

(2021) 06 OHC CK 0046

In the Orissa High Court

Case No : Writ Petition (Civil) No. 34100 Of 2020

Subhashree Mishra And Three Others

APPELLANT

Vs

Registrar General Of India & Census Commissioner And
Others

RESPONDENT

Date of Decision : 11-06-2021

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2021) 06 OHC CK 0046

Hon'ble Judges : S. K. Mishra, J;Savitri Ratho, J

Bench : Division Bench

**Advocate : Nirmal Ranjan Routray, J. Pradhan, T.K. Choudhury, S.K. Mohanty,
Prasanna Ku. Parhi, Chhayakant Pradhan**

Final Decision : Dismissed

Judgement

S. K. Mishra, J

1. Admit.

2. The petitioners, in this writ application, have challenged the order dated 12.02.2020 passed in O.A. No.260/698./2017 by the learned Central

Administrative Tribunal, Cuttack Bench, Cuttack (hereinafter referred to as the Tribunal for brevity) rejecting their prayer to grant

2nd financial up-gradation under Assured Career Progression (ACP) Scheme and order dated 24.11.2020 passed in R.A. No.10 of 2020 (arising out

of O.A. No.260/698/2017) refusing to review and recall the order passed in the said Original Application.

3. The Government of India, Ministry of Home Affairs, Office of the Registrar General, India issued Circular dated 18.03.1980 regarding method(s)

of recruitment to temporary Group B and Group C posts to be

created for manning Units of the Direct Data Entry System to be installed at different stations in India, under the Plan Scheme â??Computerization of 1981 Census Dataâ?. The said Circular stipulated educational qualification for the post of Operator i.e. â??Degree with Statistics or Mathematics or Economic (with Statistics) as a subject, of a recognized University or equivalentâ?. In August, 1981, the Government of India, Ministry of Home Affairs, Office of the Registrar General, India issued another Circular regarding method(s) of recruitment of temporary Group â??Bâ?? and Group â??Câ?? posts created/ to be created for manning the Units of the Direct Data Entry System installed/ to be installed at different stations in India under the Plan Scheme â??Computerization of 1981 Census Dataâ?. As per the August, 1981 Circular, the educational qualification for the post of Operator was â??degree of a recognized University or equivalentâ??.

4. To fill up the posts of Direct Data Entry Operators Grade-B under the Opposite Party No.3- Director, Census Operations of Odisha,

Bhubaneswar, District- Khordha, candidates were called for through Offices of Employment Exchange of Cuttack and Bhubaneswar. On being

selected, the Petitioners were appointed as Operators of D.D.E. Unit on ad hoc basis with effect from 01.06.1982/ 07.05.1984/ 11.05.1984 on regular

capacity. Further, vide order dated 22.08.1985, the then Deputy Director of Census, Office the Director of Census Operations, Orissa, Bhubaneswar,

the Petitioners were appointed on regular basis in temporary capacity with effect from 01.06.1992/ 07.05.1984/ 11.05.1984.

While the Petitioners were discharging their duties, the Fifth Central Pay Commission in its Report made certain recommendations relating to the

Assured Career Progression (ACP) Scheme for the Central Government Civilian Employees in all Ministries/ Departments with a view to provide

â??Safety Netâ?? to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues.

To that effect Office Memorandum dated 9thÂ August, 1999 was issued by the Government of India, Ministry of Personnel, Public Grievance and

Pensions (Department of Personnel and Training).

The ACP Scheme provides two financial up-gradations to the employees on completion of 12 years and 24 years of qualifying service. The Petitioners

and others have been granted 1st financial up-gradation with effect from 09.08.1999 and placed in the scale of 5,000-8000/- vide order dated 13.06.2000.

5. After completion of 24 years of regular service, the Petitioners claimed that they are entitled to 2nd financial up-gradation under the ACP Scheme.

The Opposite Party No.4-Assistant Director, Office of the Registrar General of India, New Delhi vide letter dated 15.04.2015 requested all the

Directors of Census Operations of different States to send the fresh/ revised proposals of the officials i.e. D.E.Os. Grade â??Bâ?? and Senior

Supervisors for grant of 2nd financial up-gradation under ACP Scheme in PB-III with GP of Rs.5,400/- with effect from their respective dates.

Further, the Opposite Party No.4- Assistant Director, Office of the Registrar General of India, New Delhi vide letter dated 29.04.2015 requested all

the Directors of Census Operations of different States to furnish the documents relating to educational qualification of all the DEOs/ Senior

Supervisors who have completed 24 years of regular service from 01.01.2006 to 31.08.2008. In the said letter dated 29.04.2015 the educational

qualification sought for was â??possessing a degree in Statistics/ Mathematics/ Operation Research/ Physics/ Economics/ Commerce/ Computer

Application of a recognized University or equivalentâ?. The Opposite Party No.4-Assistant Director, Office of the Registrar General of India, New

Delhi also requested all the Directors of Census Operations to furnish two lists i.e. those who have the required qualification and lack of required

qualification of DEOs Grade â??Bâ?? for consideration of their cases for grant of 2nd financial up-gradation under ACP Scheme.

6. The further case of the Petitioners is that the Opposite Party No.2-Under Secretary, Office of the Registrar General of India, New Delhi vide

Office Order date 18.01.2016 granted 2nd up-gradation under ACP Scheme in favour of 231 Data Entry Operators Grade â??Bâ??/ Senior

Supervisors after completion of 24 years of regular service in the Pay Band 3 with Grade Pay Rs.5,400/-. On being aggrieved by the letter dated

29.04.2015 of the Opposite Party No.4- Assistant Director, Office of the Registrar General of India, New Delhi, an application was submitted on

dated 13.06.2016 to the Opposite Party No.5- Secretary, Ministry of Personnel, Public Grievance and Pension, Department of Personnel & Training,

North Block, New Delhi by the President of All India Census EDP Staff Association (AICEDPSA), C/o- DCO, Odisha, Bhubaneswar ventilating

their grievances regarding imposition of certain qualification for grant of 2nd financial up-gradation under ACP Scheme in the hierarchal cadre. It is

further pleaded by the Petitioners that due to amendment of Recruitment Rules in the year 1981, the Petitioners were given appointment as Direct

Data Entry Operators Grade â??Bâ?? and the same was very much within the knowledge of the authority. It was also pleaded that insisting upon

certain qualification meant for direct recruitment to the post of Assistant Director amounts to denial of actual financial up-gradation under ACP

Scheme.

7. The Opposite Party No.2-Under Secretary, Office of the Registrar General of India, New Delhi vide letter dated 02.09.2016 communicated the

decision taken on the representations submitted by the President and Secretary General of AICEDPSA to all Controlling Officers under his/ their

control. From the communication dated 02.09.2016 it appears that the Opposite Parties/ Authorities have insisted upon paragraph-6 of Annexure-1 to

the Office Memorandum relating to Assured Career Progression Scheme for the Central Government Civilian Employees issued on 9th August, 1999

by the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) as well as paragraph-53

of the clarification dated 18.07.2001 regarding possession of necessary qualification meant for the post of Assistant Director under direct recruitment

quota. It is the case of the Petitioners that while considering their representation, the Opposite Party No.2-Under Secretary, Office of the Registrar

General of India, New Delhi has neither taken the latest clarification issued by the Opposite Party No.5- Secretary, Ministry of Personnel, Public

Grievance and Pension, Department of Personnel & Training, North Block, New Delhi vide Office Memorandum dated 29.06.2004 wherein it is

specifically clarified that 12/24 years of qualifying service is the only criteria for grant of 1st/ 2nd financial up-gradation under ACP Scheme.

8. Being aggrieved by the letter dated 29.04.2015 issued by the Opposite Party No.4- Assistant Director, Office of the Registrar General of India,

New Delhi and the letter dated 02.09.2016 issued by the Opposite Party No.2- Under Secretary, Office of the Registrar General of India, New Delhi,

the Petitioners approached the learned Central Administrative Tribunal, Cuttack Bench, Cuttack by filing O.A. No.260/698/2017. The Opposite Party

Nos.1 to 4 after receiving notices in the said Original Application entered appearance and filed counter reply supporting the claim of the Petitioners for

grant of 2nd financial up-gradation on the ground that once relaxation granted at the time of initial appointment to the grade of Operators were relaxed

for ever.

Though it is pleaded by the Petitioners that the Opposite Party Nos.1 to 4 filed their counter affidavit supporting the claim of the Petitioners for grant

of 2nd financial up-gradation on the ground that once relaxation granted at the time of initial appointment to the grade of Operators were relaxed for

ever with the quotation of paragraphs-6, 7, 10 and 11 of the counter affidavit, we find that in reality such facts are not pleaded in the counter affidavit

filed by the Opposite Party Nos.1 to 4 before the learned Central Administrative Tribunal, Cuttack Bench, Cuttack in the said Original Application

which is annexed as Annexure-10 to the writ petition. So, it appears that the Petitioners' averments especially at paragraph-12 of the writ petition

is misleading and erroneous one. When the learned Central Administrative Tribunal, Cuttack Bench, Cuttack dismissed the Original Application on

12.02.2002, at paragraph 12, has observed that "in the case in hand, there is no such relaxation in the matter of educational qualification in

the initial entry grade of the applicants as DEOs. The facts of the above mentioned decision by CAT, Principal Bench being different and

distinct from the facts herein, the decision so relied upon by the applicants is of no help". The Petitioners after going through the order

dated 12.02.2020 passed by the learned Tribunal in O.A. No.260/698/2017 filed review application bearing RA No.10 of 2020 which was also

dismissed on 24.11.2020. 09. In assailing the orders dismissing the Original Application and also the Review Application, the Petitioners put forth the

following grounds in the present writ petition to set aside the orders of the learned Tribunal. Those are: (i) As the Opposite Party Nos.1 to 4 have

not only admitted that the Petitioners have been given relaxation for ever at the time of initial recruitment by amending the Recruitment Rule but also

relied upon the judgment of the Hon'ble Supreme Court passed in the case of Jagdish Kumar vrs.- State of HP and Others: reported in 2006

(1) SLJ SC 54, the learned Tribunal committed error on record by dismissing their Applications; (ii) the second ground of challenge is that the ratio decided in the judgment by a High Court cannot be ignored by the Tribunal on the ground that a Full Bench of the Tribunal has since taken a contrary view. On such grounds, the Petitioners prayed that the writ petition may be allowed and they may be granted 2nd financial up-gradation under ACP Scheme.

10. The Opposite Parties have filed their counter affidavit in this case, inter alia, submitting that on the recommendation of the 5th Central Pay

Commission, the Government introduced Assured Career Progression (ACP) Scheme for Central Government Civilian Employees vide Department of

Personnel and Training's O.M. dated 09.08.1999 to mitigate hardship in case of stagnation in promotion. As per the ACP Scheme, two financial

up-gradations in the hierarchy post were to be given to the Central Government Civilian Employees on completion of 12 and 24 years of regular

service subject to fulfillment of all conditions/ norms for promotion prescribed in the relevant Recruitment Rules in which the financial up-gradation is

to be given under the above scheme. It is further submitted that as per the recommendation of the 6th Central Pay Commission, the posts of Junior

Supervisor and Senior Supervisor have been merged due to same Grade Pay of both the posts. After merger of both the posts, the promotion of DEOs

Grade 'B' has been considered as a single promotion either in the grade of Junior Supervisor or in the grade of Senior Supervisor. So, the

Department of Personnel and Training approved this office's proposal for granting 2nd financial up-gradation under the above Scheme to DEOs

Grade 'B' of EDP cadre in the grade of Assistant Director (DC) after completion of 24 years of regular service to those have completed 24

years between 01.01.2006 to 31.08.2008. It is also submitted that as per Paragraph-6 of the Annexure of Department of Personnel and Training O.M.

dated 09.08.1999, in ACP Scheme, an official has to fulfill all the promotional norms for granting the financial up-gradation under ACP Scheme. In

compliance of it, the 2nd financial up-gradation under ACP Scheme has been granted in the promotional grade of Assistant Director (DC) to those

DEOs Grade 'B'/ Senior Supervisors who have completed all the promotional norms for the post of Assistant Director (DC). The Petitioners

claimed for grant of 2nd financial up-gradation under ACP Scheme in the Pay Scale of the post of Assistant Director (DC). However, it is further submitted that as per the Recruitment Rules (RRs) for promotion to the post of Assistant Director (DC), an employee has to be a graduate in the subject of Mathematics/ Commerce/ Statistics/ Economics/ Operation Research/ Physics/ Computer Application. But the Petitioners do not have any graduate degree in any of the above subjects. It is further submitted that the request for relaxation in educational qualification in Recruitment Rules for the post of Assistant Director (DC) was taken up with the Department of Personnel and Training twice, but in both the occasions Department of Personnel and Training did not find it fit to grant relaxation in educational qualification. Therefore, the 2nd financial up-gradation in the Grade Pay of Assistant Director (DC) is denied to those DEOs Grade â??Bâ?"/ Senior Supervisors who do not fulfill educational qualification required for promotion to the post of Assistant Director (DC). However, such employees have already been granted 2nd and 3rd financial up-gradation under the Modified Assured Career Progression (MACP) Scheme where fulfilling of the aforesaid promotional norm is not a pre-requisite. The Opposite Parties further submitted that similar question arose before the Patna Bench, Patna which was decided against the employees. The said order of the Central Administrative Tribunal, Patna Bench, Patna was upheld by a Division Bench of the Patna High Court in CWJC No.6154 of 2017. Therefore, the Opposite Parties prayed to dismiss this writ petition.

11. The Petitioners have challenged the impugned orders passed by the Tribunal on the ground that the Opposite Party Nos.1 to 4 at paragraphs, 6, 7, 10 and 11 of the counter affidavit filed in the Original Application have admitted the facts of relaxation, this is an erroneous and false statement on the face of record which has been noted earlier in the preceding paragraph. We have carefully examined the record and found that at page 54 of the brief a part of some documents purported to be an Office Memorandum appears in which at paragraph-4, it has been mentioned â??as per Para-6 of Annexure-1, annexed to DOP & Tâ??s O.M. dated 09.08.1999 vide which the ACP scheme was introduced states thatâ??. However, such plea has not been taken in the counter affidavit by the Opposite Party Nos.1 to 4 in the Original Application before the Tribunal and as such the submission of

the Petitioners is not only erroneous but also misleading. If at all the Petitioners wanted to take advantage of any inter office memo or office memorandum, they should have called for the same or should have produced the complete copy of the same. The very nature of the part of the document which appears at page 54 of the brief cannot be taken into consideration. Moreover, the same is an inadmissible piece of document. The other Annexures mentioned at serial nos.3, 4 and 5 of the Index of the counter affidavit stated to have been filed by the Opposite Party Nos.1 to 4 in the Original Application under Annexure-10 at page 40 of the brief have not been annexed to the writ petition which creates a doubt regarding genuineness of the documents filed. In any case, the very plea of the Petitioners that it was admitted in the counter affidavit is erroneous and misleading and on the basis of such plea, a finding cannot be given in favour of the Petitioners. On further examination of the record, it appears that the Opposite Party Nos.1 to 4 have also relied on this document. But, it was brought to our notice that this is an Office Memorandum prepared by the Census Operations, Odisha, Bhubaneswar. A note was put up before the Authorities at Bhubaneswar and the Authorities recommended for grant of 2nd ACP to the DEOs who do not have requisite educational qualification and their appointments have been made in pursuance of the relaxation in educational qualification to the DoP & T for approval. The response of the DoP & T appears at page 192 of the brief is quoted as follows:

â??Department of Personnel & Training

Establishment (D)

Dy. No.1103199/15CR.

F.No.13/9/2013-Ad.IIII (pt) of O/o RGI

Reference notes on pre-pages.

2. The matter has been examined in consultation with Estt. (RR). As per the provisions of the ACP Scheme, the financial upgradations are allowed in the promotional

hierarchy on fulfillment of normal promotional norms prescribed under relevant RRs including educational qualification, if prescribed in the RRs for the promotional

post. No relaxation clause is available under the Scheme. Further, DoP & T as a policy do not grant relaxation in educational qualifications prescribed in the RRs.

Therefore, the proposal of O/o RGI for relaxation in educational qualification for financial upgradation under ACP Scheme cannot be agreed to.

3. This issue with the approval of Joint Secretary (DC) in this Department.

Sd/-

Section Officer

Xx xx xx xx??

This being the real facts situation, the plea of the Petitioners that the Opposite Party Nos.1 to 4 have admitted their claim in their counter affidavit

cannot be acceded to. In fact, they are relying upon some inter office memo or office memorandum in which the Office of the Director, Census

Operations, Odisha, Bhubaneswar proposed for grant of 2nd financial upgradation under ACP Scheme in favour of the Petitioners. But the matter

was referred to the DoP&T and the DoP&T did not accede to such proposal. It, therefore, cannot be held that by preparing this document the claim

of the

Petitioners has been accepted by the Opposite Party Nos.1 to 4.

12. The second contention of the Petitioners is that in a similar case i.e. in the case of Union of India represented by Secretary, Ministry of

Agriculture, Department of Animal Husbandry and Dairying and Another vrs.- K. Vijayabhanu and other batch of cases: reported in 2018 SCC

OnLine Ker 16238, the High Court of Kerala at Ernakulam has taken a view that the Petitioners therein are entitled to get the benefit of ACP Scheme

and they shall not be held ineligible to get the benefit of ACP Scheme on the ground that they did not possess the qualification for promotional post.

This judgment was pronounced on 30th October, 2018. Another judgment has been relied upon by the Petitioners that was passed by a Division Bench

of the High Court of Judicature at Patna in the case of Amrendra Kumar Sinha and others vrs.- The Union of India and others (in Civil Review

No.343 of 2017 in Civil Writ Jurisdiction Case No.6154 of 2017) decided on 01.08.2017. The Patna High Court has come to the conclusion which

reads as follows:

Further, from culling out the facts and provisions, it is evident that these petitioners are basically looking for replacement scale, which is available to an Assistant

Director, which was a temporary post, created due to exigency of service, sometime in the year 2001 with a different pay-scale as well as eligibility having higher

qualification and technical competence, which were provided for in the Rules.

From a discussion made by the Tribunal, it is evident that in terms of the financial upgradation due to stagnation, these petitioners have earned the next grade pay

available to them. But that does not satisfy them, because they want replacement scale of the next higher post, for which they do not have eligibility in the very first

place.

Even for grant of upgradation under the A.C.P. scheme, promotional norms of the next higher post has to be ingrained into such claimants. They cannot claim benefit

of the next higher post as a replacement scale as a matter of right. This fact is evident from the reading of the scheme itself. Some of which has been extracted and

reproduced by the Tribunal and quoted by us in the earlier part of the order.

Xx xx xx xx xx

But these are the persons, who do not fulfill the requirements to hold the next higher post, but they surely have wish and aspirations to beget, if not, try to demand

the pay-scale, which is available to the next higher post of Assistant Director.â??

13. In that view of the matter, we are in agreement with the views of the Patna High Court and also the view taken by the Central Administrative

Tribunal, Cuttack Bench, Cuttack in its orders i.e. the orders impugned before us. Accordingly, the second ground is also not accepted by us in view

of the judgment rendered earlier to the judgment rendered by the High Court of Kerala at Ernakulam. Both the said judgments were delivered by the

Division Bench of their respective High Court. However, the ratio arrived at by Patna High Court has not been taken into consideration or

distinguished in the later judgment rendered by the High Court of Kerala at Ernakulam. Moreover, the facts are also similar to that of the case of

Patna High Court, as it was also a case of D.E.Os. of Registrar General of India and Census Commissioner. Whereas in the reported judgment

passed by the High Court of Kerala at Ernakulam, the employees of the National

Institute of Fisheries Post Harvest Technology and Training

(NIFPHT & T) have challenged the authorities' decision denying grant of benefit of ACP Scheme on the ground that they do not possess the

qualification for promotional post concerned. The reported case of the High Court of Kerala at Ernakulam is distinguishable in this case. The

applicants therein were not given employment in relaxation of educational qualification for the based post. Secondly, the Additional Director post is a

temporary post in the establishment of the Registrar General of India and Census Commissioner. In that case, no such plea has been raised regarding

temporary nature of the post and the promotional post.

14. In all fitness of the things, the judgment referred by us i.e. the judgment rendered by the Patna High Court is more befitting to the present case. So

we rely on it. In addition, it being at an earlier point of time.

15. A writ of certiorari is generally issued to correct the error of jurisdiction. If the Tribunal under the supervision of the High Court exercises

jurisdiction not conferred on it, fails to exercise jurisdiction conferred on it or exercises jurisdiction in a patently illegal and irregular way, then the High

Court should exercise its jurisdiction under Section 226 read with Section 227 of the Constitution of India to correct the error of jurisdiction. Moreover,

a writ of certiorari should not be allowed, unless it is shown to the Court that such conclusion regarding factual aspect of the case is based on

inadmissible evidence or is based on clear ignorance of admissible and relevant materials on record. A writ of certiorari should not also be issued or

exercised in a case of erroneous judgment on the question of law unless it is shown that such error of law is patent on the face of the record, an error

which has been demonstrated before the Court without any lengthy and complicated argument. But, by simply perusing the judgment, and that such

error of law has caused a grave miscarriage of justice.

16. In this case, the learned counsel appearing for the Petitioners could not establish before the Court that finding of fact arrived at by the Tribunal is

in ignorance of admissible materials available on record or that it is based on materials which are not existence or admissible. Similarly, the learned

counsel for the Petitioners could not establish a patent error of law, apparent on the face of the record, which has caused a grave miscarriage of

justice. This being so, we are not inclined to allow this writ petition.

17. Hence, this writ petition is dismissed.

18. As the restrictions due to resurgence of Covid-19 are continuing, learned counsel for the parties may utilize a printout of the order available in the

High Court's website, at par with certified copy, subject to attestation by Mr. Nirmal Ranjan Routray, learned Advocate, in the manner prescribed

vide Court's Notice No.4587 dated 25th March, 2020 as modified by Court's Notice No.4798 dated 15th April, 2021.