

NON-REPORTABLE
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). OF 2022
(Arising out of SLP(Civil) No(s). 1111 of 2020)

ODISHA STATE FINANCIAL CORPORATIONAPPELLANT(S)

VERSUS

**ODISHA STATE FINANCIAL CORPORATION
EMPLOYEES UNION & ORS.RESPONDENT(S)**

J U D G M E N T

Rastogi, J.

1. Leave granted.
2. The instant appeal has been preferred by the Odisha State Financial Corporation assailing the judgment of the Division Bench of the High Court dated 31st January, 2019 directing the Corporation to pay the arrear benefits under the revised scale of pay from 1st April,

2012 in terms of the decision of the Board of Directors of the Corporation.

3. The brief facts of the case culled out from the record are that the appellant is a statutory corporation, namely, Odisha State Financial Corporation(for short “OSFC”). The State Government constituted a Fitment Committee in Finance Department Resolution dated 9th September, 2008 to examine revision in the pay scale of the State Government employees and on the recommendations made by the Committee constituted by the Government vide notification dated 16th December, 2008, revised scales of pay were introduced for the State Government employees.

4. After the revised scales of pay were introduced by the Government of Orissa for the State Government employees, as usual, there was a demand for revision of pay as per recommendations of 6th Central Pay Commission by the State Public Sector Undertakings(hereinafter being referred to as the “PSUs). Accordingly, the Government of Orissa, consequent upon revision of scale of pay of whole time State Government employees as per recommendations of 6th Central Pay Commission by introduction of Orissa Revised Scales of Pay Rules, 2008(hereinafter being referred

to as the “ORSP Rules 2008”) considered the revision of scale of pay of State PSUs w.e.f. 1st January, 2006 vide its Resolution dated 8th May, 2009, subject to fulfilment of the eligibility criteria as per ORSP Rules 2008.

5. The Resolution dated 8th May, 2009 by Government of Orissa regarding revision of scale of pay of State Public Sector Undertakings on the basis of ORSP Rules, 2008 relevant for the purpose is reproduced as under:-

“....

Keeping in view the demand of various service associations of the State PSUs and having regard to the present wide disparity in the pay structures of both executive and non-executive cadres of different PSUs, the state government have been pleased to allow the revision of scale of pay of State PSUs w.e.f. 01.01.2006 subject to fulfilment the following eligibility criteria as per ORSP Rules, 2008:-

- (i) The Public Sector Undertakings must be a profit making one and its balance sheet must show cumulative profit at least for the last consecutive two years.
- (ii) The Public Sector Undertaking must not have defaulted in payment of statutory dues of the employees such as provident Fund and ESI etc.
- (iii) The Public Sector Undertaking must not have defaulted in payment of loan to any financial institution or State Government. The Public Sector Undertaking must be up to date in payment of guarantee fee/royalty/divided to the State Government, whichever is applicable.

- (iv) The Public Sector Undertaking must have completed statutory audit upto date.
- (v) The Public Sector Undertaking has to meet the expenditure for payment of revised scale of pay to the employees from its internal resources and must not depend on Government for any financial support on such expenditure.

The eligible PSUs who satisfy the above eligibility norms will first obtain approval of their Board of Directors regarding fitment of scale of pay of their employees post wise and cadre wise, on the basis of ORSP Rules, 2008 and send the same to their Administrative Department. The concerned Administrative Department will examine the suitability of the said PSU on the basis of above five conditions and send to this Department after getting prior approval of the Finance Department for sanction of the same will modification, if any, on case to case basis.

This has been concurred in by the Finance Department vide their UOR No. 1902 dt. 14.02.2009.”

6. In terms of the Resolution of the Government of Orissa dated 8th May 2009, apart from fulfilment of the eligibility criteria as referred to therein, taking note of the financial conditions of PSUs and whether the undertakings be in a position to meet the expenditure by payment of revision scale of pay, it was clarified that the payment of revision of scale of pay to the employees will be meted out by PSUs from its internal resources and must not depend upon Government for any financial assistance on such expenditure. At the given time, it was also clarified that the eligible PSUs who satisfy the

above eligibility norms, in the first instance, will first seek approval of the Board of Directors regarding fitment of scale of pay of their employees on the basis of ORSP Rules, 2008 and, thereafter, the suitability of the said PSU be examined by the concerned Administrative Department which, in the instant case, is Micro Small and Medium Enterprises (in short "MSME"), will examine the suitability on the basis of the conditions been fulfilled and send back to the Department after getting prior approval of the Finance Department for sanction of the same with modification, if any.

7. Indisputedly, in the instant case, although the recommendations made by the Committee of the Corporation were approved by the Board of Directors in its 368th meeting held on 18th June, 2012 but the administrative department in its meeting held on 10th August, 2016 did not approve the same.

8. The extract of the minutes of the meeting held under the Chairmanship of the Principal Secretary of the Government of India, MSME Department dated 10th August, 2016 relevant for the purpose is reproduced as under:-

".....

Form the records, it is revealed that the OSFC has defaulted to the tune of Rs. 8.28 crore towards payment of loan to SIDBI. Besides,

presently, the total salary burden of OSFC is about Rs. 68.00 lakh per month which is met out of day to day recovery. It was also revealed that the OSFC employees have not received their salary for last three months viz. (a) May (b) June (c) July of 2016 as there is no fund. The OSFC is required to pay the loan of SIDBI in instalments which the OSFC has failed to pay and has become a defaulter. This has created an adverse situation because the default in the payment of loan to SIDBI has resulted in breach of agreement.

So the OSFC is not meeting the criteria stipulated by both Finance Department and PE department of the Government for payment of Revised Pay Scale.

Accordingly, after careful deliberations on the issues involved, it is felt that the OSFC is not running under severe financial constraints and yet to fulfil the eligibility criteria as stipulated by the Public Enterprises Department vide their Resolution No. 1386 dated 8.5.2009. Although the Board of Directors of OSFC resolved in their meeting held on 18.06.2012 to implement the Revised Pay Scale w.e.f. 01.04.2012, but the same was not with the PE Department concurrence. The present situation of the Corporation is not conducive for allowing the revised pay as PE Department/Finance Department guidelines. Therefore, after careful consideration, as per the direction of Hon'ble High Court, in PWC No. 6469/2014, it is decided that the proposal for implementation of Revised Pay Scale to the employees of OSFC may not be considered at this stage. The meeting ended with a vote of thanks to the Chair.”

9. Since the recommendations were not approved by the Administrative Department, the stage of seeking approval by the Finance Department did not arise at this stage, the writ petition came to be preferred by the employees Union before the learned Single Judge under Article 226 of the Constitution of India.

10. The learned Single Judge recorded the statement of the State counsel that the Administrative Department in the minutes of

meeting dated 10th August, 2016 has decided not to implement the scale of pay as suggested by the Board still proceeded on the statement made by the counsel appearing for the Corporation that the Corporation would pay the arrear benefits under revised scale of pay w.e.f. 1st April, 2012 as per the decision of the Board and disposed of the writ petition under its Order dated 10th April, 2018.

11. It may be relevant to note at this stage that the revised scale of pay under ORSP Rules, 2008 could not have been implemented without being approved by the Administrative Department and the Department of Finance, Government of Orissa. Thus, the directions of the learned Single Judge under Order dated 10th April, 2018 in itself were not sustainable.

12. When the appeal came to be preferred at the instance of the appellant, the Division Bench of the High Court, even after recording the statement of the counsel that the recommendations of the Corporation not being approved by the Administrative Department/Finance Department, still dismissed the writ appeal on the premise that the financial condition of a State functionary is not a ground to refuse legitimate dues of its employees without noticing the fact that the ORSP Rules, 2008 introduced for the State

Government employees vide notification dated 16th December, 2008 could not have been extended to PSUs and particularly to the employees of the Corporation, unless recommendations made by PSUs being approved by the concerned administrative Department, i.e., MSME, in the instant case, and after getting approval of the Finance Department for sanction of the scheme.

13. Indisputedly, as already observed, the recommendations were neither approved by the Administrative Department nor the Finance Department, Government of Orissa. In the given circumstances, the recommendations made by the Corporation/Board of Directors to implement the ORSP Rules, 2008 to the employees of the Corporation were not available for its implementation and this has been completely overlooked by the Division Bench of the High Court while dismissing the appeal filed by the present appellant.

14. Learned counsel for the respondents has tried to justify that there was no such financial loss to the Corporation and the profit and loss account for the years 2005-2006 to 2008-2009 shows the profits earned by the Corporation. Although, it may not have any material bearing on the issue for our consideration but one of the condition of eligibility as being resolved by the Government of Orissa

in its Resolution dated 8th May, 2009 for taking decision to implement ORSP Rules, 2008 to the employees of the State PSUs to keep in view the previous balance sheets of the undertakings which must show cumulative profit at least for the last consecutive two years and the material placed on record justify that the balance sheet of the Corporation reflects accumulated financial losses in the preceding years.

15. We have heard learned counsel for the parties and, in our considered view, the recommendations made by the Corporation in introducing the ORSP Rules, 2008 for the employees of the Corporation in the absence of being approved by the Administrative Department, i.e., MSME, in the instant case, and by the Finance Department were not available for implementation and the finding which has been recorded by the learned Single Judge and affirmed in appeal, in our considered view, is not sustainable and deserves to be set aside.

16. Consequently, the appeal succeeds and accordingly allowed. The order of the Division Bench dated 31st January, 2019 is quashed and set aside. No costs.

17. Pending application(s), if any, stand disposed of.

.....**J.**
(AJAY RASTOGI)

.....**J.**
(SANJIV KHANNA)

NEW DELHI
APRIL 05, 2022