

SUPREME COURT OF INDIA

Orissa Power Transmission

Vs.

Khageswar Sundaray & Ors.

C.A.No. 6904 of 2011

(R.V. Raveendran and A.K.Patnaik,JJ.,)

11.08.2011

ORDER

A.K.Patnaik,J.,

SLP.(Civil)No.12901 of 2008

1. Leave granted.

2. This is an appeal against the order dated 18.12.2007 of the Division Bench of the Orissa High Court in OJC No.5768 of 1994.

3. The facts very briefly are that the Orissa State Electricity Board (for short `the OSEB') decided in its meeting held on 02.05.1970 that Lower Division Clerks (for short `the LDCs') in the Circles, Divisions and Sub- Divisions of the OSEB shall be granted two advance increments in the time-scale of pay attached to the post on their becoming graduates while in service. Accordingly, an office order was passed by the Secretary of the OSEB on 17.06.1970 and LDCs of the OSEB would be granted two advance increments on their becoming graduates while in service. On 03.10.1970, a Tripartite Settlement was entered into by the OSEB with the Employees Unions regarding revision of wages of the employees of the OSEB and on 30.06.1971 an office order was issued by the Secretary of the OSEB giving the details of the revised scales of pay, dearness allowance and house rent allowance admissible to the employees of the OSEB as on 01.04.1969. Thereafter in terms of settlement dated 03.10.1970, the OSEB constituted an Anomaly Committee which was to examine inter alia the issue with regard to advance increments in the revised scales of pay for employees who became graduates while in service. The Anomaly Committee recommended inter alia that two advance increments which were given to LDCs working in the different Circles, Divisions and Sub-Divisions of the OSEB in the Pre-revised scale of Rs.80-135 may be given such advance increments in the revised scale of pay when the employees become graduates or pass Accounts Examinations on or before 30.06.1971 and such advance increments may not be given to those employees who become graduates or pass Accounts Examinations subsequent to 30.06.1971. The recommendations of the Anomaly Committee

were considered by the OSEB in its meeting held on 12.05.1973 and the OSEB accepted the recommendations of the Anomaly Committee saying that the employees, who graduated or passed Accounts Examinations on or before 30.06.1971, would be eligible for such two advance increments. The decision of the OSEB was followed by a Circular dated 16.07.1973 clearly saying that the benefit of advance increments shall be allowed in the revised pay-scale to the employees who have graduated or have passed the Accounts Examinations on or before 30.06.1971. The respondent Nos.1 to 5, who have been working as LDCs under the OSEB, passed the graduate examinations in the years 1974, 1975 and 1976 and were not granted two advance increments by the OSEB.

4. Aggrieved, the respondent Nos.1 to 5 filed a writ petition before the Orissa High Court being OJC No.1428 of 1979 and the writ petition was disposed of by the High Court with a direction to the OSEB to dispose of the representations of the respondent Nos. 1 to 5. Pursuant to the direction of the High Court, the OSEB rejected the representations. Thereafter, respondent Nos.1 to 5 filed another writ petition being OJC No.2237 of 1981 claiming two advance increments. The OSEB in its counter-affidavit filed before the High Court stated that the earlier notification of 1970 under which two advance increments were given to employees of the OSEB who graduated while in service had been withdrawn. The High Court in its order dated 12.04.1989 held that since the basis of the relief claimed by respondent Nos.1 to 5 was the notification of 1970 which had been withdrawn, the High Court cannot grant any relief to the respondent Nos. 1 to 5 but reserved liberty to the said respondents to challenge the legality of the decision of the OSEB taken in its meeting held on 12.05.1973 confining the benefit of advance increments to those employees who had become graduates or passed Accounts Examinations on or before 30.06.1971. The respondent Nos. 1 to 5 filed a fresh writ petition being OJC No.5768 of 1994 praying for quashing the decision of the OSEB in 1973 and the office order dated 16.07.1973 confining the benefit of advance increments in the revised scales of pay to the employees who graduated or had passed the Accounts Examinations on or before 30.06.1971.

5. The High Court allowed the writ petition being OJC No.5768 of 1994 by the impugned order dated 18.12.2007. In the impugned order, the High Court observed that respondent Nos. 1 to 5 will get the benefit of only Rs.6/- in their monthly pay. The High Court held that other employees similarly placed like the respondent Nos.1 to 5 had been given the benefit and there should not have been any discrimination and they should not have been denied the same benefit of two advance increments. The High Court also held that the proceedings of the meeting of the OSEB held on 12.05.1973 in which the decision to grant two advance increments to the employees who had graduated or had passed the Accounts Examinations on or before 30.06.1971 did not disclose any reason, far less any justifiable reason, to confine the benefit of the two advance increments only to the employees fulfilling the criteria by a cut-off date and hence the decision of the OSEB was arbitrary. The High Court accordingly quashed the decision of the OSEB taken on 12.05.1973 so far as respondent Nos. 1 to 5 were concerned and directed that two advance increments be notionally given to respondent Nos. 1 to 5 in their Pre-revised scale of pay with effect from the respective dates they acquired the degree qualifications in the year 1974-1976 and on that basis fix their current pay and pay

their current salary accordingly. The High Court, however, observed that the impugned order will be confined to only respondent Nos. 1 to 5 and shall not be a precedent for others.

6. We have heard learned counsel for the parties and we find that in the proceedings of the meeting of the OSEB held on 12.05.1973, it is stated that the Wage Board Award recommending revised scales of pay was not clear if the advance increments were to continue and the Anomaly Committee after considering the matter had recommended that the benefit of advance increments should be given to employees who graduated or passed the Accounts Examinations on or before 30.06.1971 and that those who have passed the concerned examinations after this date shall not be eligible for this benefit. In the proceedings of the meeting of the OSEB held on 12.05.1973 it was also made clear that the OSEB accepted the recommendations of the Anomaly Committee not to allow advance increments in the case of employees who had obtained the degree or passed the Accounts Examinations subsequent to 30.06.1971. If respondent Nos. 1 to 5 desired to challenge this decision of the OSEB as arbitrary and discriminatory, they should have placed sufficient materials before the court to demonstrate that the cut-off date of 30.06.1971 adopted by the OSEB was arbitrary and discriminatory and that the decision of the OSEB was violative of Article 14 of the Constitution. In the impugned order, the High Court has not referred to any such materials and has instead held that the proceedings of the meeting of the OSEB did not disclose any reason, far less any justifiable reason, to confine the benefit of two advance increments to employees who graduated or passed the Accounts Examinations on or before 30.06.1971.

7. We are of the considered opinion that the view taken by the High Court that in the absence of any reason given by the decision of the OSEB in its meeting held on 12.05.1973 to fix the cut-off date of 30.06.1971 for becoming a graduate or passing the Accounts Examinations for an employee to be entitled to the two advance increments, its decision was arbitrary and discriminatory is not sustainable in law. The OSEB as the employer was fully with its powers to decide the cut-off date for the employee to become a graduate or passing the Accounts Examinations to be eligible to the two advance increments in the revised scales of pay and the decision of the OSEB could not be held to be arbitrary only because the reason for decision was not stated in the proceedings of the meeting of the OSEB in which the decision was taken. This Court in *State of Bihar and Others vs. Ramjee Prasad and Others* [(1990) 3 SCC 368] held:

"the choice of date cannot be dubbed as arbitrary even if no particular reason is forthcoming for the same unless it is shown to be capricious or whimsical or wide off the reasonable mark".

8. In a recent case in *National Council for Teacher Education and Others vs. Shri Shyam Shiksha Prashikshan Sansthan and Others*¹ this Court after referring to various earlier authorities on the point in *Sushma Sharma (Dr.) vs. State of Rajasthan*⁴ *UGC vs. Sadhana Chaudhary*² *Ramrao vs. All India Backward Class Bank Employees Welfare Association*³ and *State of Punjab vs. Amar Nath Goyal*⁵ has reiterated this position of law and has held the

cut-off dates specified in clauses (4) and (5) of Regulation 5 of the National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2007 to be valid.

9. We, therefore, allow this appeal and set aside the impugned order of the Division Bench of the High Court and dismiss the writ petition of respondent Nos. 1 to 5.

There shall be no order as to costs.

¹(2011) 3 SCC 0238

²(1996) 10 SCC 0536

³(2004) 2 SCC 0076

⁴(1985) *supp.* SCC 0045

⁵(2005) 6 SCC 0754