NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1851 OF 2020

[ARISING OUT OF SPECIAL LEAVE PETITION [C] NO.22181 OF 2019]

STATE OF ODISHA & ORS. ...APPELLANTS

VERSUS

SRI SATYA NARAYAN BEHURA ...RESPONDENT

WITH

CIVIL APPEAL NO.1852 OF 2020,
[ARISING OUT OF SPECIAL LEAVE PETITION [C] NO.22184 OF 2019]

CIVIL APPEAL NO. 1853 OF 2020,
[ARISING OUT OF SPECIAL LEAVE PETITION [C] NO.22185 OF 2019]

CIVIL APPEAL NO. 1854 OF 2020,
[ARISING OUT OF SPECIAL LEAVE PETITION [C] NO.22186 OF 2019]

CIVIL APPEAL NO. 1855 OF 2020,
[ARISING OUT OF SPECIAL LEAVE PETITION [C] NO.20571 OF 2019]

CIVIL APPEAL NO. 1856 OF 2020,
[ARISING OUT OF SPECIAL LEAVE PETITION [C] NO.20100 OF 2019]

CIVIL APPEAL NO. 1857 OF 2020,
[ARISING OUT OF SPECIAL LEAVE PETITION [C] NO.20420 OF 2019]

CIVIL APPEAL NO.1858 OF 2020,
[ARISING OUT OF SPECIAL LEAVE PETITION [C] NO.320 OF 2020]

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AND

CIVIL APPEAL NO.1859 OF 2020,
[ARISING OUT OF SPECIAL LEAVE PETITION [C] No.5389/2020 Dy. NO.4351 OF 2020]

J U D G M E N T

Vineet Saran, J.

Leave granted.

2. The facts in all the appeals are similar, hence for the purpose of convenience, the Civil Appeal No.1851 of 2020, arising out of SLP(C) No.22181 of 2019, is being treated as the lead appeal and its facts are being dealt with and considered hereunder.

3. The respondent joined as an Assistant Conservator of Forest (ACF), Grade-B on 06.11.1990, in the office of the Divisional Forest Officer, Ghumsur North Division, Bhanjanagar, Odisha. At the relevant time, Orissa Revised Scales of Pay Rules, 1998 (for short, 'ORSP Rules, 1998') were in force. Rule 8 of the said Rules provided for Time Bound Advancement (for short "TBA") scales to be given on completion of 15 years and 25 years of service, which was in case the employees who had not availed such benefit of promotion or TBA scales.

The Orissa Revised Scales of Pay Rules,2008 (for short, 'ORSP Rules, 2008') were notified, which came into force w.e.f. 01.01.2006. Rule 14 provided for Assured Career Progression (for short, 'ACP') which could be availed in three stages i.e. on completion of 15 years, 25 years and 30 years of service in their

original post or grade and such benefit of ACP was to be given only after screening each and every case by the Screening Committee to be constituted by the Department.

Then, on 06.02.2013, Government of Orissa promulgated the Revised Assured Career Progression Scheme (for short, 'RACP Scheme') for State Government employees, which was given effect from 01.01.2013. According to the same, three financial upgradations were to be accorded on completion of 10 years, 20 years and 30 years of service in a single cadre, which was in the absence of any promotion. Thereafter, on 23.02.2016, an Office Memorandum was issued by the Government of Orissa, which was a clarification to the effect that whenever there is an upgradation and the financial factor is taken into account, the same would fulfil the spirit of the RACP Scheme.

4. Considering the fact that the respondent had already availed the benefits of the Rules and the Scheme, by an Order dated 07.08.2016, it was directed that the financial upgradation sanctioned to the respondent was to be withdrawn, as excess payment had been made to him, and a formal Order to this effect was issued on 29.08.2016.

5. The respondent claims that the upgradation and other benefits given to the respondent were well within the provision of the Rules and the RACP Scheme and as such he filed an O.A. No.762 of 2017 before the State Administrative Tribunal, Bhubaneswar (for short, 'the Tribunal') with the following prayers:

> *"i) The Hon'ble Tribunal may be pleased to quash the impugned order vide No.16046 dated 29.08.2016, and*
> *ii) The Hon'ble Tribunal further be pleased to quash the impugned O.M. dated 23.02.2016, as the same is contrary to the Resolution dated 06.02.2013 and is not applicable to the applicant and further be pleased to declare that the order dated 24.02.2015 has been issued rightly."*

By its Order dated 16.11.2017, the Tribunal allowed the O.A. of the respondent (along with other connected O.As), the operative portion of which is reproduced below:

> *".....The Govt. of Orissa, Finance Department office Memorandum dt. 23.2.2016 on the basis of which the impugned order dt. 29.8.2016 has been passed is not tenable because the Finance Department Office Memorandum dt. 23.2.2016 is not in consonance with the RACP scheme i.e. resolution dt. 6.2.2013 and therefore, the resolution is to be followed and not the Office Memorandum dt. 23.2.2016. When the benefit of grade pay of Rs.7600/- has been granted to the*

applicants after completion of 20 years of service as 2nd up-gradation w.e.f. 1.2.2013 by the order passed in 2015 in terms of the resolution dt. 6.2.2013, the same cannot be withdrawn merely on the basis of subsequent clarification given by the Finance Department office Memorandum dt. 23.2.2016.

Hence, all the O.As are allowed. The impugned order dt. 29.8.2016 stands quashed. The applicants be allowed to continue in the grade pay of Rs.7600/- towards 2nd up-gradation under RACPs in P.B.-3 in the scale of pay Rs.15600/- to Rs.39100/-."

6. Challenging the same, the Appellant, State of Orissa filed Writ Petition (C) No.19368 of 2018, which has been dismissed by Judgment and Order dated 03.01.2019. Hence, this Appeal by the State of Orissa.

7. The contention of Ms. V. Mohana, learned Senior Counsel appearing for the appellant, State of Orissa, is that the respondent, on completion of 15 years of service, was allowed Time Bound Advancement (TBA) scale on 10.11.2005 under the ORSP Rules, 1998. Thereafter, on 13.10.2009 the second upgradation, amounting to promotion, was accorded to the respondent, by which the respondent was accorded Group-A Junior Branch status to ACF (entry grade post). Then, on

05.06.2010, a third promotion by way of pay upgradation was accorded to the respondent, whereby the respondent was promoted to OFS (Group-A) Senior Branch. It has been contended that the RACP Scheme was akin to the Time Bound Advancement (TBA) scale and as such the benefit accorded to the respondent on 10.11.2005 was the first benefit given and, thereafter, the second and third benefits were given on 13.10.2009 and 05.06.2010 and, thus, three benefits were given to the respondent within 20 years of his service, whereas according to the RACP Scheme, he would be entitled to only two such benefits. It was contended that the subsequent benefit given on 24.02.2015, by which the pay scale of the respondent was raised, was a mistake of the Department and, in any case, by aforesaid Order dated 24.02.2015 itself, it was specified that *"DDO concerned may be instructed to obtain an undertaking from the employee while availing RACP benefits that the excess payments if any detected in future will be recovered from him or will be adjusted from the pensionary benefits of the employees".*

Ms. Mohana, thus, submitted that the Office Memorandum dated 23.02.2016 was perfectly justified as an

upgradation given earlier (whereby financial benefit was given to the respondent) fulfilled the spirit of the RACP Scheme. It was, thus, urged that the Order dated 07.08.2016, as well as the consequent Order dated 29.08.2016, were fully justified and in accordance with the Rules as well as the RACP Scheme and that the benefit accorded to the respondent by the Tribunal was not justified in law and the Order of the Tribunal was liable to be quashed. In support of her submission, learned Senior Counsel relied on the decisions of this Court rendered in ***Union of India vs S. S. Ranade*** *(1995) 4 SCC 462,* ***State of Rajasthan vs Fateh Chand Soni*** *(1996) 1 SCC 562,* ***Bharat Sanchar Nigam Limited vs R. Santhakumari Velusamy*** *(2011) 9 SCC 510,* ***Hukum Chand Gupta vs Director General, Indian Council of Agricultural Research*** *(2012) 12 SCC 666 and* ***Secretary, Government (NCT of Delhi) vs Grade-I Dass Officers' Association*** *(2014) 13 SCC 296.*

Per contra, Shri Jaideep Gupta, learned Senior Counsel for the respondent herein (petitioner before the Tribunal), has submitted that in 20 years of service of the respondent, the respondent has been given only one upgradation/promotion on

05.06.2010. According to the learned Senior Counsel, the TBA accorded on 10.11.2005 was not to be counted, as the same was not under the RACP Scheme. The upgradation accorded on 13.10.2009 was also not specifically for the respondent but an upgradation in general, which could also not be said to be a benefit under the RACP Scheme, and as such, the first benefit given under the Scheme was only on 05.06.2010. It was urged that in such view of the matter, the benefit given on 24.02.2015 was the second benefit under the RACP Scheme, and was on completion of 20 years of service, which was perfectly justified in law and the Tribunal has rightly allowed the claim of the respondent.

8. Learned Counsel for the parties have relied on certain other circulars and clarifications given by the Finance Department of the Government of Orissa, which were not part of the record, either before the Tribunal or the High Court. Learned Counsel for the parties have submitted that since they are Government documents, the same can be taken on record. Learned Counsel for both the parties have also accepted the fact that the High Court has not given any reason for

dismissing the Writ Petition and only quoted the paragraph 7 of the Order of the Tribunal and dismissed the Writ Petition, without giving any finding of its own.

9. In our considered view, the contentions, as raised by the Counsel for the parties, ought to have been taken into account, while passing the judgment in the Writ Petition, which has not been done so in the present case. As such, we are of the opinion that the matter should be remanded to the High Court for deciding the Writ Petition afresh, in accordance with law and after dealing with all the contentions raised by the parties.

10. Accordingly, we allow these appeals and remand the matter to the High Court to decide the Writ Petitions afresh, after considering the various contentions raised by the parties. The appellants herein are granted liberty to file additional affidavits in the Writ Petitions within four weeks from the date the Writ Petitions before the High Court stands revived. The respondent shall have three weeks thereafter to file additional counter affidavits. Rejoinders, if any, may be filed within two

weeks thereafter. The High Court shall, thereafter, make every endeavour to decide the Writ Petitions as expeditiously as possible, preferably within six months from the filing of the affidavits as indicated above.

No orders as to costs.

.....J
(UDAY UMESH LALIT)

.....J
(VINEET SARAN)

New Delhi
Dated: February 28, 2020.