relevant point of time as paid to the employees of the Corporation on the date of their retirement.,,,

8. SUBMISSIONS,,,

Learned counsels for the petitioners submitted that the petitioners being regular employees of the Corporation on the date of their superannuation,,,
 either under VRS or attaining the age of superannuation, are entitled to the revised scale of pay under the ORSP Rules, 1998. According to them, the",,,
 Corporation adopted the ORSP Rules, 1998 with effect from 16.02.2009 but with a condition that revision of pay would be made in terms of the",,,
 ORSP Rules, 1998 and in accordance with the guidelines vide Finance

Department Notification No.255/98 dated 3.6.1998 although said notification",,, stated to calculate the same prospectively, which is challenged in these writ petitions.",,,

9. It is submitted by the learned counsel for the petitioners that once the ORSP Rules, 1998 is made applicable, the pay fixation has to be made under",,,

the said Rule which is act of Legislature and the same cannot be throttled by the Government Office Order. In this regard, this Court has already",,,

taken a decision in the case of Mahendra Kumar Mohanty â?"V- State of Orissa and others (W.P.(C) No.20784 of 2014 and four other writ petitions),,,

disposed of on 30.08.2017.,,,

10. Learned counsels for the petitioners further submitted that the VRS never speaks of any denial of their right to claim the arrear dues if revised,,,

later on giving benefit to the regular employees of the Corporation when they got retired. Apart from this, scheme only maintains that the VRS is only",,,

introduced to reduce the number of employees on payment of one month salary. Since the claim does not deny the applicability of revision of scale of,,,

pay under ORSP Rules, 1998 with effect from 01.01.1996, the petitioners except the petitioners in W.P.(C) No.18311 of 2011 and W.P.(C) No.930 of",,,

2015 being the employees on the date of their voluntary retirement, are eligible to get their pay revised as per ORSP Rules, 1998 and accordingly their",,,

entitlement under VRS has to be decided. But the Corporation illegally rejected their representation to deny such right accrued to them.,,,

11. Learned counsels for the petitioners further submitted that so far as the DA is concerned, the Corporation being under P.E. Department of State",,,

Government, cannot make the ORSP Rule 1998 applicable from 2006 but the same should be applied under the notification of the P.E. Department on",,,

higher rate with effect from 01.07.1998. Since according to the Act, 1950 and the Regulation, 1978, the employees are at par with the State",,,

Government employees, the present petitioners and the husband of the petitioner in W.P.(C) No.930 of 2015 should not be deprived of availing the",,,

same benefit with regard to the pay and allowances as applicable to the Government employees revised from time to time. In support of their,,,

submissions, they rely on the decisions of this Court in the case of Mahendra Kumar Mohanty and State of Orissa and others (Supra), Braja Sundar",,,

Panda and others â?"V- State of Orissa and others; 2017 (I) OLR 653, V.R.

Harihara and others â?"V- The Karnataka State Small Industries",,,

Development Corporation and others; 1999 LAB. I.C. 345, The State of Manipur and others â?"V- Maisnam Mani Singh; 2010 LAB.I.C. 3787,",,,

Tripura Jute Mills Officers Association and others â?"V- State of Tripura and others; 2011 (2) GLTS 571, Haryana State Minor Irrigation Tubewells",,,

Corporation and others â?"V- G.S.Uppal and others; AIR 2008 SC 2152, D.J.Prasad and others â?"V- Registrar, Sri Krishnadevaraya University and",,,

Sl. No.,Name of the officers,Designation,Establishment

1.,Sri Bhaskar Mishra,Auditor Hqrs,"Headquqarters, OSRTC press

Central Store, Cu(cid:37)ack, DM

BBSR D.T.M., Cu(cid:37)ack, DTM

BBSR D.W.E. BBSR DTM

Keonjhar DTM, Angul

2.,Sri S.K.Pattnaik,Auditor Bargarh,"DTM, Bargarh/Padampur/

Bhawanipatna/Jeyapore/

Vizianagaram

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Keonjhar DTM, Angul

2.,Sri S.K.Pattnaik,Auditor Bargarh,"DTM, Bargarh/Padampur/

Bhawanipatna/Jeyapore/

Vizianagaram

3.,Sri B.K.Swain,Auditor Sambalpur,"DM, Sambalpur/DW

Sambalpur/DTM

Sambalpur/Balangir/Rourkela

4.,Sri P.K.Pradhan,Auditor Berhampur,"DTM, Berhampur

Bhanjanagar, DM, Berhmapur,

DWE, Berhmapur

mode of payment of current dues from 1st April, 1998, fifty percentage (50%) of the differential between existing pay, dearness allowance and interim",,,

relief as on 1st January, 1996 or the date from which the revised pay is opted for and the revised pay on that date would also be impounded to the",,,

General Provident Fund Account with a lock-in period of five years counting from 1st April, 1998.â??",,,

18. The ORSP Rules, 1998 vide said Finance Department Resolution of 1998 was issued by the Government of Orissa in Finance Department on",,,

03.06.1998 after being framed under Article 309 of the Constitution of India. When the Rules are framed under legislative process with effect from",,,

01.01.1996, the Office Order dated 18.02.2009 vide Annexure-2 showing to be effective from 16.02.2009 by contradicting Clause-12 of the ORSP",,,

Rules, 1998 cannot stand in the eye of law because the Office Order cannot be inconsistent with the Rules framed by the Government. Moreover",,,

ORSP Rules, 1998 is effective from 1.1.1996 although such Rule is framed in 1998. When ORSP Rules, 1998 is adopted by the Corporation in 2009",,,

the ORSP Rules, 1998 would apply entirely to the employees of the Corporation. Any restriction by the Corporation by issuing Office Order dated",,,

18.2.2009 inconsistent to ORSP Rules, 1998 would be de hors the law. It is trite in law that Office Order is not law whereas Rule framed is law as",,,

per Article 13(3)(a) of the Constitution of India. On the other hand, ORSP Rules, 1998 must be implemented from 01.01.1996 to the petitioners-",,,

employees of the Corporation but not prospectively.,,,

19. The Honâ??ble Supreme Court in the case of Vinod Kumar Koul â?"V- State of Jammu and Kashmir and others; AIR 2012 SC 3149, at",,,

paragraph-10 have observed in the following manner:",,,

â??10. There is nothing in the language of Rule 13(i) or any other Rule from which it can be inferred that for the District cadre post only a permanent",,,

resident of the particular district can apply. Rather, Rule 13(i) postulates inviting of applications from the permanent residents of Jammu and Kashmir",,,

and not any particular district. Only in terms of clause (ii) of Rule 13 the candidature of a person who applies for more than one district can be",,,

considered for the district in which he is ordinarily residing. In our view, in the absence of any statutory stipulation in that regard, it cannot be said that",,,

a candidate who is a permanent resident of the State of Jammu and Kashmir is

not eligible to be considered for a District cadre post merely because,,, he is not a permanent resident of the particular District for which the post has been advertised.â??,,, With due respect to the above decision, it appears that no administrative decision can override the statute and in the instant cases, the Office Order",,, dated 18.02.2009 of the opposite party-Corporation cannot override the statutory Rules, i.e, ORSP Rules, 1998 by making such Rule prospective for,,, the employees of the Corporation and restricting payment of arrear salary and other allowances 20. If the matter is analyzed in another angle, it must,,, be placed on record that the ORSP Rules, 1998 has stated about revision of pay as available to the employees with effect from 1.1.1996. The Office",,, Order dated 18.02.2009 although adopts the fitment of the scale of pay as per such ORSP Rules, 1998, but denies to give allowance on the pay and",,, arrear salary which are not tenet of such ORSP Rules, 1998. Thus, it fails to the logic to accept the contention of the opposite party-Corporation that",,, the pay available in 2009 would not relate back to 1.1.1996. So, the Office Order dated 18.02.2009 issued by the Corporation is not only contrary to,,, the Rules framed under the power conferred under the Constitution but also it is self-contradictory and otiose one. On the other hand, ORSP Rules,",,, 1998 as per its entire provisions being applicable to the employees of the Corporation including the petitioners would be effective from 01.01.1996. It is,,, also revealed that the petitioners are all retired regular employees of the Corporation. Since they were working as on 1.1.1996 and ORSP Rules, 1998",,, even if adopted later on, on 16.2.2009 by the Corporation would be effective from 01.01.1996, the petitioners are entitled to the benefit of ORSP",,, Rules, 1998 from 1.1.1996 till their retirement.",,, 18. Since this Court has already taken a view that ORSP Rules, 1998 is effective from 01.01.1996 till the retirement of the petitioners either under",,, VRS or attaining the age of superannuation, no other alter view is permissible in these batch of cases who are on similar footing.",,, 19. Besides, it is reported in the case of Union of India â?"V-Arjun Jyoti Kundu and others; (2007) 7 SCC 472 wherein at paragraph-19, it has been",,, observed in the following manner:,,, â??19.We are afraid that the tribunal has exceeded its jurisdiction in issuing the direction, it has issued. The fact that notwithstanding the Fifth Pay",,,

Commission not recommending, particularly, the payment of higher scale to two sets of typists, typists in English language and typists in Hindi",,,

language, the Government chose to give them relief with effect from 31.1.2000 would not justify an inference of discrimination or a finding that the",,,

authority has acted arbitrarily or unreasonably. As this Court has clarified in the decisions adverted to, it is for the Government to act on the report of",,,

the Pay Commission or either to accept or not to accept its recommendation. Once the recommendations of the pay commission are accepted, in full,",,

it could also give effect to it from the date recommended in that behalf. But when admittedly no provision was made in respect of the English and",,,

Hindi typists and they pointed to the anomalies and the Government on the basis of the recommendation of the Anomalies Committees decided to give",,,

them the scale with effect from 31.1.2000, it could not be held to be discriminatory or to be beyond the power of the Government.â??",,,

With due regard to the aforesaid decision, it appears that in that particular case, the Pay Commission has not made provisions for English and Hindi",,,

Typist for which the Anomaly Committee has to opine about benefit of Pay Commission to particular class of Government servant but at the same",,,

time Their Lordships have made it clear that once the recommendations of the Pay Commission are accepted in full, it could also give effect to it from",,,

the date recommended in that behalf.,,,

20. It is also reported in the case of U.P. Warehousing Corporation â?"V- Vijay Narayan; AIR 1980 SC 840 where Their Lordships, at paragraphs-21",,,

and 22 have observed in the following manner:,,,

â??21.The question whether breach of statutory regulations or failures to observe the principles of natural justice by a statutory Corporation will",,,

entitle an employee of such Corporation to claim a declaration of continuance in service and the question whether the employee is entitled to the",,,

protection of Arts. 14 and 16 against the Corporation were considered at great length in Sukhdev Singh & Ors. v. Bhagatram Sardar Singh",,,

Raghuvanshi & Anr. The question as to who may be considered to be agencies or instrumentalities of the Government was also considered, again at",,,

some length, by this Court in Ramana Dayaram Shetty v. The International Airport Authority of India & Ors (AIR 1979 SC 1628).",,,

22. I find it very hard indeed to discover any distinction, on principle, between a

person directly under the employment of the Government and a person",,,
 under the employment of an agency or instrumentality of the Government or a
 Corporation, set up under a statute or incorporated but wholly owned by",,,
 the Government. It is self evident and trite to say that the function of the State
 has long since ceased to be confined to the preservation of the public,,,
 peace, the exaction of taxes and the defence of its frontiers. It is now the
 function of the State to secure `social, economic and political justice' to",,,
 preserve `liberty of thought, expression, belief, faith and worship', and to ensure
 `equality of status and of opportunity'. That is the proclamation of the",,,
 people in the preamble to the Constitution. The desire to attain these objectives
 has necessarily resulted in intense Governmental activity in manifold,,,
 ways. Legislative and executive activity have reached very far and have touched
 very many aspects of a citizen's life. The Government, directly or",,,
 through the Corporations, set up by it or owned by it, now owns or manages, a
 large number of industries and institutions. It is the biggest builder in the",,,
 country. Mammoth and minor irrigation projects, heavy and light engineering
 projects, projects of various kinds are undertaken by the Government.",,,
 The Government is also the biggest trader in the country. The State and the
 multitudinous agencies and Corporations set up by it are the principal,,,
 purchasers of the produce and the products of our country and they control a
 vast and complex machinery of distribution. The Government, its",,,
 agencies and instrumentalities, Corporations set up by the Government under
 statutes and Corporations incorporated under the Companies Act but",,,
 owned by the Government have thus become the biggest employers in the
 country. There is no good reason why, if Government is bound to observe",,,
 the equality clauses of the constitution in the matter of employment and in its
 dealings with the employees, the Corporations set up or owned by the",,,
 Government should not be equally bound and why, instead, such Corporations
 could become citadels of patronage and arbitrary action. In a country",,,
 like ours which teems with population, where the State, its agencies, its
 instrumentalities and its Corporations are the biggest employers and where",,,
 millions seek employment and security, to confirm the applicability of the
 equality clauses of the constitution, in relation to matters of employment,",,
 strictly to direct employment under the Government is perhaps to mock at the
 Constitution and the people. Some element of public employment is all,,

that is necessary to take the employee beyond the reach of the rule which denies him access to a Court so enforce a contract of employment and,,, denies him the protection of Arts. 14 and 16 of the Constitution. After all employment in the public sector has grown to vast dimensions and,,, employees in the public sector often discharge as onerous duties as civil servants and participate in activities vital to our country's economy. In,,, growing realization of the importance of employment in the public sector, Parliament and the Legislatures of the States have declared persons in the,,, service of local authorities, Government companies and statutory corporations as public servants and, extended to them by express enactment the,,, protection usually extended to civil servants from suits and prosecution. It is, therefore, but right that the independence and integrity of those employed",,,, in the public sector should be secured as much as the independence and integrity of civil servants.â??,,,

With due regards to the aforesaid decision, it must be clear that the Corporation which is a Government enterprise being administered by the",,,,

Corporation, which is an authority as defined under the Constitution, the law declared by the Honâ??ble Supreme Court in the Warehousing",,,,

Corporationâ??s Case (Supra) relating to parts III and IV of the Constitution are applicable to the employees working in the Corporation. Therefore,",,,

the petitioners are entitled for the pay scale at par with the pay scale applicable to the employees of the State Government. This judgment of the,,,

Honâ??ble Supreme Court has been followed by Karnataka High Court in the case of V.R. Harihara and others â?"V- The Karnataka State Small,,,

Industries Development Corporation and others; 1999 LAB.I.C. 345.,,,,

21. The contentions of Mr.Mohanty, learned Senior Advocate for the Corporation are also relevant for discussion. According to him, since the",,,,

petitioners except the petitioner in W.P.(C) No.18311 of 2011 and W.P.(C) No.930 of 2015 have retired from service under VRS and the petitioner in,,,

W.P.(C) No.18311 of 2011 and the husband of the petitioner in W.P.(C) No.930 of 2015 have retired under normal superannuation prior to the cut-off,,,

date, i.e, 18.02.2009, they cannot claim the right as a Government servant retiring after cut-off date under normal superannuation. He relied on the",,,,

decision of the Honâ??ble Supreme Court in the case of Suresh Chandra Singh and others â?"V-Fertilizer Corporation of India Limited and others,,,

(Supra). The said decision relates to age of retirement/superannuation. In that case, the challenge was made to the policy decision of the Board of that",,,

Corporation for not enhancing the age of superannuation to sixty years. So, Their Lordships have held that the Board of Directors itself forms a",,,

different class and cannot be equated with other employees in regard to service conditions applicable to it. The fact of that case is different from the",,,

facts in hand for which the ratio deci dendi of that case is not applicable to this case.,,,

22. Mr.Mohanty, learned Senior Advocate for the Corporation further relied on the decision in the case of A.K.Bindal and another â?" V- Union of",,,

India and others (Supra) where the benefit of employees retired on VRS was discussed. In that case, the employees of Fertilizer Corporation of India",,,

opted to retire under VRS and accepted the benefits thereunder. There, the question of right to live under Article 21 of the Constitution was raised but",,,

Their Lordships have clearly distinguished between the executives appointed in Central Government Company and the Government. In that case, the",,,

executives of said Government company have claimed their right of revision of scale of pay with effect from 01.01.1992 as per Public Enterprises",,,

Departmentâ??s Office Memorandum. There was a restriction to the effect that there shall be no increase in labour cost per physical unit of output.,,,

That case relates to the revision of the scale of pay under Industrial Disputes Act. The facts of that case are not same as in the present cases",,,

because in the present cases, the Corporation has already adopted ORSP Rules, 1998 as concurred by the Finance Department in 1998.",,,

23. Mr.Mohanty, learned Senior Advocate for the petitioner further relied on the decision of the Honâ??ble Supreme Court in the case Manoj Bhai",,,

N. Shah and others â?"V- Union of India (Supra). In that case, the scheme was clear to pay the ex gratia and other differential benefit like provident",,,

fund, gratuity, pension, leave encashment and the Scheme has got a proviso that the employees whose resignations had been accepted or whose",,,

services had been terminated during the period between the 1st day of August, 2002 and the date of publication of this Scheme, shall not be eligible for",,,

the arrears on account of revision under this Scheme. So, according to such proviso and the scheme, Their Lordships observed that the employees",,,

opting for VRS cannot claim for benefit even if there is a revision of pay with retrospective effect. The scheme under which the present cases relate",,,

to VRS is clearly distinguishable from that scheme.,,,

24. The Model Voluntary Retirement Scheme vide Annexure-5 series to W.P.(C) No.15202 of 2010 itself describes the eligibility, procedure and",,,

benefits. The benefits are that ex-gratia payment of twenty-one days salary for every completed years of service and gratuity of fifteen days salary,,,

for every completed year, unpaid salary, unutilized leave salary and other total entitlement on the date of retirement would be paid. There is a",,,

miscellaneous provision in the said scheme, which is placed in the following manner:",,,

â??6.0. MISCELLANEOUS,,,

6.1. Application for Voluntary Retirement cannot be withdrawn after the sanction order has been communicated to the concerned employee;,,,

6.2. The vacancy caused by Voluntary Retirement Scheme shall stand abolished;,,,

6.3.The clearance of all dues under the Scheme shall be paid to the employee within thirty (30) days of sanction of the Voluntary Retirement subject,,,

to clearance of all dues payable to the Corporation by the employees concerned;,,,

6.4. An employees availing voluntary retirement under this Scheme shall not be eligible for re-appointment in any,,,

Government (Central or State, Semi-Govt. Organisations or Central/State Public Sector Undertakings in future; and",,,

6.5. Notwithstanding any of the aforesaid provisions the scheme does not confer any right of an employee to have his request for Voluntary,,,

Retirement accepted by the Management. The competent authority has the right/ discretion either to accept or reject the request of any employee for,,,

voluntary retirement, keeping in view the service record of the employee, the organizational requirement and any other relevant factors in this",,,

regard.â? The aforesaid scheme does not disclose about any proviso as found in the case of Manoj Bhai N. Shah and others â?"V- Union of India,,,

(Supra) where the Honâ??ble Supreme Court have decided the case basing on restriction. Since there is no restriction in the present case, the facts",,,

of the present cases are completely different from the aforesaid case decided by the Honâ??ble Supreme Court. So, the decision of Manoj Bhai N.",,,

Shah and others â?"V- Union of India (Supra) is not applicable to the present

cases. Hence, the contention of Mr.Mohanty, learned Senior Advocate",,,
is indefensible.,,,

25. In terms of the aforesaid discussions, the Court is of the opinion that ORSP Rules, 1998 is applicable to the petitioners in W.P.(C) No.15202 of",,,
2010, W.P.(C) Nos.1638, 1639 and 3023 of 2003, W.P.(C) Nos.2478 and 2479 of
2005, W.P.(C) Nos.407, 18311, 33083, 33084, 33085, 33086 and",,,
33087 of 2011, W.P.(C) Nos.6003 and 21222 of 2012 and the husband of the
petitioner in W.P.(C) No.930 of 2015. Point No.(I) is answered",,,
accordingly.,,,

26. POINT No.(II),,,

The petitioners claim that the Corporation awarded DA at the rate of 104% under
ORSP Rules, 1989 in 1998. But they are entitled to DA at the rate",,,
of 182% as per the notification issued by the P.E. Department of Government of
Orissa. On the other hand, the opposite parties claim that the DA",,,
was only adopted by the Corporation with effect from 20.06.2006 prospectively.
As the petitioners have retired by then, such DA was not paid to",,,
them but the DA which was paid to the regular employees at that time at the
rate of 104% was being paid to the petitioners. It is also the contention",,,
of the Corporation that considering the financial condition of the Corporation, the
decision was taken in 2006 to give the DA prospectively but not",,,
retrospectively.,,,

27. The DA, under service law, means the allowance payable to the employees
on the increase of cost index and the percentage of the same is fixed",,,
by the Government, which is added to the pay of concerned employee. In the
instant cases, while the employees of the Corporation got retired, there",,,
was no salary revised under ORSP Rules, 1998 but they were being paid salary
as per ORSP Rules, 1989. Of course, the Office Memorandum dated",,,
07.01.1998 issued by the P.E. Department of Government of Orissa shows that
the DA of the employees of Public Sector Undertakings under the",,,
State was enhanced as applicable to the employees of the State Government
with effect from 01.07.1997. That Office Memorandum dated",,,
07.01.1998 issued by the P.E. Department of Government of Orissa has made a
rider clause vide Clause-6, which is placed in the following manner:",,,
â??6.The Public Sector Undertakings can pay the above additional dose of DA
after careful consideration of their Board of Directors to ensure that,,,

they would be able to meet the burden out of their internal resources. No budgetary support in any form shall be provided by the State Government for,,
this purpose. There is no automatic authorisation to pay additional DA by virtue of this circular.â??,,

Clause-6 of the aforesaid Office Memorandum clearly gives power to the concerned Public Sector Undertaking to take a decision to meet the,,

enhanced DA from their own sources and the said Office Memorandum is not automatic authorization to pay the additional DA as enhanced. So, the",,,

benefit of such Office Memorandum dated 07.01.1998 can only be availed depending on the decision of the Board of the Corporation. Office Order,,

dated 20.06.2006 issued by the Corporation shows that the DA was enhanced at the rate of 148% minimum per pay with effect from 01.04.2006. The,,

said office order further shows that the same is prospective but not retrospective. It also appears that the DA is payable under the office order or the,,

Government instructions. The revision of scale of pay under the rules of the different Pay Commission revisions cannot be equated with the issuance,,

of the office order for enhancement of DA. Further, the petitioners cannot take benefit out of such Office Memorandum unless adopted by the",,,

Corporation. Hence, the Court is the view that the petitioners are not entitled to the DA at the rate of 182% on the date of their retirement either",,,

under VRS or under normal superannuation. Point No.(II) is answered accordingly,,

28. CONCLUSION,,

The petitioners in the respective writ petitions have prayed for payment of dues under ORSP Rules, 1998 and to pay the revised DA at the rate of",,,

148% as are applicable to the employees of the Corporation at the relevant time of retirement and consequently payment of differential amount,,

thereto,,

29. It has been already held in the above paragraphs that the petitioners are entitled to pay under ORSP Rules, 1998 and thus consequently the DA",,,

would be available on such re-fixation of the pay qua to the employees of the State Government. Only plea has been taken by Mr.Mohanty, learned",,,

Senior Advocate for the Corporation that the financial condition of the Corporation is not good to sanction such arrear salary. There is no proof filed,,

by the Corporation as to financial condition of the Corporation to have been deplored so as to meet the entitlement of the petitioners. A bald assertion,,, is not enough to defuse the anxiety of the petitioners. The Corporation may be a Public Sector Undertaking but it has to meet the constitutional,,, mandate as available to the employees of the Corporation. It is reported in the case of Mahindar Singh Gill â?"V- Chief Election Commissioner, New",,,, Delhi and others; AIR 1978 SC 851 where Their Lordships have observed that when a statutory functionary makes an order based on certain,,, grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.",,, When in the instant cases, the Corporation has accepted the ORSP Rules, 1998 and no proof is there about the financial condition of the Corporation,",,, mere filing of the counter affidavit stating that the financial condition of the Corporation being not good, arrears could not be released cannot be a",,,, ground to disown the responsibility to make the pay revision applicable under ORSP Rules, 1998 with effect from 01.01.1996 and payment of arrear",,,, amount. It is true that all the petitioners have retired but not died except the husband of the petitioner in W.P.(C) No.930 of 2015. On the date of,,, retirement of all the petitioners and the husband of the petitioner in W.P.(C) No.930 of 2015, they are entitled to the pay as per ORSP Rules, 1998 as",,,, observed earlier. Hence, the Court direct as follows:",,, (I) The opposite parties-Corporation is directed to issue a modification to the Office Order dated 18.02.2009 in the line of ORSP Rules, 1998 being",,,, applicable with effect from 01.01.1996;,,, (II) The opposite parties-Corporation is directed to calculate the differential arrear salary of the petitioners in W.P.(C) No.15202 of 2010, W.P.(C)",,,, Nos.1638, 1639 and 3023 of 2003, W.P.(C) Nos.2478 and 2479 of 2005, W.P.(C) Nos.407, 18311, 33083, 33084, 33085, 33086 and 33087 of 2011,",,, W.P.(C) Nos.6003 and 21222 of 2012 and the husband of the petitioner in W.P. (C) No.930 of 2015 with effect from 01.01.1996 till the respective,,, date of their retirement either under VRS or under normal superannuation and make payment of the same to the petitioners after offering opportunity,,, of being heard to them; and,,, (III) The entire exercise, as directed above, must be completed within a period of four months from today.",,,

The writ petitions are disposed of accordingly.,,,