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ORISSA HIGH COURT : CUTTACK

W.P.(C) No.28862 of 2023

In the matter of an Application under Articles 226 and 227
of the Constitution of India, 1950

* * *

Sri Biren Kumar Biswal
Aged about 60 years
Son of Late Duryodhan Biswal
At: Rayapur, P.O.: M.G. Khamar
P.S.: Patakura
District: Kendrapara. ... Petitioner.

-VERSUS-

1. State of Odisha
Represented through
Principal Secretary
General Administration and
Public Grievance Department
Lok Seva Bhawan, Bhubaneswar
District: Khordha.
2. Nodal Officer
Odisha Administrative Tribunal
Bhubaneswar, At/P.O.: Bhubaneswar
District: Khordha ... Opposite parties.

Counsel appeared for the parties:

For the Petitioner : M/s. Sameer Kumar Das,
Prakash Kumar Behera,
Nirajan Jena, Advocates



For the Opposite parties : Mr. Arnav Behera,
Additional Standing Counsel

P R E S E N T:

**HONOURABLE
MR. JUSTICE MURAHARI SRI RAMAN**

Date of Hearing : 12.09.2024 :: Date of Judgment : 02.01.2025

JUDGMENT

MURAHARI SRI RAMAN, J.—

Aggrieved by Office Order bearing No.E(ii)/24/2023/688/OAT, dated 30.05.2023 of the Nodal Officer issued from the Odisha Administrative Tribunal, Bhubaneswar (Annexure-7) approving the revision of pay recommended by the Screening Committee in its Proceeding dated 28.02.2023, which was held to comply with the direction contained in the Order dated 13.01.2023 passed by this Court in W.P.(C) No.12359 of 2022, the petitioner beseeching quashment of said Order came up in the instant writ petition claiming following relief(s):

“Under the above circumstances, it is therefore humbly prayed that the Hon’ble Court be graciously pleased to quash the Office Order No. 688/OAT, dated 30.05.2023 of the opposite party No.2 under Annexure-7 and consequential Letter dated 21.08.2023 under Annexure-8;



And further be please to direct the opposite parties to revise the pay of the petitioner in the 3rd Revised Assured Career Progression on completion of 30 years of service in Level-10 of the Pay Matrix with all consequential benefits by restoring his pay revision under Annexure-4;

And also revise his pension and pensionary benefits and to grant him all consequential service and financial benefits including arrears within a stipulated period as deem fit and proper;

And/or pass any other appropriate writ/writs, order/orders, direction/directions in the fitness of the case.

And for this act of kindness as in duty bound the petitioner shall ever pray.”

Facts as stated in the writ petition:

2. The petitioner having joined as Junior Grade Typist in the Odisha Administrative Tribunal, Bhubaneswar on 04.10.1990, got promotion to the post of Senior Grade Typist on 01.02.2019. As per the Odisha Administrative Tribunal (Recruitment and Conditions of Service and Officers and Staff) Rules, 1999 (herein after referred to as “OAT Staff Rules, 1999”), which came into force with effect from 03.09.1999, the next promotional avenue is the post of “Senior Assistant”.

2.1. On the recommendations of Fitment Committee, the State Government employees are granted Assured



Career Progression (“ACP”, for short) on completion of 15, 25 and 30 years of service akin to the Time Bound Advancement (“TBA”, for short) provisions of the Odisha Revised Scales of Pay Rules, 1998. Such provision was revised by a Finance Department Resolution dated 06.02.2013 granting three financial upgradation under the Revised Assured Career Progression Scheme (“RACPS”, for convenience) on completion of 10, 20 and 30 years.

2.2. As the petitioner was to get his 2nd RACP in the promotional grade of Senior Assistant, his pay was fixed in the scale of pay Rs.9,300/- — Rs.34,800/- with Grade Pay Rs.4,200/- with financial benefit with effect from 01.01.2013. It has further been revised in terms of the Odisha Revised Scale of Pay Rules, 2008 (“ORSP Rules, 2008”, for convenience), which he has been in receipt of.

2.3. While the petitioner was so continuing and discharging his duty, the Odisha Administrative Tribunal, Bhubaneswar was abolished by virtue of Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) Notification F. No. A-11014/10/2015-AT [G.S.R. 552(E).], dated 2nd August, 2019), pursuant to which some of the employees were deputed and permanently absorbed in



other Departments of the State Government, but the petitioner and certain other employees were allowed to continue in the said Tribunal in order to do the needful in transferring the records to this Court and they were assigned with administrative functions. After the closure of the Tribunal the powers and functions of the Registrar of the Odisha Administrative Tribunal were vested with “Nodal Officer”/“Officer-on-Special Duty, an officer borne in the Odisha Administrative Service Cadre.

2.4. The Nodal Officer by Office Order No.3367—E(vii)/73/2021/OAT, dated 16.11.2021 while stating the petitioner to be eligible to get 3rd financial upgradation under Modified Assured Career Progression Scheme (“MACPS”, for brevity) with effect from 04.10.2020 on completion of 30 years of service, re-fixed the scale of pay at Rs.5,200/- — Rs.20,000/- with Grade Pay of Rs.2,800/- in Level-8 by rectifying/reducing/revising the pay granted in 2nd RACPS, which had already been granted at Rs.9,300/- — Rs.34,800/- with Grade Pay of Rs.4,200/- with effect from 01.01.2013.

2.5. Claiming such revision *vide* Order dated 16.11.2021 is erroneous and contrary to what has been expounded by a Division Bench of this Court in *State of Odisha*



*Vrs. Bihari Lal Barik, W.P.(C) No.2831 of 2016, disposed of by Judgment dated 27.06.2016¹, the petitioner contended that the pay fixation as made in Office Order No.2152—E(ii)/45/2014, dated 06.03.2014 (Annexure-4) was reasonable and in conformity with the rules governing the field. Therefore, assailing said Order dated 16.11.2021, he approached this Court by way of filing writ petition, giving rise to W.P.(C) No.12359 of 2022, which came to be disposed of by a Single Bench *vide* Judgment dated 13.01.2023 with a direction to the Nodal Officer to place the matter before the Screening Committee which would take decision afresh after affording opportunity to the petitioner to furnish show cause reply.*

2.6. In pursuance thereof, show cause reply being furnished by the petitioner, the opposite party No.2, made the following observation in the Order dated 30.05.2023:

“***

And whereas, the following Rules/Notifications/Resolutions which were in vogue at the time of grant of 2nd RACP are meticulously examined as it is revealed from the proceedings dated 28.02.2023 in favour of the present petitioners:

¹ Reported as *State of Odisha Vrs. Bihari Lal*, 2016 SCC OnLine Ori 333.



1. *Resolution of Finance Department vide No.3560/F., dated 06.02.2013.*
2. *Resolution of the General Administration & Public Grievance Department vide No.3894/Gen., dated 09.02.2018.*
3. *Odisha Administrative Tribunal (Recruitment and Conditions of Service of Officers and Staff) Rules, 1999.*

And whereas, the Screening Committee in its meeting dated 28.02.2023, have decided to fix the pay as per Annexure-‘A’ & ‘B’ attached to the proceedings of the Screening Committee dated 28.02.2023.

And whereas, the proceedings of the Screening Committee Meeting held on 28.02.2023 has been approved by the General Administration & Public Grievance Department and communicated vide Letter No. 14938/Gen., dated 22.05.2023.

Now therefore, upon approval of the recommendations of the Screening Committee dated 28.02.2023, the pay fixation in favour of Sri Ratnakar Sahoo, Senior Grade Typist and Sri Biren Kumar Biswal, Senior Grade Typist of Odisha Administrative Tribunal are hereby approved as per Annexure-‘A’ & ‘B’ enclosed herewith as per Orders dated 13.01.2023 of the Hon’ble High Court of Orissa passed in the W.P.(C) No.12358/2022 and W.P.(C) No.12359/2022 respectively.

The above order is come into force with immediate effect.”



2.7. As a sequel to the above order, Letter bearing No.1225— E(vii)/2/2023/335/OAT, dated 21.08.2023 has been issued by the Officer-on-Special Duty, Odisha Administrative Tribunal, Bhubaneswar with the following instructions seeking recovery of excess amount already paid to the petitioner:

“With reference to the Orders on the subject cited, it is stated here that an excess amount of salary to the tune of Rs.3,75,255/- (rupees three lakhs seventy-five thousand and two hundred fifty-five only) has been drawn and disbursed in your favour during your service period. A copy of the excess drawal particulars are enclosed herewith for your reference.

You are, therefore, requested to submit your reply within 10 days in support of your stand failing which the above action will be considered as final and recovery of the excess drawal shall be effected.”

2.8. Dissatisfied with the manner of disposal of grievance with reference to the material particulars submitted in the reply to show cause dated 20.02.2023 (Annexure-P/2 series of the counter affidavit) and erroneous approach of the opposite parties *qua* the averments, as taken note of in the Judgment dated 13.01.2023 rendered in W.P.(C) No.12359 of 2022 (Annexure-5), the petitioner preferred to move this Court in second round of litigation seeking to question the legality of Order dated 30.05.2023 of the opposite party No.2



(Annexure-7) and the propriety of instructions contained in the Letter dated 21.08.2023 (Annexure-8).

Counter affidavit of the opposite parties:

3. Laying emphasis on the OAT Staff Rules, 1999, the opposite parties affirmed that the post of Senior Assistant is filled up by way of promotion from among the Junior Assistant or the Store Keeper of the Odisha Administrative Tribunal who have rendered three years of service and such employee must have passed the Preliminary Accounts Examination conducted by the Board of Revenue/Madhusudan Das Institute of Accounts and Finance. It is also provided that 10% of the vacancies in the Cadre of Senior Assistant in a year is required to be filled up from among the Senior Grade Typist/Senior Grade Diarist/Senior Grade Recorder of the Odisha Administrative Tribunal who have passed matriculation examination and rendered 10 years of continuous service as such on the 1st day of January in which the recruitment is made. Though the post of Senior Assistant is the promotional post of Senior Grade Typist, it is not within the Cadre as the Senior Grade Typist has to compete with the Senior Grade Diarist and Senior Grade Recorder.



3.1. Explaining further it is asserted that a Senior Grade Typist may be promoted to the post of Senior Assistant if he is found eligible in his Cadre whereas a Junior Assistant is promoted to the post of Senior Assistant, if he is found eligible in his Cadre. In view of Paragraph 10 of RACPS *vide* Finance Department Resolution dated 06.02.2013, *“the employees in isolated/ex-cadre posts not having any promotional hierarchy will get next higher Grade Pay as per the First Schedule of the Odisha Revised Scales of Pay Rules, 2008 with the interpolations, if any introduced subsequently”*.

3.2. It has been asserted in the counter affidavit that:

“17. That, in this view of the matter, the fixation of pay of the petitioner at Rs.9,560/- + Grade Pay Rs.4,200/- (Pay Band-2) with effect from 01.01.2013 and at Rs.10,290/- + Rs.4,200/- with effect from 01.10.2013, in the scale of pay of Rs.9,300/- — Rs.34,800/- instead of being fixed at Rs.9560/- + Grade Pay 2,800/- (Pay Band-I) with effect from 01.01.2013 and at Rs.10,290/- + Grade Pay Rs.2,800/- with effect from 01.10.2013, was incorrect. The error was pointed out by the Screening Committee in its meeting dated 21.09.2021 and recommended that instead of sanctioning the Grade Pay of Rs.2,800/- in Pay Band-1 next to the Grade Pay of Rs.2,400/- while fixing the Pay and Grade Pay of the petitioner after grant of the 2nd RACP, inadvertently the pay



*of the petitioner was fixed in the initial Pay Band of Group-B, i.e., Rs.9,300/- — Rs.34,800/- with Grade Pay of Rs.4,200/- which should have been fixed in Pay Band-I, i.e., Rs.5,200/- — Rs.20,200/- with Grade Pay of Rs.2,800/-. ****

18. *The State Government implemented the Odisha Revised Scale of Pay Rules, 2017, on the basis of recommendations made by the 7th Central Pay Commission and Fitment Committee constituted by Finance Department Government of Odisha with effect from 01.01.2016. Since the pay of the petitioner is to be revised with effect from 01.01.2013, his pay fixed subsequent to introduction of the Odisha Revised Scale of Pay Rules, 2017 is also revised. According to Rule 7 of the Odisha Revised Scales of Pay Rules, 2017, to derive the new pay, the pay fixation was needed to be done in Schedule-III of the said Rules, on the basis of old pay 01.01.2016, following which the pay of the petitioner requires to be revised in Level-6 of the Pay Matrix. The example of the above pay fixation has been given in the form of illustration-4 in the Odisha Revised Scales of Pay Rules, 2017. ****
30. *In reply to the averments made in paragraph 6 to the writ petition, it is humbly submitted that the Government in Finance Department have introduced Revised Assured Career Progression Scheme vide Resolution No.3560/F., dated 06.02.2013. This Scheme provides for three financial upgradation in a Cadre counted from the direct entry grade on completion of 10/20/30 years of service. It provides for the promotional*



post Grade Pay in case of Cadres having the promotional hierarchy and next higher Grade Pay as per First Schedule of ORSP Rules, 2008 for the isolated/ex-Cadre posts. It is further humbly submitted that Finance Department in Letter No.1738/F., dated 20.01.2014 have clarified at point number 12 that “the Grade Pay of a promotional post which belongs to another Cadre shall not be allowed under the RACP Scheme even if the former post is only the feeder post of that promotional post” since the RACP Scheme is confined to a Cadre only. The petitioner joined as Junior Grade Typist in the Office of the Odisha Administrative Tribunal on 04.10.1990 and completed more than twenty years of service as on 01.01.2013, i.e., the date of implementation of RACP Scheme. However, the Office Order dated 06.03.2014 issued earlier by Office of the Odisha Administrative Tribunal for grant of financial benefit, i.e., awarding Grade Pay of Rs.4,200/- along with Pay Band Rs.9,300/- — Rs.34,800 meant for Senior Assistant post of Odisha Administrative Tribunal on the 2nd RACP is not correct. Thus it is humbly submitted that the petitioner was not entitled for the Grade Pay of Rs.4,200/- in Pay Band-II Rs.9,300/- — Rs.34,800/- of the post of Senior Assistant on the 2nd RACP following the clarification made at point number 12 of Finance Department Letter No.1738/F., dated 20.01.2014.”

Rejoinder affidavit of the petitioner:



4. Refuting the above contentions, the petitioner in his rejoinder affidavit stated that the stance taken by the opposite parties has no merit in view of principles laid down in *State of Odisha Vrs. Bihari Lal*, 2016 SCC OnLine Ori 333 which was rendered by Division Bench taking cognizance of all such relevant the Resolutions with reference to the ORSP Rules, 2008. While asserting that Order dated 30.05.2023 (Annexure-7) issued as a sequel to acceptance of recommendation of the Screening Committee cannot withstand scrutiny in law, the Letter dated 21.08.2023 seeking to recover excess drawal in salary from the petitioner would be in violation of ruling of the Hon'ble Supreme Court of India in the case of *State of Punjab Vrs. Rafiq Masih*, (2015) 4 SCC 334.

Hearing:

5. Since pleadings are completed and exchanged between the counsel for the respective parties, on consent this matter (second round of litigation) is taken up for final disposal at the stage of admission.
- 5.1. Heard Sri Sameer Kumar Das, learned Advocate for the petitioner and Sri Arnav Behera, learned Additional Standing Counsel for the opposite parties.



5.2. Hearing being concluded, the matter was reserved for preparation and pronouncement of judgment.

Rival contentions and submissions:

6. Sri Sameer Kumar Das, learned Advocate appearing for the petitioner submitted that evasive reply of the opposite parties in the counter affidavit cannot have any aid to sustain the impugned Order at Annexure-7 and the Letter at Annexure-8. It is submitted that in the garb of counter affidavit, the opposite parties could not improve upon what is not available in the Screening Committee Proceeding dated 28.02.2023 which was stated to have conducted to comply with the direction contained in the Judgment dated 13.01.2023 of this Court in W.P.(C) No.12359 of 2022. Further reasons by way of counter affidavit cannot be supplemented to fortify the Order dated 30.05.2023 (Annexure-7).

6.1. Having not answered as to why the decision rendered by this Court in *State of Odisha Vrs. Bihari Lal, 2016 SCC OnLine Ori 333* is not applicable to the present case, the opposite parties could not countenance the decision taken in the Meeting held on 28.02.2023 by the Screening Committee (Annexure-Q/2 enclosed to the counter affidavit), which is stated to have been



followed in the making of Order dated 30.05.2023 (Annexure-7).

6.2. It is further submitted by the counsel for the petitioner that in view of *State of Punjab Vrs. Rafiq Masih, (2015) 4 SCC 334*, which is a case relating to recovery of excess payment of salary made to the employees belonging to Group-C and Group-D, the Letter dated 21.08.2023 seeking to recover excess drawal in salary has no sanctity, and the action suggested in the said letter *vide* Annexure-8 is outcome of non-application of mind and tainted by non-consideration of show-cause reply/explanation submitted by the petitioner in proper perspective.

7. Sri Arnav Behera, learned Additional Standing Counsel appearing for the opposite parties placed heavy reliance on the counter affidavit and submitted that following undertaking as contained in the Fifth Schedule specified under Rule 17 of the Odisha Revised Scales of Pay Rules, 2008 has been given by the petitioner:

“I hereby undertake that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by me to the Government either by adjustment against future payments due to me or otherwise.”



It is vehemently contended that the petitioner cannot hide behind the shield of *Rafiq Masih (supra)*. Buttressing his argument, he relied on *High Court of Punjab and Haryana Vrs. Jagdev Singh, (2016) 6 SCR 781* and contended that as the mistake in fixation of pay could come to fore at a later stage, in view of undertaking given by the petitioner, he is requested to make refund of excess amount already drawn.

7.1. Expanding his argument further, Sri Arnav Behera, learned Additional Standing Counsel submitted that the decision of *Bihari Lal (supra)* is not applicable inasmuch as the post of Senior Grade Typist is not the feeder grade for promotion to Senior Assistant. He further submitted that the feeder grade for promotion to the Senior Assistant is Junior Assistant and only 10% of the posts of Senior Assistant Cadre of the Odisha Administrative Tribunal could be filled up from not only the eligible Senior Grade Typist, but also Senior Grade Diarist and Senior Grade Recorder. Therefore, he strenuous urged that the claim of the petitioner to get his pay to be fixed at Level-10 instead of Level-8 under the 3rd Modified Assured Career Progression Scheme under Rule 13 of the Odisha Revised Scales of Pay Rules, 2017 is having no foundation and accordingly insisted for sustaining the Office Order dated 30.05.2023 (Annexure-7) refusing



the accede to the claim of the petitioner by the Nodal Officer of the Odisha Administrative Tribunal and Letter dated 21.08.2023 (Annexure-8) seeking to recover/refund of excess payment made to the petitioner.

7.2. Accordingly, Sri Arnav Behera, learned Additional Standing Counsel made fervent prayer for dismissal of the writ petition.

Analysis and discussions:

8. It needs emphasis that the Screening Committee in its Proceeding *vide* Meeting held on 28.02.2023 (Annexure-Q/2 series) has recorded that the petitioner has joined as Senior Grade Typist on 01.02.2019. There is no dispute that the petitioner having joined as Junior Grade Typist on 04.10.1990 has completed 20 years of service on 03.10.2010. Therefore, eligibility to avail benefit of RACPS under the ORSP Rules, 2008 was in vogue on 03.10.2010. In the Proceeding dated 28.02.2023 (which was held to comply the direction contained in Judgment dated 13.01.2023 rendered in W.P.(C) No.12359 of 2022) the Screening Committee recommended not only to revise the pay with effect from 01.01.2013 but also allow the petitioner to exercise option for grant of 3rd MACP with effect from 04.10.2020 (completion of 30 years of service).



9. With the background factual position as narrated in the foregoing paragraphs, this Court is called upon to examine whether the Screening Committee has acted within the ambit of order of remit directed in the Judgment dated 13.01.2023 of this Court in the earlier round of litigation being W.P.(C) No.12359 of 2022.

9.1. To appreciate, it is felt expedient to extract herein below portion of the impugned Office Order dated 30.05.2023 (Annexure-7) so far as is relevant for the present purpose:

*“Odisha Administrative Tribunal
Bhubaneswar*

Office Order

No.E(ii)24/2023/688/OAT., Bhubaneswar

Dated, the 30.05.2023

Sub: Disposal of representation dated 20.02.2023 of Sri Ratnakar Sahoo, Senior Grade Typist and Sri Biren Kumar Biswal, Senior Grade Typist of Odisha Administrative Tribunal in response to the Order dated 13.01.2023 of Hon’ble High Court of Orissa passed in W.P.(C) No.12358/2022 and W.P.(C) No.12359/2022 respectively.

Whereas, Hon’ble High Court of Orissa passed Order dated 13.01.2023 in W.P.(C) No.12358/2022 and W.P.(C) No.12359/2022 filed by Ratnakar Sahoo,



Senior Grade Typist and Biren Kumar Biswal, Senior Grade Typist respectively in the following manner:

‘30. Having heard the rival contentions raised by the learned counsels for the respective parties and upon a careful consideration of the factual background of the cases and upon a conspectus of the materials placed before this Court by the respective parties, this Court is of the considered view that the Order under Annexure-5 has affected both the Petitioners adversely as their pay scale was revised and downgraded that too without giving them an opportunity to show cause. Therefore, this Court has no hesitation in holding that the orders dated 16.11.2021 under Annexure-5 in both the writ petitions are unsustainable in law and needs to be set aside. Accordingly, the order dated 16.11.2021 under Annexure-5 in both the writ applications, which are identical, are hereby quashed. Further, the matter is remanded to the Nodal Officer, Odisha Administrative Tribunal, Bhubaneswar, who shall place the matter before the Screening Committee and the Screening Committee is directed to take a fresh decision after providing an opportunity to show cause to the Petitioners and further a final decision shall be taken in the matter by passing a speaking and reasoned order by taking into consideration all grounds raised by the Petitioners in their reply to the proposed show cause notice. The Opposite Parties are further directed to take a decision in the matter within a period of two months from the date of production of certified copy of this order.



Further, the Opposite Parties are also directed to act on the production of certified copy of this order.

31. *With the aforesaid observations and directions, both the writ petitions are allowed partly. However, there shall be no order as to cost.'*

Whereas, Hon'ble High Court has indicated in the above order that the Order dated 16.11.2021 (Annexure-5 to the writ petition) passed by the Odisha Administrative Tribunal are hereby quashed. Further, Hon'ble Court directed the Nodal Officer, Odisha Administrative Tribunal, Bhubaneswar to place the matter before the Screening Committee to take a fresh decision after providing an opportunity to show-cause to the petitioners and further a final decision be taken in the matter by passing a speaking and reasoned order by taking into consideration of all grounds raised by the petitioners in their reply to the proposed show-cause notice.

And whereas, taking into consideration of the orders of the Hon'ble High Court and on the request of the Nodal Officer of Odisha Administrative Tribunal vide Letter No.119, dated 02.02.2023 and No.120, dated 02.02.2023, the General Administration & Public Grievance Department formed a Screening Committee vide their Office Order No.3841/Gen., dated 14.02.2023. Show cause notices were served upon the two petitioners to file their reply. Accordingly, they have submitted show-cause dated 20.02.2023 stating there in their own stand on the Order dated 16.11.2021 (Annexure-5 to the Writ Petitions).



And whereas, the following Rules/Notifications/Resolutions which were in vogue at the time of grant of 2nd RACP are meticulously examined as it is revealed from the proceedings dated 28.02.2023 in favour of the present petitioners.

- 1. Resolution of Finance Department vide No.3560/F., dated 06.02.2013.*
- 2. Resolution of the General Administration & Public Grievance Department vide No. 3894/Gen., dated 09.02.2018.*
- 3. Odisha Administrative Tribunal (Recruitment and Conditions of Service of Officers and Staff) Rules, 1999.*

And whereas, the Screening Committee in its meeting dated 28.02.2023, have decided to fix the pay as per Annexure-‘A’ & ‘B’ attached to the proceedings of the Screening Committee dated 28.02.2023.

And whereas, the proceedings of the Screening Committee Meeting held on 28.02.2023 has been approved by the General Administration & Public Grievance Department and communicated vide Letter No. 14938/Gen., dated 22.05.2023.

Now therefore, upon approval of the recommendations of the Screening Committee dated 28.02.2023, the pay fixation in favour of Sri Ratnakar Sahoo, Senior Grade Typist and Sri Biren Kumar Biswal, Senior Grade Typist of Odisha Administrative Tribunal are hereby approved as per Annexure-‘A’ & ‘B’ enclosed herewith as per Orders dated 13.01.2023 of the Hon’ble High Court of



Orissa the W.P.(C) No. 12358/2022 and W.P.(C) No. 12359/2022 respectively.

The above order is come into force with immediate effect.

*Sd/- 30.05.2023
Nodal Officer"*

9.2. As it appears the Nodal Officer *vide* Notice dated 16.02.2023 (Annexure-P/2 to the counter affidavit) invited show cause reply; responding to which the petitioner explained by reply dated 20.02.2023 as follows:

*“****

In obedience to that order your good office has issued notice dated 16.02.2023 under reference:

- 1. That the moot issue involved in the cases as to whether there was any illegality or irregularity in the earlier order dated 06.03.2014 of the Odisha Administrative Tribunal, Bhubaneswar passed by its Registrar allowing the benefits of 2nd Revised Assured Career Progression in the appropriate scale and grade. The Honourable Court on consideration all the aspects was pleased to find the Order dated 16.11.2021 to be irrational and illegal and accordingly set aside the same. Therefore, I enclosed here with the copy of my writ petition and its annexures for ready reference with a request to treat it as a part of my objection/ reply to your notice dated 16.02.2023.*



2. *That since the honourable Court has taken note of each of the issues involved in the case more specifically the judgement of the honourable High Court of Orissa confirmed in the honourable Supreme Court of India, i.e., in the case of State of Odisha and another Vrs. Bihari Lal Barik and others, W.P.(C) No.2831 of 2016 disposed of on 27.06.2016. The Honourable Court has taken note of the judgement of the honourable Supreme Court with regard to recovery from the employee of any payment made pursuant to a Government Order by reference to the judgement of the honourable Court in the case of State of Punjab and another Vrs. Rafiq Masih, (White Washer) and others reported in (2015) 4 SCC 334. From the aforesaid at two judgments the issue involved in this case have already been decided in my favour and therefore no further adjudication is required at your level. But since the honourable Court has directed to Screening Committee to do the needful in the matter and to pass a speaking order in order to assist the Screening Committee to come to a just conclusion decision in the matter by allowing me the benefit of 2nd Revised Assured Career Progression as allowed in the previous Order of the honourable Odissa Administrative Tribunal, Bhubaneswar, I strongly rely upon the judgments in the case of Bihar Lal Barik (supra).*

I have gone through the counter affidavit filed on behalf of the Nodal Officer and the State Government in the High Court and has also filed a rejoinder. The ground taken in the entire counter affidavit got answered in paragraph 16 of the



*judgement in the case of Bihari Lal (supra) and therefore no further adjudication is required in the matter. For better appreciation of the case paragraph 16 of the judgement in the case of Bihari Lal Barik (supra) is quoted hereunder for ready reference of the honourable Screening Committee, though I have attached the entire judgement along with this petition. ****

3. *That for the aforesaid reasons at the cost of reputation it is humbly submitted that the petitioner entered into Government service on 04.10.1990 as a Junior Grade Typist and joined in Odisha Administrative Tribunal which is a Heads of Department and the service condition is governed under the provisions of the Odisha Administrative Tribunal (Recruitment and Conditions of Service of Officers and Staff) Rules, 1999. As per Rule 7 read with Schedule-I thereof clearly provides that the post of Junior Grade Typist and Senior Grade Typist. Unlike other Departments of the State Government there is no such promotional post like Head Typist and Superintendent in the hierarchy of promotion of the Junior Grade Typist and Senior Grade Typist in the Odisha Administrative Tribunal. Therefore, there is a promotional avenue available in the Recruitment Rules, 1999 for these Senior Grade Typist to that of Senior Assistant under the Odisha Administrative Tribunal. The law has been well-settled in the case of State of Odisha and another Vrs. Bihari Lal Barik and others, W.P.(C) No.2831 of 2016 disposed of on 27.06.2016 that an employee while given the benefit of the Revised*



Assured Career Progression he is entitled to the Pay Band attached to the next post in his promotional avenue not in any other Grade Pay come in between. Therefore the petitioner who became entitled to the 2nd Revised Assured Career Progression on completion of 20 years of service with effect from 04.10.2010 was rightly allowed the benefit of the 2nd Revised Assured Career Progression by the same Tribunal under Annexure-4 of the writ petition by allowing the benefit of the Grade Pay of Rs.4,200/- in the scale of pay of Rs.9,300/- — Rs.34,800/- with the actual financial benefit from 01.01.2013 as per Finance Department Resolution No.3560/F., dated 06.02.2013 as it is the scale of pay of the post of Senior Assistant. Hence, there is no illegality or irregularity in such fixation of the pay of the petitioner on completion of 20 years of service in the 2nd Revised Assured Career Progression under Annexure-4 of the writ petition.

4. *That it is not out of place to mention here that to justify the stand taken by me that the next promotional post of Senior Grade Typist is the Senior Assistant which carries the scale of pay of Rs.9,300/- — Rs.34,800/- with Grade Pay of Rs.4,200. I have obtained copy of one such promotion order of another Senior Grade Typist of the same Tribunal. Sri Nilakanth Das vide Memo No.2194, dated 20.03.2017 which was also annexed in the honourable court which justify the fact that a next promotional avenue of the Senior Typist is to the post of Senior Assistant as Sri Nilakanth Das was rightly extended the benefit of*



Grade Pay of Rs.4,200/- while fixing his pay in the 2nd Revised Assured Career Progression. The other persons who have got such promotion as that of Sri Nilakantha Das are Sri Bira Kishore Singh, Sri Pramod Kumar Panda and Sri Lachhman Tudu of the same Tribunal. Therefore, I am entitled to similar treatment in shape of Revised Assured Career Progression without discrimination.

In the aforesaid premises, I humbly pray before the honourable Screening Committee to take a pragmatic approach in my favour by taking note of the judgements I rely upon, so also the judgments of the honourable Court more specifically by taking note of the fact that I am going to retire from service on attaining the age of superannuation on 31.05.2023. I hope and trust your honour will pass a judicious order by allowing me to draw the benefits of Revised Assured Career Progression as per the earlier order of the Odisha Administrative Tribunal in the 2nd Revised Assured Career Progression and also direct the Nodal Officer to re-fix my pay under 3rd Revised Assured Career Progression as per my entitlement in the Grade Pay of Rs.4,600/- and oblige.”

9.3. The impugned Order dated 30.05.2023 acceded to the recommendations of the Screening Committee in its Meeting held on 28.02.2023 reveals that:

“Pursuant to the Order dated 13.01.2023 of Hon’ble High Court of Orissa passed in W.P.(C) No.12358/2022 and W.P.(C) No.12359/2022 filed by Sri Ratnakar Sahoo, Senior Grade Typist and Sri Biren Kumar



Biswal, Senior Grade Typist respectively and in pursuance to the Order No.3041/Gcn., dated 14.02.2023 of General Administration and Public Grievance Department and Letter No. 230/OAT, dated 24.02.2023, the following members of the Screening Committee were present on dated 28.02.2023 to take decision relating to financial upgradation under RACP/MACP in favour of Sri Ratnakar Sahoo and Sri Biren Kumar Biswal. Senior Grade Typists of O.A.T. Members Present:

- i. Smt Sagarika Hota. Chairperson
FA-cum-Additional Secretary
General Administration and
Public Grievance Department*
- ii. Sri Debabrata Mallick Member Convenor
Nodal Officer,
Odisha Administrative Tribunal*
- iii. Sri Chitta Ranjan Panda Member
Under Secretary to Government
(FE), General Administration and
Public Grievance Department*

The operating portion of Order dated 13.01.2023 is furnished as under based upon which the follow up action in the matter is decided:

*30. ****

*31. ****

As per the Order dated 13.01.2023 of the Hon'ble Court, show cause notices were served upon the two petitioners to submit their grievances vide Letter



No.177, dated 16.02.2023 and No.170, dated 16.02.2023 of Odisha Administrative Tribunal. Accordingly, two petitioners have submitted their reply to show cause pointing out the detailed facts as raised by them in the two Writ Petitions.

Pursuant to the Order of Hon'ble High Court of Orissa, sufficient opportunity of being heard was extended to both Sri Ratnakar Sahoo, Senior Grade Typist and Sri Biran Kumar Biswal, Senior grade Typist. But both Sri Sahoo and Sri Biswal could not substantiate with reasons or pointed out anomaly in the Order dated 16.11.2021 of the Nodal Officer, Odisha Administrative Tribunal beyond the ground already resorted to in the W.P.(C) No.12358 of 2022 and W.P.(C) No.12359 of 2022 filed by the petitioners respectively.

In view of the above discussion, the Screening Committee recommends to revise the pay with effect from 01.01.2013 and allow to exercise option to grant 3rd Modified Assured Career Progression with effect from 04.10.2020. The detailed calculation of revised pay with effect from 01.01.2013 till the date of superannuation annexed at Annexure-A and B respectively in favour of Sri Ratnakar Sahoo, Senior Grade Typist and Sri Biran Kumar Biswal, Senior Grade Typist.

The meeting ended with vote of thanks to the chairperson and members.”

9.4. Cumulative reading of aforesaid material would indicate that neither the Screening Committee nor did the Nodal Officer considered the grievance of the



petitioner in proper perspective. From the reply dated 20.02.2023 it is unambiguous that the petitioner has confined its claim with respect to 2nd RACPS under the ORSP Rules, 2008 which has been availed and objection as to recovery of alleged excess payment. There seems no issue with respect to 3rd MACP under the Odisha Revised Scales of Pay Rules, 2017. None of the contentions/averments/grounds as made available to the Screening Committee by the petitioner by way of reply has been addressed to.

9.5. This Court while directing the Nodal Officer to place the matter before the Screening Committee which in turn was required to consider the show cause reply of the petitioner in compliance of principles of natural justice *vide* Judgment dated 13.01.2023 rendered in W.P.(C) No.12359 of 2022, observed as follows:

“7. Mr. S.K. Das, learned counsel appearing for the Petitioner submitted that the impugned order dated 16.11.2021 under Annexure-5 is erroneous and illegal and the same is against the Rules of 1999 under Annexure-3 to the writ petition. He further contended that the Petitioner was rightly allowed the 2nd RACP with Grade Pay of Rs.4200/- under the Finance Department Resolution 2013. The conduct of the Nodal Officer in reverting the Petitioner to a lower scale of pay all of a sudden without providing any opportunity to show cause is per se illegal, according to Mr.



Das. Further, the recovery sought to be made is in clear violation of the law laid down by the Hon'ble Supreme Court in the case of State of Punjab and others Vrs. Rafiq Masih (White Washer) and others, reported in (2015) 4 SCC 334. Referring to the aforesaid judgment, Mr. Das further submits that the benefit already accrued in favour of the Petitioner in terms of the rules should not have been taken away abruptly and consequential order for recovery should not have been passed after 7 years. It is further contended that such conduct of the authorities has seriously jeopardized the life and livelihood of the Petitioner and eventually the service conditions have been altered.

- 8. It is further contended by the learned counsel for the Petitioner that on the basis of the Finance Department Resolution of the Year 2013, the Petitioner is eligible for 3rd RACP benefits w.e.f. 04.10.2020 in the next higher Grade Pay of Rs.4,600/-. But most unfortunately, the Opposite Party No.2 has directed the Petitioner to give his option to come down to Level-8 of the pay matrix under ORSP Rules, 2017, although the same is not his actual entitlement. On the contrary, the Petitioner is entitled to the Grade Pay of the P.B.-2 in Level-10 of the Pay Matrix. Although the Petitioner approached the Nodal Officer with request to reconsider his decision, the Nodal Officer verbally informed that the decision of the Screening Committee cannot be changed. In the said context, Mr. Das further submitted that there exists no statutory Screening Committee in the*



Administrative Tribunal Rules, 1999 as of now. He further contended that the recovery sought to be made pursuant to the decision of such Screening Committee is completely in violation of the law laid down by the Hon'ble Supreme Court in Rafiq Masih's case (supra). Accordingly, it was prayed that the order under Annexure-5 be quashed.

9. *A counter affidavit has been filed on behalf of the Opposite Parties wherein it has been pleaded that the Petitioner entered into the Government service as Junior Grade Typist on 04.10.1990 in the time scale of pay of Rs.950-20-1150-EB-25-1500 under the ORSP Rules, 1989 (equivalent to 6th Pay GP of Rs.1900/- or 7th Pay at Level-4). Thereafter, the Petitioner was promoted to the rank of Senior Grade Typist only on 16.02.2015. After completion of 15 years of continuous service in the post of Junior Grade Typist in the absence of promotion, he was granted financial upgradation benefit in the shape of TBA in the scale of pay of Rs.3200-85-4900/- under the ORSP Rules, 1998 w.e.f. 04.10.2005 (equivalent of GP of Rs.2000/- as per the ORSP Rules, 2008 under 6th Pay and Level-5 as per the ORSP Rules, 2017 under 7th Pay). Further, referring to the Finance Department Resolution dated 06.02.213, it has been stated that RACP was made applicable w.e.f. 01.01.2013 on completion of 10, 20 and 30 years of service in a single cadre in absence of promotion. It has also been stated in the counter affidavit that after completion of 20 years of service in the post of Junior Grade Typist as on 03.10.2010 the Screening Committee in its proceeding dated*



08.05.2014 found that the Petitioner is eligible for grant of the 1st RACP with benefit of Grade Pay corresponding to Senior Grade Typist and 2nd RACP w.e.f. 01.01.2013.

10. Pursuant to the aforesaid decision of the Screening Committee on 08.05.2014 under Annexure-C/2, 6 (six) numbers of Group-C employees of the OAT who were found eligible to get financial upgradation benefits under the RACP Scheme wherein the Petitioner's name finds place at Sl. No.4. However, it has also been stated that the pay of the Petitioner was erroneously fixed vide Office Order dated 31.05.2014. Further, in the counter affidavit, it has been narrated in detail as to how the pay has been fixed erroneously. **Upon a careful examination of the analysis made in the counter affidavit, this Court is of the considered view that for such erroneous calculation, the blame cannot be put on the Petitioner."**

9.6. This Court while rendering the aforesaid judgment, has taken into consideration the decision in *Bihari Lal* (*supra*) and *Rafiq Masih* (*supra*). Neither the Screening Committee nor has the Nodal Officer considered the effect and impact of the aforesaid judgments on the instant fact-situation of the case. Therefore, the Office Order dated 30.05.2023 of the Odisha Administrative Tribunal following the recommendations of the Screening Committee is quite illogical, irrational and bereft of reason.



- 9.7. It is manifest from the Order dated 30.05.2023 (Annexure-7) read with reasons ascribed to in the Proceeding of the Screening Committee in the Meeting held on 28.02.2023 (Annexure-Q/2 of the counter affidavit) purported to have considered the reply to show cause issued pursuant to the direction of this Court *vide* Judgment dated 13.01.2023 that such show cause reply has not been considered seemly.
- 9.8. It is apt to understand the purport and object of “consider”. In *Ram Chander Vrs. Union of India*, AIR 1986 SC 1173, it was held that the word ‘consider’ occurring in the Rule must mean the Authority shall duly apply its mind and give reasons for its decision. The duty to give reason is an incident of the judicial process and emphasized that in discharging *quasi* judicial functions the Authority must act in accordance with the principles of natural justice and give reasons for its decision.
- 9.9. “Consideration” does not mean incidental or collateral examination of a matter by the Authority in the process of assessment/adjudication/determination. There must be something in the order to show that the Authority applied his mind to the particular subject-matter or the particular source of information with a view to arriving at its conclusion. See, *Additional*



Commissioner of Income Tax Vrs. Gurjargravures Pvt. Ltd., AIR 1978 SC 40.

9.10. The word 'consider' is of great significance. Its dictionary meaning of the same is, 'to think over', 'to regard as', or 'deem to be'. Hence, there is a clear connotation to the effect that there must be active application of mind. In other words, the term 'consider' postulates consideration of all relevant aspects of a matter. Thus, formation of opinion by the statutory Authority should reflect intense application of mind with reference to the material on record. The order of the Authority should reveal such application of mind. The Authority cannot simply adopt the language employed in the document before it and proceed to affirm the same. [*Vide, Chairman, LIC of India Vrs. A. Masilamani, (2013) 6 SCC 530; Nilamani Jal Vrs. Collector, 2016 (II) OLR 190 (Ori)*].

9.11. The Hon'ble Supreme Court of India for failure of the Appellate Authority to ascribe reasons in the matter of *Steel Authority of India Limited Vrs. Sales Tax Officer, (2008) 10 SCR 655 = 2008 INSC 799* made the following observation:

"12. A bare reading of the order shows complete non-application of mind. As rightly pointed out by learned counsel for the appellant, this is not the



way a statutory appeal is to be disposed of. Various important questions of law were raised. Unfortunately, even they were not dealt by the first appellate authority.

13. *Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same it becomes lifeless. [See Raj Kishore Jha Vrs. State of Bihar, (2003) 11 SCC 519].*
14. *Even in respect of administrative orders Lord Denning, M.R. in Breen Vrs. Amalgamated Engg. Union, (1971) 1 All ER 1148, observed:*

‘The giving of reasons is one of the fundamentals of good administration.’

In Alexander Machinery (Dudley) Ltd. Vrs. Crabtree 1974 ICR 120 (NIRC) it was observed:

“Failure to give reasons amounts to denial of justice.” “Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at.” Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the “inscrutable face of the sphinx”, it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One



of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking-out. The “inscrutable face of the sphinx” is ordinarily incongruous with a judicial or quasi judicial performance.”

9.12. Where the fact finding authority has acted without any evidence or upon a view of the facts which could not reasonably be entertained or the facts found were such that no person acting judicially and properly instructed as to the relevant law could have found, the Court is entitled to interfere. See, *Lalchand Bhagat Ambica Ram Vrs. CIT, (1959) 37 ITR 288 (SC)*.

9.13. With reference to *Omar Salay Mohamed Sait Vrs. CIT, (1959) 37 ITR 151 (SC)* the Hon'ble Andhra Pradesh High Court in *Spectra Shares & Scrips Pvt. Ltd. Vrs. CIT, (2013) 354 ITR 35 (AP)*, has been pleased to make the observation that Income-tax Appellate Tribunal is a fact finding Tribunal and **if it arrives at its own conclusions of fact after due consideration of the evidence before it, the Court will not interfere.** It is necessary, however, that every fact for and against the assessee must have been considered with due care and the Tribunal must have given its finding in a manner which would clearly indicate what were the questions which arose for determination, what was the evidence pro and contra in regard to each one of them



and what were the findings reached on the evidence on record before it. The conclusions reached by the Tribunal should not be coloured by any irrelevant considerations or matters of prejudice and if there are any circumstances which required to be explained by the assessee, the assessee should be given an opportunity of doing so. On no account whatever should the Tribunal base its findings on suspicions, conjectures or surmises nor should it act on no evidence at all or on improper rejection of material and relevant evidence or partly on evidence and partly on suspicions, conjectures or surmises and if it does anything of the sort, its findings, even though on questions of fact, will be liable to be set aside by the Court.

9.14. “Reason”, being heartbeat of every decision making process, it has been restated in *Nareshbhai Bhagubhai Vrs. Union of India*, (2019) 15 SCC 1 as follows:

“In Kranti Associates (P) Ltd. Vrs. Masood Ahmed Khan, (2010) 9 SCC 496 this Court held that:

‘12. The necessity of giving reason by a body or authority in support of its decision came up for consideration before this Court in several cases. Initially this Court recognised a sort of demarcation between administrative orders and quasi judicial orders but with the passage of time



the distinction between the two got blurred and thinned out and virtually reached a vanishing point in the judgment of this Court in A.K. Kraipak Vrs. Union of India, (1969) 2 SCC 262.

47. *Summarising the above discussion, this Court holds:*

- (a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
- (b) A quasi judicial authority must record reasons in support of its conclusions.*
- (c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*
- (d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi judicial or even administrative power.*
- (e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.*
- (f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi judicial and even by administrative bodies.*



- (g) *Reasons facilitate the process of judicial review by superior courts.*
- (h) *The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.*
- (i) *Judicial or even quasi judicial opinions these days can be as different as the Judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.*
- (j) *Insistence on reason is a requirement for both judicial accountability and transparency.*
- (k) *If a Judge or a quasi judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.*
- (l) *Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.*
- (m) *It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes*



the Judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. [See David Shapiro in “Defence of Judicial Candor”, (1987) 100 Harvard Law Review 731-37].

- (n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija Vrs. Spain, (1994) 19 EHRR 553 and Anya Vrs. University of Oxford, 2001 EWCA Civ 405 (CA), wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, ‘adequate and intelligent reasons must be given for judicial decisions’.*
- (o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of “due process”.*

9.15. Conceding that giving reasons facilitates the detection of errors of law, this Court in *Santosh Kumar Paikray Vrs. State of Odisha*, 2016 (II) OLR 1131 (Ori) discussed importance of assignment of reason in the following lines:

“8. The meaning of the expression ‘reason’ as stated by Franz Schubert:

‘reason is nothing but analysis of belief.’



In Black's Law Dictionary, 5th Edition, 'reason' has been defined as:

'a faculty of the mind by which it distinguishes truth from falsehood, good from evil, and which enables the possessor to deduce inferences from facts and from propositions.'

In other words, reason means the faculty of rational thought rather than some abstract relationship between propositions and by this faculty, it is meant the capacity to make correct inferences from propositions, to size up facts for what they are and what they imply, and to identify the best means to some end, and, in general, to distinguish what we should believe from what we merely do believe. The importance of giving reason, it reveals a rational nexus between facts considered and conclusions reached.

9. *In Union of India Vrs. Madal Lal Capoor, AIR 1974 SC 87 and Uma Charan Vrs. State of MP, AIR 1981 SC 1915, the Apex Court held reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision whether it is purely administrative or quasi judicial and reveal a rational nexus between the facts considered and conclusions reached. The reasons assure an inbuilt support to the conclusion and decision reached. The fair play requires recording of germane and relevant precise reasons when an order affects the right of a citizen or a person irrespective of the fact whether it is judicial, quasi*



judicial or administrative. The recording of reasons is also an assurance that the authority concerned applied its mind to the facts on record and it is vital for the purpose of showing a person that he is receiving justice.”

9.16. It is stated in *State Bank of India Vrs. Ajay Kumar Sood*, 2022 SCC OnLine SC 1067 that individual judges can indeed have different ways of writing judgments and continue to have variations in their styles of expression. The expression of a judge is an unfolding of the recesses of the mind. **However, while recesses of the mind may be inscrutable, the reasoning in judgment cannot be.** While judges may have their own style of judgment writing, they must ensure lucidity in writing across these styles.

9.17. In *Sical Logistics Ltd. Vrs. Mahanadi Coalfields Ltd.*, 2017 (II) ILR-CUT 1035, this Court has held as follows:

“9. It is well settled principle of law laid down by the Apex Court time and again that the authority should pass reasoned order. Reasons being a necessary concomitant to passing an order, the authority can thus discharge its duty in a meaningful manner either by furnishing the same expressly or by necessary reference.

11. It is well-settled principle of law laid down by the Apex Court in *Mohinder Singh Gill and another*



Vrs. The Chief Election Commissioner, New Delhi and others, AIR 1978 SC 851 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. Otherwise an order bad in the beginning may by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out.’

In Commissioner of Police, Bombay Vrs. Gordhandas Bhanji, AIR 1952 SC 16, the Apex Court held as follows:

‘Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. Orders are not like old wine becoming better as they grow older.’

Similar view has also been taken in Bhikhubhai Vithalbhaji Patel and others Vrs. State of Gujarat and another, (2008) 4 SCC 144 as well as in M/s. Shree Ganesh Construction Vrs. State of Orissa, 2016 (II) OLR 237 = 2016 (II) ILR-CUT 237.



*In the case of State of Punjab Vrs. Bandheep Singh, (2016) 1 SCC 724 the Apex Court held that **the validity of administrative orders/decisions/executive instructions/orders/circulars must be judged by reasons stated in decision or order itself**. Subsequent explanations or reasons cannot be accepted to sustain decision or order.”*

9.18. Under the aforesaid premises, the reasons given in the counter affidavit in order to justify the decision taken in the decision-making process of the Screening Committee and the Nodal Officer cannot be countenanced.

10. Next it is relevant to consider whether the Screening Committee and the Nodal Officer have considered the plea of the petitioner in proper perspective as directed in the Judgment dated 13.01.2023.

10.1. Though the Odisha Administrative Tribunal in its Office Order dated 30.05.2023 has quoted paragraphs 30 and 31 of the Judgment dated 13.01.2023, whereby this Court specifically requested the Screening Committee “to take a fresh decision after providing an opportunity to show cause to the petitioners”, glossing through the “Proceedings of the Screening Committee Meeting held on 28.02.2023” (Annexure-Q/2 of the counter affidavit) it transpires that though the petitioner has responded to the notice



to show cause, none of the grounds/aspects found mentioned in the reply dated 20.02.2023 has been taken care of. The Screening Committee with terse voice stated *“Pursuant to the Order of Hon’ble High Court of Orissa, sufficient opportunity of being heard was extended to both Sri Ratnakar Sahoo, Senior Grade Typist and Sri Biran Kumar Biswal, Senior grade Typist. But both Sri Sahoo and Sri Biswal could not substantiate with reasons or pointed out anomaly in the Order dated 16.11.2021 of the Nodal Officer, Odisha Administrative Tribunal beyond the ground already resorted to in the W.P.(C) No.12358 of 2022 and W.P.(C) No.12359 of 2022 filed by the petitioners respectively.”*

10.2.The Screening Committee without discussing the implication of *State of Odisha Vrs. Bihari Lal, 2016 SCC OnLine Ori 333* could not have abruptly jumped to the conclusion that the reduction of pay scale was just and proper. While issuing notice *vide* Letter dated 21.08.2023 (Annexure-8), the Officer-on-Special Duty, Odisha Administrative Tribunal appears to have fell in grave error by not examining the applicability of ratio of judgment of the Hon’ble Supreme Court of India in the case of *Rafiq Masih, (2015) 4 SCC 334*.

10.3.At this juncture it may be pertinent to have regard to *The Agricultural Produce Marketing Committee Vrs. The*



State of Karnataka, 2022 LiveLaw (SC) 307 wherein the following observation has been made:

- “7. We have heard the learned counsel appearing on behalf of the respective parties at length.
8. At the outset it is required to be noted that the proceedings before the learned Single Judge of the High Court by way of writ petition No. 3884 of 1998 was with respect to 172 acres 22 guntas of land acquired. In the writ petition No. 3884 of 1998, the original land owners prayed for the following reliefs: ***
- 8.2 That the learned Single Judge framed the following common points for consideration: ***

Despite the fact that a number of issues/grounds were raised before the High Court on the legality and validity of the acquisition proceedings, the learned Single Judge decided only one issue, namely, whether the acquisition proceedings have lapsed by virtue of the 2013 Act. Whereas a number of issues/grounds were raised and as such the original reliefs sought (acquisition proceedings under Act 1894) were the main reliefs which were required to be dealt with and considered, unfortunately, the learned Single Judge did not give findings on the other issues/grounds and on the reliefs sought and as observed hereinabove, disposed of the writ petitions considering only one relief/ground, namely, whether the acquisition proceedings have lapsed by virtue of the 2013 Act. **When a number**



of submissions were made on the other issues/grounds, we are of the opinion that the High Court ought to have considered the other issues and ought to have given the findings on other issues also. Because of not deciding the other issues and deciding the matter only on one issue and thereafter when the decision on such one issue, is held to be bad in law for the reasons stated hereinbelow, this Court has no other alternative but to remand the matters to the learned Single Judge for deciding the Writ Petitions afresh on all other issues.

8.3 *By way of analogy we observe that while considering Order 14 Rule 2 (as amended w.e.f. 01.02.1977), this Court in the case of Nusli Neville Wadia Vrs. Ivory Properties & Others, (2020) 6 SCC 557, has observed and held that after the amendment w.e.f. 01.02.1977, though Order 14 Rule 2(2) enables the court to decide the issue of law as a preliminary issue in case the same relates to—*

- (i) jurisdiction of Court or*
- (ii) a bar to suit created by any law for the time being in force, a departure has been made in amended provision whereby now it mandates the court to pronounce judgment on all issues notwithstanding that a case may be disposed of on a preliminary issue.*



It is further observed that intendment behind this departure is to avoid remand in an appealable case for deciding other issues.

8.4 Therefore, the Courts should adjudicate on all the issues and give its findings on all the issues and not to pronounce the judgment only on one of the issues. As such it is the duty cast upon the Courts to adjudicate on all the issues and pronounce the judgment on all the issues rather than adopting a shortcut approach and pronouncing the judgment on only one issue. By such a practice, it would increase the burden on the appellate Court and in many cases if the decision on the issue decided is found to be erroneous and on other issues there is no adjudication and no findings recorded by the court, the appellate court will have no option but to remand the matter for its fresh decision. Therefore, to avoid such an eventuality, the courts have to adjudicate on all the issues raised in a case and render findings and the judgment on all the issues involved.”

10.4. Apposite it is to have reference to what has been imperatively enunciated in *CCT Vrs. Shukla & Bros.*, (2010) 4 SCC 785:

“12. In exercise of the power of judicial review, the concept of reasoned orders/actions has been enforced equally by the foreign courts as by the courts in India. The administrative authority and tribunals are obliged to give reasons, absence



whereof could render the order liable to judicial chastisement. Thus, it will not be far from an absolute principle of law that the courts should record reasons for their conclusions to enable the appellate or higher courts to exercise their jurisdiction appropriately and in accordance with law. It is the reasoning alone, that can enable a higher or an appellate court to appreciate the controversy in issue in its correct perspective and to hold whether the reasoning recorded by the court whose order is impugned, is sustainable in law and whether it has adopted the correct legal approach. To subserve the purpose of justice delivery system, therefore, it is essential that the courts should record reasons for their conclusions, whether disposing of the case at admission stage or after regular hearing.

13. ***At the cost of repetition, we may notice, that this Court has consistently taken the view that recording of reasons is an essential feature of dispensation of justice. A litigant who approaches the court with any grievance in accordance with law is entitled to know the reasons for grant or rejection of his prayer. Reasons are the soul of orders.*** Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. These principles are not only applicable to administrative or executive actions, but they apply with equal force and, in fact, with a greater degree of precision to judicial pronouncements. A judgment without



reasons causes prejudice to the person against whom it is pronounced, as that litigant is unable to know the ground which weighed with the court in rejecting his claim and also causes impediments in his taking adequate and appropriate grounds before the higher court in the event of challenge to that judgment. Now, we may refer to certain judgments of this Court as well as of the High Courts which have taken this view.

14. ***The principle of natural justice has twin ingredients; firstly***, the person who is likely to be adversely affected by the action of the authorities should be given notice to show cause thereof and granted an opportunity of hearing and ***secondly***, the orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. ***Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself.*** Such rule being applicable to the administrative authorities certainly requires that the judgment of the court should meet with this requirement with higher degree of satisfaction. The order of an administrative authority may not provide reasons like a judgment but the order must be supported by the reasons of rationality. The distinction between passing of an order by an administrative or quasi judicial authority has practically extinguished and both are required to pass reasoned orders.
15. *In Siemens Engg. and Mfg. Co. of India Ltd. Vrs. Union of India, (1976) 2 SCC 981 the Supreme Court held as under:*



‘6. *** If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of administrative law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. **The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law.**’

16. In *McDermott International Inc. Vrs. Burn Standard Co. Ltd.*, (2006) 11 SCC 181 the Supreme Court clarified the rationality behind providing of reasons and stated the principle as follows:

‘56. *** ‘*** “Reason” is a ground or motive for a belief or a course of action, a statement in justification or explanation of belief or action.



It is in this sense that the award must state reasons for the amount awarded.

*The rationale of the requirement of reasons is that reasons assure that the arbitrator has not acted capriciously. **Reasons reveal the grounds on which the arbitrator reached the conclusion which adversely affects the interests of a party.** The contractual stipulation of reasons means, as held in *Poyser and Mills' Arbitration, In re*, (1964) 2 QB 467 = (1963) 2 WLR 1309 = (1963) 1 All ER 612, "proper adequate reasons". Such reasons shall not only be intelligible but shall be a reason connected with the case which the court can see is proper. Contradictory reasons are equal to lack of reasons.' ”²*

17. *In Gurdial Singh Fijji Vrs. State of Punjab*, (1979) 2 SCC 368 while dealing with the matter of selection of candidates who could be under review, if not found suitable otherwise, the Court explained the reasons being a link between the materials on which certain conclusions are based and the actual conclusions and held, that where providing reasons for proposed supersession were essential, then it could not be held to be a valid reason that the concerned officer's record was not such as to justify his selection was not contemplated and thus was not legal. In this context, the Court held,

*‘18. *** ‘Reasons’ *** ‘are the links between the materials on which certain conclusions are*

² [Ed.: As stated in *Bachawat's Law of Arbitration and Conciliation*, 4th Edn., at pp. 855-56.]



based and the actual conclusions'. The Court accordingly held that the mandatory provisions of Regulation 5(5) were not complied with by the Selection Committee. That an officer was 'not found suitable' is the conclusion and not a reason in support of the decision to supersede him. True, that it is not expected that the Selection Committee should give anything approaching the judgment of a Court, but it must at least state, as briefly as it may, why it came to the conclusion that the officer concerned was found to be not suitable for inclusion in the Select List.'

This principle has been extended to administrative actions on the premise that it applies with greater rigour to the judgments of the courts.

18. *In State of Maharashtra Vrs. Vithal Rao Pritirao Chawan, (1981) 4 SCC 129 while remanding the matter to the High Court for examination of certain issues raised, this Court observed:*

*'2. *** It would be for the benefit of this Court that a speaking judgment is given.'*

19. *In the cases where the courts have not recorded reasons in the judgment, legality, propriety and correctness of the orders by the court of competent jurisdiction are challenged in the absence of proper discussion. The requirement of recording reasons is applicable with greater rigour to the judicial proceedings. **The orders of the court must reflect what weighed with the court in***



granting or declining the relief claimed by the applicant. In this regard we may refer to certain judgments of this Court.

20. *A Bench of the Bombay High Court in Pipe Arts India (P) Ltd. Vrs. Gangadhar Nathuji Golamare, (2008) 6 Mah LJ 280, wherein the Bench was concerned with an appeal against an order, where prayer for an interim relief was rejected without stating any reasons in a writ petition challenging the order of the Labour Court noticed, that legality, propriety and correctness of the order was challenged on the ground that no reason was recorded by the learned Single Judge while rejecting the prayer and this has seriously prejudiced the interest of justice. After a detailed discussion on the subject, the Court held: (Mah LJ pp. 283-87, paras 8, 10 & 12-22)*

- ‘8. The Supreme Court and different High Courts have taken the view that it is always desirable to record reasons in support of the Government actions whether administrative or quasi judicial. Even if the statutory rules do not impose an obligation upon the authorities still it is expected of the authorities concerned to act fairly and in consonance with basic rule of law. These concepts would require that any order, particularly, the order which can be subject-matter of judicial review, is reasoned one. Even in Chabungbam Ibohal Singh Vrs. Union of India, 1995 Supp (2) SCC 83 the Court held as under:***



‘8. *** His assessment was, however, recorded as “very good” whereas qua the appellant it had been stated “unfit”. As the appellant was being superseded by one of his juniors, we do not think if it was enough on the part of the Selection Committee to have merely stated “unfit”, and then to recommend the name of one of his juniors. No reason for unfitness is reflected in the proceedings, as against what earlier Selection Committees had done to which reference has already been made.’

10. In *Jawahar Lal Singh Vrs. Naresh Singh*, (1987) 2 SCC 222 accepting the plea that absence of examination of reasons by the High Court on the basis of which the trial court discarded prosecution evidence and recorded the finding of an acquittal in favour of all the accused was not appropriate, the Supreme Court held that the order should record reasons. **Recording of proper reasons would be essential, so that the appellate court would have advantage of considering the considered opinion of the High Court on the reasons which had weighed with the trial court.**



12. *In State of Punjab Vrs. Surinder Kumar, (1992) 1 SCC 489* while noticing the jurisdictional distinction between Article 142 and Article 226 of the Constitution of India, the Supreme Court stated that powers of the Supreme Court under Article 142 are much wider and the Supreme Court would pass orders to do complete justice. The Supreme Court further reiterated the principle with approval that the High Court has the jurisdiction to dismiss petitions or criminal revisions in limine or grant leave asked for by the petitioner but for adequate reasons which should be recorded in the order. The High Court may not pass cryptic order in relation to regularisation of service of the respondents in view of certain directions passed by the Supreme Court under Article 142 of the Constitution of India. **Absence of reasoning did not find favour with the Supreme Court.** The Supreme Court also stated the principle that powers of the High Court were circumscribed by limitations discussed and declared by judicial decision and it cannot transgress the limits on the basis of whims or subjective opinion varying from Judge to Judge.
13. *In Hindustan Times Ltd. Vrs. Union of India, (1998) 2 SCC 242* the Supreme Court while dealing with the cases under the labour laws and the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 observed that even when the petition under Article 226



is dismissed in limine, it is expected of the High Court to pass a speaking order, may be briefly.

14. *Consistent with the view expressed by the Supreme Court in the afore-referred cases, in State of U.P. Vrs. Battan, (2001) 10 SCC 607 the Supreme Court held as under:*

‘4. *** The High Court has not given any reasons for refusing to grant leave to file appeal against acquittal. ... The manner in which appeal against acquittal has been dealt with by the High Court leaves much to be desired. Reasons introduce clarity in an order. **On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order. The absence of reasons has rendered the High Court order not sustainable.**’

15. *Similar view was also taken by the Supreme Court in Raj Kishore Jha Vrs. State of Bihar, (2003) 11 SCC 519.*
16. *In a very recent judgment, the Supreme Court in State of Orissa Vrs. Dhaniram Luhar, (2004) 5 SCC 568 while dealing with the criminal appeal, insisted that the reasons in support of the decision was a cardinal principle and the High Court should record*



its reasons while disposing of the matter. The Court held as under:

- ‘8. *Even in respect of administrative orders Lord Denning, M.R. in Breen Vrs. Amalgamated Engg. Union, (1971) 2 QB 175 = (1971) 2 WLR 742 = (1971) 1 All ER 1148] observed: (QB p. 191 C)*

‘The giving of reasons is one of the fundamentals of good administration.’

In Alexander Machinery (Dudley) Ltd. Vrs. Crabtree, 1974 ICR 120 (NIRC) it was observed:

‘Failure to give reasons amounts to denial of justice.’

“Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at.”
Reasons substitute subjectivity by objectivity. *The emphasis on recording reasons is that if the decision reveals the “inscrutable face of the sphinx”, it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of*



mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking-out. The “inscrutable face of the sphinx” is ordinarily incongruous with a judicial or quasi judicial performance.’

17. *Following this very view, the Supreme Court in another very recent judgment delivered on 22.02.2008, in State of Rajasthan Vrs. Rajendra Prasad Jain, (2008) 15 SCC 711 stated that ‘reason is the heartbeat of every conclusion, and without the same it becomes lifeless’.*
18. *Providing of reasons in orders is of essence in judicial proceedings. Every litigant who approaches the court with a prayer is entitled to know the reasons for acceptance or rejection of such request. Either of the parties to the lis has a right of appeal and, therefore, it is essential for them to know the considered opinion of the court to make the remedy of appeal meaningful. **It is the reasoning which ultimately culminates into final decision which may be subject to examination of the appellate or other higher courts. It is not only desirable but, in view of the consistent position of law, mandatory for the court to pass orders while recording reasons in***



support thereof, however, brief they may be. Brevity in reasoning cannot be understood in legal parlance as absence of reasons. While no reasoning in support of judicial orders is impermissible, the brief reasoning would suffice to meet the ends of justice at least at the interlocutory stages and would render the remedy of appeal purposeful and meaningful. It is a settled canon of legal jurisprudence that the courts are vested with discretionary powers but such powers are to be exercised judiciously, equitably and in consonance with the settled principles of law. Whether or not, such judicial discretion has been exercised in accordance with the accepted norms, can only be reflected by the reasons recorded in the order impugned before the higher court. **Often it is said that absence of reasoning may ipso facto indicate whimsical exercise of judicial discretion.**

Patricia Wald, Chief Justice of the D.C. Circuit Court of Appeals in the article, "The Problem with the Courts : Black-robed Bureaucracy or Collegiality Under Challenge" [42 Md L Rev 766, 782 (1983)] observed as under:

'My own guiding principle is that virtually every appellate decision requires some statement of reasons. The discipline of writing even a few sentences or paragraphs explaining the basis for the judgment insures a level of thought and scrutiny by the court



that a bare signal of affirmance, dismissal, or reversal does not.'

19. *The court cannot lose sight of the fact that a losing litigant has a cause to plead and a right to challenge the order if it is adverse to him. Opinion of the court alone can explain the cause which led to passing of the final order. Whether an argument was rejected validly or otherwise, reasoning of the order alone can show. To evaluate the submissions is obligation of the court and to know the reasons for rejection of its contention is a legitimate expectation on the part of the litigant. Another facet of providing reasoning is to give it a value of precedent which can help in reduction of frivolous litigation. Paul D. Carrington, Daniel J Meador and Maurice Rosenberg, Justice on Appeal 10 (West 1976), observed as under:*

'When reasons are announced and can be weighed, the public can have assurance that the correcting process is working. Announcing reasons can also provide public understanding of how the numerous decisions of the system are integrated. In a busy court, the reasons are an essential demonstration that the court did in fact fix its mind on the case at hand. An unreasoned decision has very little claim to acceptance by the defeated party, and is difficult or impossible to accept as an act reflecting systematic application of legal principles. Moreover, the necessity of stating reasons



not infrequently changes the results by forcing the judges to come to grips with nettlesome facts or issues which their normal instincts would otherwise cause them to avoid.'

20. ***The reasoning in the opinion of the Court, thus, can effectively be analysed or scrutinised by the appellate court. The reasons indicated by the court could be accepted by the appellate court without presuming what weighed with the court while coming to the impugned decision. The cause of expeditious and effective disposal would be furthered by such an approach.*** A right of appeal could be created by a special statute or under the provisions of the Code governing the procedure. In either of them, absence of reasoning may have the effect of negating the purpose or right of appeal and, thus, may not achieve the ends of justice.
21. *It will be useful to refer words of Justice Roslyn Atkinson, Supreme Court of Queensland, at AIJA Conference at Brisbane on 13.09.2002 in relation to Judgment Writing. Describing that some judgment could be complex, in distinction to routine judgments, where one requires deeper thoughts, and the other could be disposed of easily but in either cases, reasons they must have. While speaking about purpose of the judgment, he said,*



‘The first matter to consider is the purpose of the judgment. To my mind there are four purposes for any judgment that is written:

- (1) to clarify your own thoughts;*
- (2) to explain your decision to the parties;*
- (3) to communicate the reasons for the decision to the public; and*
- (4) to provide reasons for an appeal court to consider.’*

22. *Clarity of thought leads to proper reasoning and proper reasoning is the foundation of a just and fair decision. In Alexander Machinery (Dudley) Ltd. Vrs. Crabtree, 1974 ICR 120 (NIRC) the court went to the extent of observing that,*

‘Failure to give reasons amounts to denial of justice.’

Reasons are really the linchpin to administration of justice. They are the link between the mind of the decision-taker and the controversy in question. To justify our conclusion, reasons are essential. Absence of reasoning would render the judicial order liable to interference by the higher court. Reasons are the soul of the decision and its absence would render the order open to judicial chastisement. The consistent judicial opinion is that every order determining rights of the



*parties in a court of law ought not to be recorded without supportive reasons. Issuing reasoned order is not only beneficial to the higher courts but is even of great utility for providing public understanding of law and imposing self-discipline in the Judge as their discretion is controlled by well-established norms. The contention raised before us that absence of reasoning in the impugned order would render the order liable to be set aside, particularly, in face of the fact that the learned Judge found merit in the writ petition and issued rule, therefore, needs to be accepted. We have already noticed that orders even at interlocutory stages may not be as detailed as judgments but should be supported by reason howsoever briefly stated. Absence of reasoning is impermissible in judicial pronouncement. **It cannot be disputed that the order in question substantially affect the rights of the parties.** There is an award in favour of the workmen and the management had prayed for stay of the operation of the award. The court has to consider such a plea keeping in view the provisions of Section 17-B of the Industrial Disputes Act, where such a prayer is neither impermissible nor improper. The contentions raised by the parties in support of their respective claims are expected to be dealt with by reasoned orders. We are not intentionally expressing any opinion on the merits of the contentions alleged to have been raised by respective*



parties before the learned Single Judge. Suffice it to note that the impugned order is silent in this regard. According to the learned counsel appearing for the appellant, various contentions were raised in support of the reliefs claimed but all apparently, have found no favour with the learned Judge and that too for no reasons, as is demonstrated from the order impugned in the present appeals.'

21. *The principles stated by this Court, as noticed supra, have been reiterated with approval by a Bench of this Court in a very recent judgment, in State of Uttaranchal Vrs. Sunil Kumar Singh Negi, (2008) 11 SCC 205, where the Court noticed the order of the High Court which is reproduced hereunder:*

'8. *** *'I have perused the order dated 27-5-2005 passed by Respondent 2 and I do not find any illegality in the order so as to interfere under Articles 226/227 of the Constitution of India. The writ petition lacks merit and is liable to be dismissed.'*

and the Court concluded as under:

'9. ***In view of the specific stand taken by the Department in the affidavit which we have referred to above, the cryptic order passed by the High Court cannot be sustained. The absence of reasons has rendered the High Court order not sustainable.*** Similar view was expressed in *State of U.P. Vrs. Battan, (2001) 10 SCC 607.*



About two decades back in State of Maharashtra Vrs. Vithal Rao Pritirao Chawan, (1981) 4 SCC 129 the desirability of a speaking order was highlighted. The requirement of indicating reasons has been judicially recognised as imperative. The view was reiterated in Jawahar Lal Singh Vrs. Naresh Singh, (1987) 2 SCC 222.

10. *In Raj Kishore Jha Vrs. State of Bihar, (2003) 11 SCC 519 this Court has held that reason is the heartbeat of every conclusion and without the same, it becomes lifeless.*
11. *'8. *** Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made;...'*³
12. *In the light of the factual details particularly with reference to the stand taken by the Horticulture Department at length in the writ petition and in the light of the principles enunciated by this Court, namely, right to reason is an indispensable part of sound judicial system and reflect the application of mind on the part of the court, we are satisfied that the impugned order of the High Court cannot be sustained.'*

³ [Ed.: As observed in State of Orissa Vrs. Dhaniram Luhar, (2004) 5 SCC 568.]



22. Besides referring to the above well-established principles, it will also be useful to refer to some text on the subject. H.W.R. Wade in the book *Administrative Law*, 7th Edn., stated that the flavour of the said reasons is violative of a statutory duty to waive reasons which are normally mandatory. Supporting a view that reasons for decision are essential, it was stated:

‘*** A right to reasons is therefore an indispensable part of a sound system of judicial review. Natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man’s sense of justice. *** Reasoned decisions are not only vital for the purpose of showing the citizen that he is receiving justice: they are also a valuable discipline for the tribunal itself.’

23. We are not venturing to comment upon the correctness or otherwise of the contentions of law raised before the High Court in the present petition, but it was certainly expected of the High Court to record some kind of reasons for rejecting the revision petition filed by the Department at the very threshold. **A litigant has a legitimate expectation of knowing reasons for rejection of his claim/prayer. It is then alone, that a party would be in a position to challenge the order on appropriate grounds.** Besides, this would be for the benefit of the higher or the appellate court. As arguments bring things hidden and obscure to the light of reasons, reasoned judgment where the law and factual matrix of the case is discussed, provides lucidity and



foundation for conclusions or exercise of judicial discretion by the courts.

24. ***Reason is the very life of law. When the reason of a law once ceases, the law itself generally ceases*** (Wharton's Law Lexicon). Such is the significance of reasoning in any rule of law. Giving reasons furthers the cause of justice as well as avoids uncertainty. As a matter of fact it helps in the observance of law of precedent. ***Absence of reasons on the contrary essentially introduces an element of uncertainty, dissatisfaction and give entirely different dimensions to the questions of law raised before the higher/appellate courts.*** In our view, the court should provide its own grounds and reasons for rejecting claim/prayer of a party whether at the very threshold i.e. at admission stage or after regular hearing, howsoever concise they may be.
25. We would reiterate the principle that when reasons are announced and can be weighed, the public can have assurance that process of correction is in place and working. It is the requirement of law that correction process of judgments should not only appear to be implemented but also seem to have been properly implemented. Reasons for an order would ensure and enhance public confidence and would provide due satisfaction to the consumer of justice under our justice dispensation system. It may not be very correct in law to say, that there is a qualified duty imposed upon the courts to record reasons.



26. ***Our procedural law and the established practice, in fact, imposes unqualified obligation upon the courts to record reasons.***

There is hardly any statutory provision under the Income Tax Act or under the Constitution itself requiring recording of reasons in the judgments but it is no more res integra and stands unequivocally settled by different judgments of this Court holding that the courts and tribunals are required to pass reasoned judgments/orders. In fact, Order 14 Rule 2 read with Order 20 Rule 1 of the Code of Civil Procedure requires that, the court should record findings on each issue and such findings which obviously should be reasoned would form part of the judgment, which in turn would be the basis for writing a decree of the court.

27. *By practice adopted in all courts and by virtue of judge-made law, the concept of reasoned judgment has become an indispensable part of basic rule of law and, in fact, is a mandatory requirement of the procedural law. **Clarity of thoughts leads to clarity of vision and proper reasoning is the foundation of a just and fair decision.** In Alexander Machinery (Dudley) Ltd., 1974 ICR 120 (NIRC) there are apt observations in this regard to say “failure to give reasons amounts to denial of justice”. Reasons are the real live links to the administration of justice. With respect we will contribute to this view. **There is a rationale, logic and purpose behind a reasoned judgment. A reasoned judgment is primarily written to clarify own thoughts;***



communicate the reasons for the decision to the concerned and to provide and ensure that such reasons can be appropriately considered by the appellate/higher court. Absence of reasons thus would lead to frustrate the very object stated hereinabove.”

10.5. The laconic Order of the Nodal Officer (Annexure-7) acceding to the recommendation of the Screening Committee (Annexure-Q/2 of the counter affidavit) without assigning reason for the conclusion renders the decision reducing the revised pay scale already granted to the petitioner vulnerable and untenable.

11. To appreciate the meat of the matter, it may be relevant to take note of argument of Sri Arnav Behera, learned Additional Standing Counsel appearing for the opposite parties stemming on the discussion contained in paragraph 16 of the counter affidavit. He sought to impress upon this Court that the OAT Staff Rules, 1999 does not speak of grant of promotion to the post of Senior Assistant from the Senior Grade Typist; rather a Senior Grade Typist is required to compete with Senior Grade Diarist and Senior Grade Recorder for 10% of the vacancies in the Cadre of Senior Assistant in a year unlike the Junior Assistant who are promoted to Senior Assistant only by virtue of their seniority and merit in their Cadre. The Senior



Assistant is definitely a promotional post of Senior Grade Typist but it is not within the Cadre. He emphatically argued that RACPS envisages pay scale benefit in the promotional posts within the Cadre. The promotion of a Senior Grade Typist to Senior Assistant is by way of induction into another Cadre. The post of Senior Grade Typist belongs to one Cadre and that of Senior Assistant to another Cadre. A Senior Grade Typist may be promoted to the post of Senior Assistant if he is found eligible in his Cadre; whereas, a Junior Assistant is promoted to the post of Senior Assistant if he is found eligible to his Cadre. In order to support such contention reference has been made to Annexure-E/2 enclosed to the counter affidavit titled “Clarification on Revised Assured Career Progression Scheme (RACPS) for the State Government Employees” issued by the Government of Odisha in Finance Department *vide* Memo No.1738/PCC(A)/37/2013/F., dated 20.01.2014, wherein to query that “if the promotional post in a hierarchy belongs to another Cadre, then whether the Grade Pay of that promotional post is to be allowed under RACP Scheme”, it has been answered “No, the Grade Pay of hierarchical promotional post which belongs to other Cadre shall not be allowed under RACP Scheme even if the former post being only the feeder post of that



promotional post. RACP is confined to a Cadre only. Such promotion shall be a promotion to an ex-Cadre post and the period of service for RACP on that promotional post shall be reckoned afresh from the date of joining on that post". He also relied on examples appended to said answer, wherein it is found mentioned that "A" is an Assistant Engineer in Odisha Diploma Engineering Service Cadre in the Pay Band of Rs.9,300/- — Rs.34,800/- and Grade Pay of Rs.4,600/- who on completion of 20 years of service from the date of entry post of Junior Engineer shall get the pay in the Pay Band PB-2 with Pay Scale of Rs.9,300/- — Rs.34,800/- and Grade Pay of Rs.4,800/- instead of Pay Scale of Rs.9,300/- — Rs.34,800/- and Grade Pay of Rs.5,400/- under RACP Scheme, although the next promotional post of Assistant Engineer is Assistant Executive Engineer carrying the Grade Pay of Rs.5,400/- which belongs to the Odisha Engineering Service Cadre. There are only two posts in Odisha Diploma Engineering Service Cadre namely Junior Engineer and Assistant Engineer. Another example depicts as similarly "B" is an Officer under ORS Cadre in the Pay Band of Rs.9,300/- — Rs.34,800/- and Grade Pay of Rs.4,600/- who on completion of 10 years service shall get the pay in Pay Band PB-2 with Pay Scale of



Rs.9,300/- — Rs.34,800/- and Grade Pay of Rs.4,800/- under RACP Scheme, although his next promotional post comes under OAS Cadre carrying the pay scale of Rs.15,600/- — Rs.39,100/- and Grade Pay of Rs.5,400/- in Pay Band of PB-3. Under such premise he submitted that there is nothing wrong in rectifying the defect being pointed out even though payments have been made erroneously. He laid stress on the decision of the Hon'ble Supreme Court of India in the case of *High Court of Punjab and Haryana Vrs. Jagdev Singh*, (2016) 6 SCR 781 and sought to argue that the Undertaking as appended to Fifth Schedule specified as per Rule 17 of the ORSP Rules, 2008 having been furnished by the petitioner to whom the payment was made in the first instance is clearly placed on notice that any payment found to have been made in excess would be required to be refunded or adjusted against future payments. Sri Arnav Behera, learned Additional Standing Counsel submitted that the principle in *Rafiq Masih*, (2015) 4 SCC 334 laying down that “Recovery from retired employees or employees who are due to retire within one year of the order of recovery” would not be made applicable in the present set of fact-situation, as he is bound by the Undertaking.



11.1. Sri Sameer Kumar Das, learned Advocate contested by urging that the opposite parties have misread the purport of the ORSP Rules, 2008 and misdirected by submitting that as per the Undertaking furnished by the petitioner is obligated to refund the excess payment even if he has no contribution for such error, if at all there be. Such involuntary Undertaking, as is apparent from the language employed in Rule 17⁴ of the ORSP Rules, 2008, cannot be said to have bound the petitioner.

11.2. It is relevant to notice that, the basis of claim of the petitioner and refusal by the opposite parties for RACPS under the ORSP Rules, 2008 in the promotional post of Senior Assistant in Finance Department Resolution *vide* Notification dated 06.02.2013, which is reproduced hereunder:

*“Government of Odisha
Finance Department*

Resolution

No.3560— PCC(A)-49/2012/F., dated 06.02.2013

⁴ Rule 17 of the ORSP Rules, 2008, stood thus:

“17. *Excess payment to be recovered.—*

Where in the course of fixation of pay under these rules, any amount drawn or received as pay by any Government servant under any rule is found to be in excess of the amount payable to him under these rules, the excess amount so drawn or received shall be recoverable from such Government servant or from his recoverable pensionary benefits for which he shall submit an undertaking as specified in the Fifth Schedule.”



Sub: Revised Assured Career Progression Scheme (RACPs) for the State Government Employees.

The State Government considered the recommendations of the Fitment Committee and granted Assured Career Progression (ACP) to the State Government employees on completion of 15th, 25th and 30th years of service akin to the Time Bound Advancement (TBA) provisions of the Orissa Revised Scales of Pay Rules, 1998. Accordingly, all State Government employees avail ACP in 3 stages i.e. 1st ACP on completion of 15 years of service, 2nd ACP after 25 years of service and 3rd ACP after 30 years of service in their original post/grade by addition of one increment @ 3% on the Basic Pay + Grade Pay with next annual increment after a period of one year from the date of sanction of the ACP.

- 2. The Government of India in the meanwhile, had introduced Modified Assured Career Progression Scheme (MACPS) for the Central Government Civilian employees in supersession of the provisions of ACP scheme. Consequent upon implementation of the MACPS by the Government of India, various Service Associations of the State Government employees have come up with memoranda to consider implementation of the MACPS in respect of employees of the State Government.*
- 3. Taking into account the uncertain promotional avenues and career stagnation of the State Government employees, Government after careful consideration have decided to implement a career*



advancement scheme to be known as “REVISED ASSURED CAREER PROGRESSION SCHEME” (RACPS).

4. *The RACPS is to be effective from 01.01.2013.*
5. *The details of the RACP Scheme and conditions for grant of the financial upgradation under the Scheme are given in Annexure-I.*

By order of the Governor

Sd/-

(D.K. Singh)

Additional Secretary to Government

Annexure-I

*Revised Assured Career Progression Scheme
(RACPS):*

1. *There shall be three financial up-gradations under the RACPS, counted from the direct entry grade on completion of 10, 20 and 30 years of service in a single cadre in absence of promotion. An employee if completed 10 years of service in the entry grade will be considered for 1st up-gradation under RACPS. An employee completing 20 years of service and has got only one up-gradation either by promotion or by RACPS will be considered for the 2nd up-gradation. Similarly an employee completing 30 years of service and has got two up-gradation either by RACPS or promotion or both will be considered for 3rd up-gradation under RACPS.*
2. *The financial up-gradation under the RACPS would be admissible up to the highest Grade Pay*



of Rs.7600/ in the Pay Band PB-3 under ORSP Rules, 2008.

- 3. There shall be a Screening Committee to decide the eligibility of the persons for up-gradation under RACPS. The Screening Committee shall follow a time schedule and meet twice in a financial year, preferably in the first week of January and first week of July every year for advance processing of the cases maturing in that half year. Accordingly, cases maturing during the first-half i.e. April to September of a particular financial year shall be taken up for consideration by the Committee in the first week of January. Similarly, the Screening Committee meeting in the first week of July shall process the cases that would be maturing during the second-half i.e. October to March of the same financial year.*
- 4. RACPS shall be permissible in case of those employees only after regulation of their pay under O.R.S.P. Rules, 2008. On introduction of RACPS, the ACP Scheme as under O.R.S.P. Rules, 2008 shall cease to operate.*
- 5. The manner of fixation of pay on promotion shall be applicable while fixing the pay under RACPS. An employee can opt to get the pay fixed under RACPS after accrual of his next increment in existing Pay Band with Grade Pay within one month from the date of issue of RACPS order in his/her favour in the proforma appended as Fourth Schedule of O.R.S.P. Rules, 2008 else the pay of the employee shall be fixed from the date of*



effect of RACP. The next increment due shall be 12 months from the date of such fixation.

- 6. On grant of financial up-gradation under the Scheme, there shall be no change in the designation, classification or status. However, financial and certain other benefits which are linked to the pay drawn by an employee such as HBA, allotment of Government accommodation may be permitted.*
- 7. Financial up-gradation under the RACPS shall be purely personal to the employee and shall have no relevance to his position of seniority in the grade. As such, there shall be no stepping up of pay/antedation of increment between Senior and Junior after regulation of pay under RACPS.*
- 8. The Pay Band PB-3 of Rs.15,600-39,100/- with Grade Pay of Rs.54400/- being the Group-A Entry Grade Pay Band shall not be allowed under RACPS to an employee in Pay Band PB-2.*

For example, if an employee in the Pay Band PB-2 i.e. Rs.9,300-34,800/- with Grade Pay of Rs.4600/- gets financial up-gradation under RACPS, he shall be entitled to get his/her pay fixed in the Pay Band PB-2 i.e. Rs.9,300-34,800/- with Grade Pay of Rs.5400/- instead of Pay Band PB-3 i.e. Rs.15,600-39,100/- with Grade Pay of Rs.5400/-.

- 9. There shall be no further financial up-gradation under RACPS, if an employee has already availed three financial up-gradations by way of RACPS/Promotion.*



10. *Benefit of pay fixation available at the time of regular promotion shall also be allowed at the time of financial up-gradation under the Scheme, which means the pay shall be raised by 3% of the total of pay in the Pay Band and the Grade Pay drawn before such upgradation. **The employees of the Cadre having promotional hierarchy will get the Grade Pay of the promotional post.** The employees in isolated/ex-cadre posts not having any promotional hierarchy will get the next higher Grade Pay as per the first schedule of ORSP Rules, 2008 with the interpolations, if any introduced subsequently. In case the new Grade Pay corresponds to a different Pay Band, the employee will get the Pay Band corresponding to the revised Grade Pay. There shall, however, be no further fixation of pay at the time of regular promotion.*
11. *The RACPS shall also be applicable to work charged employees, only if their service conditions are comparable with the staff of regular establishment.*
12. *The RACPS is directly applicable only to State Government employees. It will not get automatically extended to employees of State PSUs/Autonomous/Statutory Bodies under the administrative control of a Department. Keeping in view the financial implications involved, a conscious decision in this regard shall have to be taken by the respective Governing Body/Board of Directors as well as the Administrative Department concerned and wherever it is*



proposed to adopt the RACPS, prior concurrence of Finance Department shall be obtained.

- 13. If a financial up-gradation under the RACPS is not allowed after 10 years in a Grade Pay and is deferred for the reason an employee being unfit or due to Departmental proceedings, his case will be reviewed in subsequent years. In the matter of disciplinary/penal proceedings, grant of benefit under the RACPs shall be subject to rules/guidelines governing normal promotion. Such cases shall, therefore, be regulated under the provisions of the OCS (CCA) Rules, 1962 and instructions issued there under.*
- 14. The RACPS contemplates mere placement on personal basis in the Grade Pay and pay scale of the higher post and shall not amount to actual functional promotion of the employees concerned. Therefore, no reservation orders roster shall apply to the RACPS. However, as usual the rules of reservation in promotion shall be ensured at the time of regular promotion. For this reason, it may not be mandatory to associate members of SC/ST in the Screening Committee meant to consider cases for grant of financial up gradation under the Scheme.*
- 15. Pay drawn in the Pay Band and the Grade Pay allowed under the RACPS shall be the basis for determining the terminal benefits in respect of the retiring employee.*
- 16. If a regular promotion in due course is refused by the employee before becoming entitled to a*



financial up-gradation, then there shall be no financial up-gradation under RACPS as the employee has not been stagnated due to lack of promotional opportunities. If, however, financial up-gradation has been allowed due to stagnation and the employee refuses the subsequent promotion, it shall not be a ground to withdraw the financial up-gradation. He shall, however, not be eligible to be considered for further financial up-gradation till he agrees to be considered for promotion again and the next financial up-gradation shall also be deferred to the extent of period of debarment due to such refusal.

- 17. Employees on deputation need not revert to the parent Department for availing the benefit of financial up-gradation under the RACPS. They may exercise a fresh option to draw the pay in the Pay Band and the Grade Pay of the post held by them or the pay plus Grade Pay admissible to them under the RACPS, whichever is beneficial like the regular employee in the parent cadre had they not been deputed.*
- 18. Assured Career Progression (ACP) availed under ORSP Rules, 2008 shall not be taken into account while considering the RACPS in favour of an employee. But, no pay fixation shall be allowed by extending the benefit of 3% of basic pay and Grade Pay to the existing Pay hut only the Grade Pay as applicable shall be allowed while giving RACPS.*



Sd/-
(D.K. Singh)
Additional Secretary to Government

11.3. It is highlighted by the learned counsel for the petitioner that as paragraph 1 of the RACPS, the petitioner having completed 20 years of service and got only one promotion after 20 years of service is entitled for upgradation and in terms of paragraph 10 thereof, the petitioner in the Cadre of Senior Grade Typist having promotional hierarchy is eligible to get the Grade Pay of the promotional post. It can also be pertinent to refer to Serial No.12 appended to Schedule-I specified under Rule 7 of the OAT Staff Rules, 1999, wherein it has been mentioned as follows:

“Rule.7

Eligibility for promotion.—

In order to be eligible for promotion, one shall have the requisite qualification and experience and must have passed the departmental examination, if necessary, as specified in Schedule-I.

*Schedule-I
(See Rule 7)*

<i>Sl. No.</i>	<i>Name of the post with the class which it belongs</i>	<i>Method of recruitment</i>	<i>Qualification for direct recruitm</i>	<i>Eligibility</i>



			ent	
12.	Senior Assistant	By promotion OR In case off non-availability of suitable candidates, by deputation from State Government		By Promotion from among the Junior Assistants or Store Keeper of the Odisha Administrative Tribunal who have rendered three years of continuous service as such and must have passed the preliminary accounts examination conducted by the Board of Revenue / Madhusudhan Institute of Accounts and Finance (Explanation: The post of Junior Assistant in Odisha Administrative Tribunal includes the post of Storekeeper in Odisha Administered Tribunal): Provided that 10% of the vacancies in the Cadre of Senior Assistant in as year shall be filled up from among the Senior Grade Typists/ Senior Grade Diaries/ Senior Grade Recorder of the Odisha Administrative Tribunal who have passed Matriculation Examination and have rendered 10



				<i>years of continuous service as such on the first day of January in which the recruitment is made.</i>
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11.4. Glance at the above provisions would make it *ex facie* apparent that there is no restriction in availing the benefit of getting Grade Pay of the Cadre having promotional hierarchy on the employees like Senior Grade Typist. The invidious distinction sought to be made by the opposite parties is reprehensible.

11.5. This Court derives analogy from yet another Finance Department Resolution No. 26274— FIN-PCC-MEET-0001/2012/F., dated 08.08.2013, which has taken effect from 01.01.2013. Relevant portion of the said Resolution stood as under:

*“Government of Odisha
Finance Department*

*Resolution
No.26274— FIN-PCC-MEET-0001/2012/F.,
dated 08.08.2013*

Sub.: Revision of grade pay in certain posts with Grade Pay of Rs.4,200 and Rs.4,600.

Under ORSP Rules, 2008, the revision of pay has been effected on scale to scale basis with merger of scales of pay under the ORSP Rules, 1998 in Pay Bands. The pay bands constitute different



Grade Pay. In Grade Pay Rs.4,200 pertaining to Pay Band PB-2, seven pay scales existing under the ORSP Rules, 1998 were merged. As a consequence of such merger, some of the promotional scales existing under the previous pay rule are now placed in Pay Band PB-2 with same Grade Pay of Rs.4200.

- 2. The introduction of Revised Assured Career Progression (RACP) Scheme in Finance Department Resolution No.3560, dated 06.02.2013 with effect from 01.01.2013 envisage three financial upgradations at an interval of 10/20/30 years of the service career with stipulation in the said FD Resolution. As per the said Finance Department Resolution, services having defined line of promotion shall avail the Pay Band/Grade Pay of next promotional hierarchy. Due to same Grade Pay existing in many of the Cadres having defined line of promotion the Grade Pay does not change as per the Scheme dated 06.02.2013 thereby creating resentment among such cadres. The Service Association of various cadres have been representing for removal of such anomaly.*
- 3. After careful consideration of the recommendation of Anomaly Committee and in exercise of powers conferred under Rule 19 of ORSP Rules, 2008, Government have been pleased to incorporate the following changes in the Grade Pay of posts of different Departments mentioned at Table-I to mitigate such anomaly:*



- i) *Enhance the promotional Grade Pay of the cadres from Rs.4,200 to Rs.4,600 where the feeder post Grade Pay is Rs.4,200.*
- ii) *With the feeder post Grade Pay of Rs.4,200, where more than one promotional hierarchy is at Rs.4,200 Grade Pay, the promotional posts shall be merged to one Cadre with the Grade Pay Rs.4,600. For example, the Section Officer, Level-II and Level-I in Heads of Department Cadre shall be merged to one cadre of Section Officer with grade pay Rs.4600.*
- iii) *The Grade Pay of the next promotional post now carrying the Grade Pay of Rs.4,600 shall be enhanced to Rs.4,800. There are services in which the posts carrying grade pay of Rs.4,600 gets filled up partly by direct recruitment and partly by promotion from a post now carrying grade pay Rs.4,200. If the Grade Pay of such feeder posts is enhanced to Rs.4,600 the Grade Pay of such promotional posts shall be enhanced to Rs.4,800.*

11.6. This Court does not subscribe to the argument advanced on behalf of the opposite parties based on the Clarification dated 20.01.2014. The view point of the opposite parties that though the post of Senior Assistant is a promotional post of Senior Grade Typist, the latter would be entitled to Grade Pay within the Cadre not in the Cadre of the former is unacceptable.



It is worthwhile to say that Clarification dated 20.01.2014 cannot supersede the Finance Department Resolution dated 06.02.2013.

11.7. There can be no gainsaying that an Office Memorandum cannot “clarify” the RACPS Resolution dated 6th February 2013, which is of a legislative character. [Vide, *State of Odisha Vrs. Bikash Ranjan Dash*, 2021 SCC OnLine Ori 1839]. This Court in *State of Odisha Vrs. Bihari Lal*, 2016 SCC OnLine 333⁵ taking note of aforesaid Resolution dated 06.02.2013 vis-à-vis Clarification dated 20.01.2014, made the following observation:

“14. The basic object of the RACP Scheme is to give incentive to the employees who have not been able to either promotion within certain years of service. The employees unless are given incentive by way of financial upgradation, the morale of the employees will be degraded and the employee will suffer from frustration. Of course, the promotional post if available, but the employee is not eligible to get the same, the financial upgradation is uncalled for. It is available from the materials on record that the earlier TBA principle was available and

⁵ Challenge against this Judgment being carried to the Hon’ble Supreme Court of India in *State of Odisha Vrs. Bihari Lal Barik*, Diary No(s). 20358 of 2017, the following Order was passed on 23.08.2017:

“Delay condoned.

We do not see any ground to interfere with the impugned order. The special leave petition is accordingly dismissed.

Pending applications, if any, shall also stand disposed of.”



subsequently the ACPS Scheme was introduced. The ORSP Rules, 2008 was enacted with a view to revise the scale of pay in 2008 in terms of Pay Band with Grade Pay by converting the then scale of pay under the ORSP Rules, 1998. Earlier scale of pay was there, but under the ORSP Rules, 2008 the Pay Band and Grade Pay were introduced. Thereafter on 06.02.2013 the RACP Scheme was introduced by revising the years to 10, 20 and 30.

16. From the aforesaid analysis of the RACP of paragraph 10 it is clear that the pay will be fixed under the ORSP Rules, 2008, but the modalities for awarding RACP would be given under this Scheme. **On clear harmonious interpretation of paragraph 10 it is found that the employees of cadre having promotional hierarchy will get Grade Pay of the promotional post and in case the new Grade Pay corresponds to a different Pay Band, the employee will get Pay Band corresponding to upgraded Grade Pay. Here the learned Addl. Government Advocate drew our attention to a clarification issued by the State Government in the Finance Department on 20.01.2014 at paragraph-12. According to said paragraph-12 the Grade Pay of promotional post which belongs to other cadre shall not be allowed under RACP Scheme even if the former post being only the feeder post of that promotional post and the RACP is confined to the cadre only.** He further stated that it has been further clarified in paragraph-12 that such



*promotion shall be to an ex-cadre post and the period of service for RACP on that promotional post shall be reckoned afresh from the date of joining in that post. **Such clarification is absolutely contrary to paragraph-10 of the RACP Scheme because paragraph-12 has denied benefit of RACPS to the employee entitled to promotional avenue under recruitment Rules, whereas paragraph-10 of RACPS allow same. If clarification is contrary to Scheme, Scheme has to be followed. Clarification has no any legislative value, whereas a scheme being in absence of rule has got binding effect and to be followed by all in the Administration.** Clarification by State Government has no legal force unless it is converted to an Act, Rule, Regulation or Scheme or Culminates from such Act, Rules, Regulation and Scheme. Be that as it may, the Scheme is clear that the RACP is available to an employee having promotional hierarchy. We are of the view that opp. Party No. 1 as V.L.W.⁶ being not promoted to the post of G.P.E.O.⁷ and P.A.⁸ is entitled to RACP Scheme and as such ORSP Rules, 2008 will be applicable to them.”*

11.8. It is thus trite that executive instructions cannot amend or supersede the statutory Rules or add something therein, nor the orders be issued in contravention of the statutory rules for the reason that

⁶ Village Level Worker
⁷ Grama Panchayat Extension Officers
⁸ Progress Assistants



an administrative instruction is not a statutory Rule nor does it have any force of law; while statutory rules have full force of law provided the same are not in conflict with the provisions of the Act. [*Vide, State of U.P. Vrs. Babu Ram Upadhyaya, AIR 1961 SC 751; State of Tamil Nadu Vrs. Hind Stone, AIR 1981 SC 711*]. In *Punit Rai Vrs. Dinesh Chaudhary, (2003) 8 SCC 204; Union of India Vrs. Naveen Jindal, (2004) 2 SCC 510* and *State of Kerala Vrs. Chandra Mohan (2004) 3 SCC 429*, it has been held that executive instructions cannot be termed as law within the meaning of Article 13(3)(a) of the Constitution of India. In *Bishamber Dayal Chandra Mohan Vrs. State of U.P., AIR 1982 SC 33* it is observed that, the difference in a statutory order and an executive order observing that executive instruction issued under Article 162 of the Constitution of India does not amount to law. However, if an order can be referred to a statutory provision and held to have been passed under the said statutory provision, it would not be merely an executive fiat but an order under the statute having statutory force for the reason that it would be a positive State made law. So, in order to examine as to whether an order has a statutory force, the Court has to find out and determine as to whether it can be referred to the provision of the statute.



11.9. In *State of Maharashtra Vrs. Jagannath Achyut Karandikar*, (1989) 1 SCR 947 it has been succinctly laid down as:

*“The Circular is an executive instruction whereas the 1955 Rules are statutory since framed under the proviso to Article 309 of the Constitution. The Government could not have restricted the operation of the statutory rules by issuing the executive instruction. **The executive instruction may supplement but not supplant the statutory rules.** The High Court was in error in ignoring this well accepted principle.”*

11.10. In *Union of India Vrs. Somasundram Viswanath*, (1988) Supp.3 SCR 146 the Hon’ble Supreme Court of India has interpreted circular/executive instructions vis-à-vis rules made as follows:

*“It is well settled that the norms regarding recruitment and promotion of officers belonging to the Civil Services can be laid down either by a law made by the appropriate Legislature or by rules made under the proviso to Article 309 of the Constitution of India or by means of executive instructions issued under Article 73 of the Constitution of India in the case of Civil Services under the Union of India and under Article 162 of the Constitution of India in the case of Civil Services under the State Governments. If there is a conflict between the executive instructions and the rules made under the proviso to Article 309 of the Constitution of India, the rules made under proviso to Article 309 of the Constitution of India prevail, and **if there is conflict between the rules made under the proviso to***



Article 309 of the Constitution of India and the law made by the appropriate Legislature the law made by the appropriate Legislature prevails.”

11.11. In *Employees’ State Insurance Corporation Vrs. Union of India*, (2022) 11 SCC 392 it has been stated thus:

“17. In *P.D. Aggarwal Vrs. State of U.P.*, (1987) 3 SCC 622 a two-Judge Bench of this Court declined to grant primacy to an office memorandum issued by the Government of Uttar Pradesh which purportedly amended the method of recruitment of Assistant Civil Engineers in the U.P. Public Service Commission without amending the relevant regulations. The Court held:

‘20. The Office Memorandum dated 07.12.1961 which purports to amend the United Provinces Service of Engineers (Buildings and Roads Branch) Class II Rules, 1936 in our opinion cannot override, amend or supersede statutory rules. **This Memorandum is nothing but an administrative order or instruction and as such it cannot amend or supersede the statutory rules by adding something therein** as has been observed by this Court in *Sant Ram Sharma Vrs. State of Rajasthan*, AIR 1967 SC 1910 = (1968) 1 SCR 111. Moreover the benefits that have been conferred on the temporary Assistant Engineers who have become members of the service after being selected by the Public



*Service Commission in accordance with the service rules are entitled to have their seniority reckoned in accordance with the provisions of Rule 23 as it was then, from the date of their becoming member of the service, and this cannot be taken away by giving retrospective effect to the Rules of 1969 and 1971 as it is arbitrary, irrational and not reasonable.’ ***”*

11.12. In the present context, the Circular dated 20.01.2014 could not have overriding effect on the Resolution dated 06.02.2013.

11.13. The legal position regarding the distinction between upgradation and promotion is well settled. In *Union of India Vrs. Pushpa Rani*, (2008) 9 SCC 24, the Supreme Court of India had examined and explained the difference thus:

“In legal parlance, upgradation of a post involves transfer of a post from lower to higher grade and placement of the incumbent of that post in the higher grade. Ordinarily, such placement does not involve selection but in some of the service rules and/or policy framed by the employer for upgradation of posts, provision has been made for denial of higher grade to an employee whose service record may contain adverse entries or who may have suffered punishment. The word ‘promotion’ means advancement or preferment in honour, dignity, rank, grade. Promotion thus not only covers advancement to higher position or rank but also implies advancement to a higher grade. In service law,



the word ‘promotion’ has been understood in wider sense and it has been held that promotion can be either to a higher pay scale or to a higher post.”

The decision in *Union of India Vrs. Pushpa Rani, (2008) 9 SCC 24* was discussed in *Bharat Sanchar Nigam Limited Vrs. R. Santhakumari Velusamy, (2011) 9 SCC 510* and ruling has been enunciated as under:

“In Pushpa Rani, (2008) 9 SCC 242, this Court while considering a scheme contained in the Letter dated 09.10.2003 held that it provided for a restructuring exercise resulting in creation of additional posts in most of the cadres and there was a conscious decision to fill up such posts by promotion from all eligible and suitable employees and, therefore, it was a case of promotion and, consequently, the reservation rules were applicable.”

It has been set forth in *Bharat Sanchar Nigam Limited Vrs. R. Santhakumari Velusamy, (2011) 9 SCC 510* as follows:

“29. On a careful analysis of the principles relating to promotion and upgradation in the light of the aforesaid decisions, the following principles emerge:

- (i) Promotion is an advancement in rank or grade or both and is a step towards advancement to a higher position, grade or honour and dignity. Though in the traditional sense promotion refers to advancement to a higher post, in its wider sense, promotion may include an advancement to a higher pay*



scale without moving to a different post. But the mere fact that both— that is, advancement to a higher position and advancement to a higher pay scale— are described by the common term “promotion”, does not mean that they are the same. The two types of promotion are distinct and have different connotations and consequences.

- (ii) Upgradation merely confers a financial benefit by raising the scale of pay of the post without there being movement from a lower position to a higher position. In an upgradation, the candidate continues to hold the same post without any change in the duties and responsibilities but merely gets a higher pay scale.*
- (iii) Therefore, when there is an advancement to a higher pay scale without change of post, it may be referred to as upgradation or promotion to a higher pay scale. But there is still difference between the two. Where the advancement to a higher pay scale without change of post is available to everyone who satisfies the eligibility conditions, without undergoing any process of selection, it will be upgradation. But if the advancement to a higher pay scale without change of post is as a result of some process which has elements of selection, then it will be a promotion to a higher pay scale. In other words, upgradation by application of a process of selection, as contrasted from an upgradation simpliciter can be said to be a promotion in*



its wider sense, that is, advancement to a higher pay scale.

- (iv) *Generally, upgradation relates to and applies to all positions in a category, who have completed a minimum period of service. Upgradation can also be restricted to a percentage of posts in a cadre with reference to seniority (instead of being made available to all employees in the category) and it will still be an upgradation simpliciter. But if there is a process of selection or consideration of comparative merit or suitability for granting the upgradation or benefit of advancement to a higher pay scale, it will be a promotion. A mere screening to eliminate such employees whose service records may contain adverse entries or who might have suffered punishment, may not amount to a process of selection leading to promotion and the elimination may still be a part of the process of upgradation simpliciter. Where the upgradation involves a process of selection criteria similar to those applicable to promotion, then it will, in effect, be a promotion, though termed as upgradation.*
- (v) *Where the process is an upgradation simpliciter, there is no need to apply the rules of reservation. But where the upgradation involves a selection process and is therefore a promotion, the rules of reservation will apply.*



(vi) *Where there is a restructuring of some cadres resulting in creation of additional posts and filling of those vacancies by those who satisfy the conditions of eligibility which includes a minimum period of service, will attract the rules of reservation. On the other hand, where the restructuring of posts does not involve creation of additional posts but merely results in some of the existing posts being placed in a higher grade to provide relief against stagnation, the said process does not invite reservation.”*

See also, *Rama Nand Vrs. Chief Secretary, Government of NCT of Delhi*, (2020) 6 SCR 19 = 2020 (II) OLR (SC) 487, where it has been observed as follows:

“17. The reasons for coming to this conclusion is based on the principles set out in the Bharat Sanchar Nigam Limited Vrs. R. Santhakumari Velusamy, (2011) 9 SCC 510. No doubt, sometimes there is a fine distinction which arises in such cases, but, a holistic view has to be taken considering the factual matrix of each case. The consequence of reorganisation of the cadre resulted in not only a mere re-description of the post but also a much higher pay scale being granted to the appellants based on an element of selection criteria. We say so as, at the threshold itself, there is a requirement of a minimum 5 years of service. Thus, all Telephone Operators would not automatically be eligible for the new post. Undoubtedly, the financial emoluments, as stated above, are much higher. The third important aspect is that the



appellants had to go through the rigorous of a specialised training. All these cannot be stated to be only an exercise of merely re-description or reorganisation of the cadre. On applying the test in BSNL case (supra), as per sub-para (i) of paragraph 29, promotion may include an advancement to a higher pay scale without moving to a different post. In the present case, there is a re-description of the post based on higher pay scale and a specialised training. It is not a case covered by sub-para (iii), as canvassed by learned counsel for the appellants, where the higher pay scale is available to everyone who satisfies the eligibility condition without undergoing any process of selection. The training and the benchmark of 5 years of service itself involve an element of selection process. Similarly, it is not as if the requirement is only a minimum of 5 years of service by itself, so as to cover it under sub-para (iv).

18. We have already observed that the complete factual contours of the difference between the two posts would have to be examined in the given factual situation and the triple criteria of minimum 5 years of service, a specialised training and much higher financial emoluments leaves us in no manner of doubt. **What was done has to be considered as a promotion disentitling the appellants to the benefits of the ACP Scheme. As the very objective of the ACP Scheme, as set out, is “to deal with the problem of genuine stagnation and hardship faced by**



the employees due to lack of adequate promotional avenues.”

In *Union of India Vrs. M.V. Mohanan Nair*, (2020) 7 SCR 851, describing object behind ACP (Assured Career Progression) *versus* MACP (Modified Assured Career Progression) with reference to policy and wisdom of Pay Commission, it has been stated as follows:

- “28. The object behind the MACP Scheme is to provide relief against the stagnation. If the arguments of the respondents are to be accepted, they would be entitled to be paid in accordance with the grade pay offered to a promotee; but yet not assume the responsibilities of a promotee. As submitted on behalf of Union of India, if the employees are entitled to enjoy Grade Pay in the next promotional hierarchy, without the commensurate responsibilities as a matter of routine, it would have an adverse impact on the efficiency of administration.
29. The change in policy brought about by supersession of ACP Scheme with the MACP Scheme is after consideration of all the disparities and the representations of the employees. The Sixth Central Pay Commission is an expert body which has comprehensively examined all the issues and the representations as also the issue of stagnation and at the same time to promote efficiency in the functioning of the departments. MACP Scheme has been introduced on the recommendation of the Sixth Central Pay



Commission which has been accepted by the Government of India. After accepting the recommendation of the Sixth Central Pay Commission, the ACP Scheme was withdrawn and the same was superseded by the MACP Scheme with effect from 01.09.2008. This is not some random exercise which is unilaterally done by the Government, rather, it is based on the opinion of the expert body— Sixth Central Pay Commission which has examined all the issues, various representations and disparities. Before making the recommendation for the Pay Scale/Revised Pay Scale, the Pay Commission takes into consideration the existing pay structure, the representations of the government servants and various other factors after which the recommendations are made. When the expert body like Pay Commission has comprehensively examined all the issues and representations and also took note of inter-departmental disparities owing to varying promotional hierarchies, the court should not interfere with the recommendations of the expert body. When the Government has accepted the recommendation of the Pay Commission and has also implemented those, any interference by the court would have a serious impact on the public exchequer.

30. *Observing that it is the function of the Government which normally acts on the recommendations of the Pay Commission which is the proper authority to decide upon the issues, in Union of India Vrs. P.V. Hariharan, (1997) 3 SCC 568, it was held as under:*



- ‘5. *** It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of ‘equal pay for equal work’ is also being misunderstood and misapplied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales. We have come across orders passed by Single Members and that too quite often Administrative Members, allowing such claims. These orders have a serious impact on the public exchequer too. It would be in the fitness of things if all matters relating to pay scales, i.e., matters asking for a higher pay scale or an enhanced pay scale, as the case may be, on one or the other ground, are heard by a Bench comprising at least one Judicial Member. ***’



31. *Observing that the decision of expert bodies like the Pay Commission is not ordinarily subject to judicial review, in State of U.P. Vrs. U.P. Sales Tax Officers Grade II Association, (2003) 6 SCC 250, the Supreme Court held as under:*

*‘11. There can be no denial of the legal position that decision of expert bodies like the Pay Commission is not ordinarily subject to judicial review obviously because pay fixation is an exercise requiring going into various aspects of the posts held in various services and nature of the duties of the employees. ***.’*

32. *In Secretary, Government (NCT of Delhi) Vrs. Grade-1 Officers Association, (2014) 13 SCC 296, the Supreme Court refused to interfere with the ACP Scheme as it would violate Government policy and since exercise of judicial review would not be proper, upheld the ACP Scheme and the conditions therein.*

33. *In State of Tamil Nadu Vrs. S. Arumugham, (1998) 2 SCC 198, the Supreme Court has observed that the Government has the right to frame a policy to ensure efficiency and proper administration and to provide to suitable avenues for promotion to officers working in different department. The Supreme Court has further observed that the Tribunal cannot substitute its own views for the views of the Government or direct new policy based on the views of Tribunal.*



34. *Observing that fixation of pay and determination of responsibilities is a complex matter which is for the executive to take a decision, the courts should approach such matters with restraint, in State of Haryana Vrs. Haryana Civil Secretariat Personal Staff Association, (2002) 6 SCC 72, the Supreme Court held as under:*

*‘10. It is to be kept in mind that the claim of equal pay for equal work is not a fundamental right vested in any employee though it is a constitutional goal to be achieved by the Government. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. While taking a decision in the matter, several relevant factors, some of which have been noted by this Court in the decided case, are to be considered keeping in view the prevailing financial position and capacity of the State Government to bear the additional liability of a revised scale of pay. *** That is not to say that the matter is not justiciable or that the courts cannot entertain any proceeding against such administrative decision taken by the Government. The courts should approach such matters with restraint and interfere only when they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to a section of employees and the Government while taking the decision has ignored factors which are material and relevant for a decision in the*



*matter. Even in a case where the court holds the order passed by the Government to be unsustainable then ordinarily a direction should be given to the State Government or the authority taking the decision to reconsider the matter and pass a proper order. The court should avoid giving a declaration granting a particular scale of pay and compelling the Government to implement the same. ***.'*

35. *The prescription of Pay Scales and incentives are matters where decision is taken by the Government based upon the recommendation of the expert bodies like Pay Commission and several relevant factors including financial implication and court cannot substitute its views. As held in Haryana Civil Secretariat Personal Staff Association (2002) 6 SCC 72, the court should approach such matters with restraint and interfere only when the court is satisfied that the decision of the Government is arbitrary. Even in a case where the court takes the view that order/Scheme passed by the Government is not an equitable one, ordinarily only a direction could be given to the State Government or the authority for consideration of the matter and take a decision. In the present batch of cases where the respondents are claiming financial upgradation in the grade pay of promotional hierarchy, no grounds are made out to show that the MACP Scheme granting financial upgradation in the next grade pay is arbitrary and unjust; warranting interference. The implementation of the MACP Scheme is claimed to*



have led to certain anomalies; but as pointed out earlier, MACP Scheme itself is not under challenge.”

11.14. Government of Odisha in Finance Department *vide* Resolution No.3560-PCC(A)-49/2012/F, dated 06.02.2013, in consideration of Fitment Committee recommendations, granted ACP to the State Government employees on completion of 15th, 25th and 30th years of service akin to the Time Bound Advancement (TBA) provisions of the Odisha Revised Scales of Pay Rules, 1998, and taking into account the uncertain promotional avenues and career stagnation of the State Government employees, decided to implement a career advancement scheme to be known as Revised Assured Career Progression Scheme (RACPS), with effect from 01.01.2013.

11.15. It can be culled out from the RACPS under the ORSP Rules, 2008, that after the Central Government introduced a Modified Assured Career Progression Scheme (MACPS), the Government of Odisha in the Finance Department *vide* Resolution dated 6th February 2013 allowed the RACPS for the State Government employees with effect from 01.01.2013. In terms of the said RACPS, three financial upgradations are made available counted from the direct entry grade on completion of 10, 20 and 30 years of service in a



single Cadre in the absence of promotion. In terms thereof an employee:

- (a) on completion of 10 years of service in the entry grade, will be considered for the first upgradation under the RACPS;
- (b) on completion of 20 years of service and having got only one upgradation either by promotion or by RACPS, will be considered for the second upgradation;**
- (c) likewise on completion of 30 years of service and having got two upgradations either by RACPS or promotion or both will be considered for third upgradation under the RACPS.

11.16. Per Paragraphs 2 and 4 of Annexure-I to the RACPS, it has further been stipulated that the financial upgradation under the RACPS would be admissible up to the highest Grade Pay of Rs.7,600/- in the Pay Band— PB-3 under the ORSP Rules, 2008 and shall be permissible with effect from 1st January 2013 in case of those employees only after regulation of their pay under the ORSP Rules, 2008. It is stated that on introduction of the RACPS, the ACP Scheme under the ORSP, 2008, ceased to be operational.



Further, under Paragraph 4 thereof, it was stipulated that there will be a Screening Committee to decide the eligibility of persons for upgradation under RACPS.

In paragraph 10 of the RACPS it has been clearly found mentioned that benefit of pay fixation available at the time of regular promotion shall also be allowed at the time of financial upgradation under the Scheme, which means the pay shall be raised by 3% of total of pay in the Pay Band and the Grade Pay drawn before such upgradation. The employees of the Cadre having promotional hierarchy will get the Grade Pay of the promotional post. The employees in isolated/*ex*-Cadre posts not having any promotional hierarchy will get the next higher Grade Pay as per the First Schedule of ORSP Rules, 2008 with the interpolations, if any, introduced subsequently. In case the new Grade Pay corresponds to a different Pay Band, the employee will get the Pay Band corresponding to the revised Grade Pay. There shall, however, be no further fixation of pay at the time of regular promotion. In this paragraph the expression “immediate next higher Grade Pay” is conspicuously absent. Therefore, there is justification in holding that the petitioner would be entitled to Grade Pay corresponding to the Pay Band of promotional hierarchy. In this context cue can be had to what has been stated in *Union of India Vrs. M.V.*



Mohanan Nair, (2020) 7 SCR 851, wherein it has been observed as follows:

*“27. The learned amicus and the learned counsel appearing for the respondents urged the court to adopt a “purposive interpretation” that the words “immediate next higher Grade Pay” to be interpreted as “Grade Pay of the next promotional post” in the hierarchy. MACP Scheme envisages merely placement in the immediate next higher Grade Pay. By perusal of the MACP Scheme extracted earlier, it is seen that the words used in the Scheme are “placement in the **immediate next higher Grade Pay** in the hierarchy of the recommended revised pay bands”. The term **“Grade Pay in the next promotional post” is conspicuously absent in the entire body of the MACP Scheme.** The argument of the respondents that the benefit of MACP Scheme is referable to the promotional post, is de hors the MACP Scheme and cannot be accepted. Though ACP and MACP Schemes are intended to provide relief against stagnation, both the Schemes have different features. Pay scales under the Sixth Pay Commission and the MACP Scheme are stated to be more beneficial since it extends to the employees with time intervals with higher pay bands and various facilities which were not available under the ACP Scheme including the three financial upgradations in shorter time span. In any event, MACP Scheme has not been challenged by the respondents. As rightly contended by the learned ASG, the respondents cannot be permitted to cherry-pick beneficial*



features from the erstwhile ACP Scheme and also take advantage of the beneficial features in the MACP Scheme.”

Under paragraph 13, it was provided that if a financial upgradation of the RACPS was not allowed due to certain departmental proceedings, the case of the concerned employee would be reviewed in the subsequent years. In the event of disciplinary/penal proceedings, the grant of benefit under the RACPS would be subject to the rules/guidelines governing normal promotion and would be governed under the provisions of the Odisha Civil Services (Classification, Control and Appeal) Rules, 1962.

11.17. This Court cannot be oblivious to take note of conceptual understanding with regard to ACP prior to 01.01.2013 and treatment of the same towards consideration of RACPS. It is explained in *State of Odisha Vrs. Bikash Ranjan Dash*, 2021 SCC OnLine Ori 1839 that:

“A careful perusal of the RACPS introduced by the resolution of the FD dated 6th February 2013 reveals that even while introducing the said RACPS, the Government considered the recommendations of the fitment committee and the prevalent system of granting TBA under the ORSP Rules, 1998 as well as the ACP under the ORSP Rules, 2008. The RACPS Resolution acknowledges in its preamble that the Central



Government had introduced the MACPS. Therefore, something similar had to be introduced in the State Government. Therefore, the RACPS was being introduced as a Career Advancement Scheme. The purpose of granting of financial upgradations was the absence of a promotional avenue to an employee who has remained over a long period of time in the same cadre. There are as many as 18 paragraphs in the RACPS. The grant of earlier benefits was clearly not seen as bar to receipt of the benefit under the RACPS. For instance, in Paragraph 18, it is clarified as under:

‘Assured Career Progression (ACP) availed under ORSP Rules, 2008 shall not be taken into account while considering the RACPS in favour of an employee.’ ***”

11.18. The conspectus of the above delineated principles laid down by the Courts, makes it unambiguous that the petitioner is entitled to the benefits of RACPS under the ORSP Rules, 2008.

12. Above analysis would now take this Court to consider whether the opposite party No.2 is justified in seeking to recover the amount of revised salary paid claimed to have been made in excess on account of specious plea of erroneous calculation?

12.1. This Court on earlier round of litigation being W.P.(C) No.12359 of 2022, *vide* Judgment dated 13.01.2023 has taken note of the decision of the Hon’ble Supreme Court of India in the case of *Rafiq Masih*, (2015) 4 SCC



334 to consider the grievance of the petitioner that no recovery is permissible for alleged excess payment of revised salary being made. In the said reported case it has been held as follows:

“4. Merely on account of the fact that the release of these monetary benefits was based on a mistaken belief at the hands of the employer, and further, because the employees had no role in the determination of the employer, could it be legally feasible, for the private respondents to assert that they should be exempted from refunding the excess amount received by them? Insofar as the above issue is concerned, it is necessary to keep in mind, that the following reference was made by a Division Bench [Rakesh Kumar Vrs. State of Haryana, (2014) 8 SCC 892] of two Judges of this Court, for consideration by a larger Bench:

‘2. In view of an apparent difference of views expressed on the one hand in Shyam Babu Verma Vrs. Union of India, (1994) 2 SCC 521 and Sahib Ram Vrs. State of Haryana, 1995 Supp (1) SCC 18; and on the other hand in Chandi Prasad Uniyal Vrs. State of Uttarakhand, (2012) 8 SCC 417, we are of the view that the remaining special leave petitions should be placed before a Bench of three Judges. The Registry is accordingly directed to place the file of the remaining special leave petitions before the Hon'ble the Chief Justice of India for taking instructions for the constitution of a Bench of three



Judges, to adjudicate upon the present controversy.'

5. *The aforesaid reference was answered by a Division Bench of three Judges on 08.07.2014. While disposing of the reference, the three-Judge [State of Punjab Vrs. Rafiq Masih, (2014) 8 SCC 883] Division Bench, recorded the following observations in para 6:*

'6. In our considered view, the observations made by the Court not to recover the excess amount paid to the appellant therein were in exercise of its extraordinary powers under Article 142 of the Constitution of India which vest the power in this Court to pass equitable orders in the ends of justice.'

Having recorded the above observations, the reference was answered as under:

'13. Therefore, in our opinion, the decisions of the Court based on different scales of Article 136 and Article 142 of the Constitution of India cannot be best weighed on the same grounds of reasoning and thus in view of the aforesaid discussion, there is no conflict in the views expressed in the first two judgments Shyam Babu Verma Vrs. Union of India, (1994) 2 SCC 521, Sahib Ram Vrs. State of Haryana, 1995 Supp (1) SCC 18 and the latter judgment Chandi Prasad Uniyal Vrs. State of Uttarakhand, (2012) 8 SCC 417.

14. In that view of the above, we are of the considered opinion that reference was



unnecessary. Therefore, without answering the reference, we send back the matters to the Division Bench for their appropriate disposal.'

6. ***In view of the conclusions extracted hereinabove, it will be our endeavour, to lay down the parameters of fact situations, wherein employees, who are beneficiaries of wrongful monetary gains at the hands of the employer, may not be compelled to refund the same.*** In our considered view, the instant benefit cannot extend to an employee merely on account of the fact, that he was not an accessory to the mistake committed by the employer; or merely because the employee did not furnish any factually incorrect information, on the basis whereof the employer committed the mistake of paying the employee more than what was rightfully due to him; or for that matter, merely because the excessive payment was made to the employee, in absence of any fraud or misrepresentation at the behest of the employee.

12. Reference may first of all be made to the decision in *Syed Abdul Qadir Vrs. State of Bihar*, (2009) 3 SCC 475, wherein this Court recorded the following observation in para 58:

'58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the



hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram Vrs. State of Haryana, 1995 Supp (1) SCC 18, Shyam Babu Verma Vrs. Union of India, (1994) 2 SCC 521, Union of India Vrs. M. Bhaskar, (1996) 4 SCC 416, V. Gangaram Vrs. Director, (1997) 6 SCC 139, B.J. Akkara Vrs. Govt. of India, (2006) 11 SCC 709, Purshottam Lal Das Vrs. State of Bihar, (2006) 11 SCC 492, Punjab National Bank Vrs. Manjeet Singh, (2006) 8 SCC 647 and Bihar SEB Vrs. Bijay Bhadur, (2000) 10 SCC 99.'

18. *It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*



- (i) *Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).*
- (ii) *Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.*
- (iii) *Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
- (iv) *Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
- (v) *In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."*

12.2. Referring to the above dicta in the case of *Rafiq Masih (supra)*, in *High Court of Punjab and Haryana Vrs. Jagdev Singh*, (2016) 6 SCR 781 it has been clarified as follows:

"11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the



payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.”

12.3. The argument of the learned Additional Standing Counsel based on above ruling buttressing that the petitioner having furnished Undertaking that recovery or adjustment could be made with respect to amount wrongly paid to him under the ORSP Rules, 2008, the shelter of *Rafiq Masih (supra)* could not be made available, cannot hold water inasmuch as the case of *Jagdev Singh (supra)* is with respect to a Judicial Officer in the rank of Haryana Superior Judicial Service. Nevertheless, in the instant case, the petitioner was a Senior Grade Typist in the Group C category who has already got retired on attaining superannuation on 31.05.2023.

12.4. The opposite party No.2 while issuing notice demanding to refund the excess amount paid in Letter dated 21.08.2023 (Annexure-8) failed to appreciate that the status of the petitioner. In view of proposition contained in *Rafiq Masih (supra)* that “*Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service)*” is



impermissible, the said Annexure-8 cannot be held to be tenable.

12.5. This Court wishes to have reference to *Sasikala Devi P. Vrs. State of Kerala*, (2023) 3 SCR 857 wherein it has been held that,

- “4. The learned counsel for the appellant submitted that the appellant was appointed as Assistant Grade-II in the University of Calicut on 04.05.1988. She was promoted as Assistant Grade-I on 21.12.1989. Thereafter, she was transferred to M.G. University on 04.02.1992 in terms of applicable guidelines for inter-university transfers. On 26.02.1993, she was promoted as Senior Grade Assistant and thereafter, on 03.03.1999 as Selection Grade Assistant.
5. On 04.11.1999, the appellant applied for inter-university transfer to Kerala University. As per the policy for inter-university transfer, the appellant was placed as the junior- most Assistant in the entry cadre of Assistant Grade-II, which was the post on which she was appointed in the year 1988 in the University of Calicut. On 29.09.2001, her name was included in the list of eligible Assistant Grade-II who were entitled to be promoted as Assistant Grade-I. On 22.05.2002, the appellant was promoted as Assistant Grade-I. Her pay was fixed on the promotional post. However, on an audit objection raised, the same was withdrawn. A writ petition was filed which was allowed by the Single Bench. However, in appeal filed by the



State, the order was reversed by the Division Bench of the High Court, which is under challenge in the present appeal. In fact, there was no error in fixation of pay of the appellants as they were to be given benefits, which were being given to other employees on promotion. If not given to the appellants, it would amount to discrimination.

6. *On the other hand, learned counsel for the respondents submitted that there was apparent error in fixation of pay of the appellants on the promotional post. Prior to their transfer in Kerala University, they had already got three promotions and their salary was fixed in terms of the applicable Rules. In inter-university transfer, they were placed at the bottom of the seniority list of Assistant Grade-II, however, their pay was protected. On promotion from Assistant Grade-II to Assistant Grade-I, they will not be entitled to upgradation of their salary for the reason that they were already getting salary of even a higher post namely Senior Grade Assistant. There is no error in the order passed by the Division Bench of the High Court.*

9. *The issue arose when the transferred employees were promoted in the transferee University. Their pay was fixed in terms of the normal rule granting higher pay on promotion. Audit objection was raised regarding wrong fixation of pay of the appellants. In the case in hand undisputed fact is that the appellants had already got three promotions before they got themselves transferred*



to Kerala University. The salary drawn by them of the higher post was protected. It was more than what was due to Assistant Grade-I, the post on which they were promoted even after being placed as Assistant Grade-II at the bottom of the seniority. Any promotion of a transferred employee from Assistant Grade-II to Assistant Grade-I will not entitle her of any benefit of higher scale or even increment, which is applicable to the employees normally promoted for the reason that these special class of employees were already drawing salary of the higher post which in terms of the policy for inter-university transfer was protected, though they were placed at the bottom of the seniority at the entry level.

10. The argument raised by the learned counsel for the appellants that there is no bar under Rule 28A of the Kerala Service Rules, 1959 for grant of such benefit is merely to be noticed and rejected as the entire scheme has to be read in totality. Grant of promotional benefits to the category of persons to which the appellants belong would mean granting them double benefit. Firstly, they already got in the University they were working when they were promoted as Assistant Grade-I and secondly when they were promoted on the same post in transferee University.
11. We do not find any error in the order passed by the Division Bench of the High Court.
12. **At the time of the hearing, it was submitted that all the appellants who were given the benefits have retired from service and**



recoveries were sought to be made from them though they were not at fault in grant of those benefits at the time of promotion. Considering the aforesaid fact and keeping in view the judgment of this Court in State of Punjab and Others Vrs. Rafiq Masih (White Washter) & Ors., (2015) 4 SCC 334, we direct that no recovery of the amount already paid to them be effected. However, their pension can be re-fixed considering the emoluments to which the appellants were entitled at the time of their retirement in accordance with the rules”

12.6. Reference may also be had to *Rooplekha Sirsath Vrs. Public Health and Family Welfare Department, Neutral* Citation: 2024:MPHC-IND:29984, wherein it has been observed thus:

- “4. The petitioner is challenging the recovery of excess amount of Rs.5,81,867/- paid to him/her on account of wrong fixation of pay. It is argued that the aforesaid recovery of excess payment is contrary to the law. **The petitioner is retired from the post of ANM which is Class-III post.** The recovery of excess amount on account of wrong fixation of pay is illegal and contrary to the law laid down by the Apex Court in the case of *State of Punjab Vrs. Rafiq Masih (White Washer), (2015) 4 SCC 334* . He further submits that there is no misrepresentation or fault of the petitioner in fixation of pay.
5. The Full Bench of this Court at Principal Seat, Jabalpur in identical matters has quashed such



recovery orders by judgment dated 06.03.2024 passed in Writ Appeal No.815 of 2017 (State of Madhya Pradesh and Another Vrs. Jagdish Prasad Dubey and Another) and connected writ petitions reported in 2024 SCC OnLine MP 1567, it has been held in paragraph No.35 as under:

‘Answers to the questions referred

35.

- (a) Question No.1 is answered by holding that recovery can be effected from the pensionary benefits or from the salary based on the undertaking or the indemnity bond given by the employee before the grant of benefit of pay refixation. The question of hardship of a Government servant has to be taken note of in pursuance to the judgment passed by the Larger Bench of the Hon’ble Supreme Court in the case of Syed Abdul Qadir case, (2009) 3 SCC 475. The time period as fixed in the case of Rafiq Masih (supra) reported in (2015) 4 SCC 334 requires to be followed. Conversely an undertaking given at the stage of payment of retiral dues with reference to the refixation of pay or increments done decades ago cannot be enforced.*
- (b) Question No.2 is answered by holding that recovery can be made towards the excess payment made in terms of Rules 65 and 66 of the Rules of 1976 provided that the entire procedures as contemplated in Chapter VIII of the Rules of 1976 are followed by the*



employer. However, no recovery can be made in pursuance to Rule 65 of the Rules of 1976 towards revision of pay which has been extended to a Government servant much earlier. In such cases, recovery can be made in terms of the answer to Question No.1.

- (c) *Question No.3 is answered by holding that the undertaking given by the employee at the time of grant of financial benefits on account of refixation of pay is a forced undertaking and is therefore not enforceable in the light of the judgment of the Hon'ble Supreme Court in the case of Central Inland Water Transport Corporation Limited and Another Vrs. Brojo Nath Ganguly and Another, reported in (1986) 3 SCC 136 **unless the undertaking is given voluntarily.**"*

6. *In the case of Shyam Babu Verma Vrs. Union of India, (1994) 2 SCC 521, the Apex Court while observing that the petitioners therein were not entitled to the higher pay scales, had come to the conclusion that since the amount has already been paid to the petitioner, for no fault of theirs, the said amount shall not be recovered by the respondent/Union of India. The observation made by the Apex Court in the said case is as under:*

'Although we have held that the petitioners were entitled only to the pay scale of Rs.330/- — Rs.480/- in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs.330/- — Rs.506/-



*but as they have received the scale of Rs.330/- — Rs.560/- since 1973 **due to no fault of theirs and that scale is being reduced in the year 1984** with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them.'*

7. *In the case of Sahib Verma Vrs. State of Haryana (1995) Supp.1 SCC 18, the Apex Court once again held that although the employee did not possess the required educational qualification, yet the Principal granting him the relaxation, had paid the salary on the revised pay scale. It was further observed that the said payment was not on account of misrepresentation by the employee, but by a mistake committed by the department and, therefore, the recovery could not have been made. The relevant observation of the Apex Court is reproduced as under:*

'Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which appellant cannot be held to be fault. Under the circumstances the amount paid till date may not be recovered from the appellant.'



8. *In the case of Syed Abdul Qadir Vrs. State of Bihar (2009) 3 SCC 475, the Apex Court held that **recovery of excess payment from a retired Government servant cannot be made if there is no mis-representation or fault on the part of the employee.***

9. *In view of the aforesaid, the petition is partly allowed and the impugned recovery order dated 09.02.2016 is hereby quashed.”*

12.7. The Hon'ble Supreme Court in its judgment in *Syed Abdul Qadir Vrs. State of Bihar, (2009) 3 SCC 475* recognized that the issue of recovery revolved on the action being iniquitous. Dealing with the subject of the action being iniquitous, it was sought to be concluded, that when the excess unauthorised payment is detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any recovery. Interference because an action is iniquitous, must really be perceived as, interference because the action is arbitrary. All arbitrary actions are truly, actions in violation of Article 14 of the Constitution of India. The logic of the action in the instant situation is iniquitous, or arbitrary, or violative of Article 14 of the Constitution of India, because it would be almost impossible for an employee to bear the financial



burden, of a refund of payment received wrongfully for a long span of time. It is apparent, that a Government employee is primarily dependent on his wages, and if a deduction is to be made from his/her wages, it should not be a deduction which would make it difficult for the employee to provide for the needs of his family. Besides food, clothing and shelter, an employee has to cater, not only to the education needs of those dependent upon him but also their medical requirements, and a variety of sundry expenses. Based on the above consideration, if the mistake of making a wrongful payment is detected within five years, it would be open to the employer to recover the same. However, if the payment is made for a period in excess of five years, even though it would be open to the employer to correct the mistake, it would be extremely iniquitous and arbitrary to seek a refund of the payments mistakenly made to the employee.

12.8. In the case of Staff Nurses when the Government of Odisha sought to recover excess payment made on account of erroneous calculation by revising the Pay Scale and Grade Pay, in a batch of cases being *Madhusmita Swain Vrs. State of Odisha & six others*, O.A. No.2165 of 2014 &c., vide Order dated 14.02.2017, the Odisha Administrative Tribunal, Bhubaneswar held as follows:



“2. The applicants who are presently working as Staff Nurses under the State-Respondents, have filed these O.As. with a prayer to quash the Clarification dated 17.05.2014 at Annexure-5 and the Order dated 31.05.2014 with regard to re-fixation of revised pay scale of the applicants at Annexure-6 and the Order dated 12.09.2014 directing for recovery of excess amount under Annexure-7 and for issuance of a direction to the respondents to pay salary of the applicants as per fixation of pay under the revised scale at Annexure-4.

7. So far as excess payment to be recovered from the applicants is concerned, when it is held that the applicants are entitled to get the benefit of revision of pay scale after completion of three years of regular service and the subsequent Clarification vide Letter dated 17.05.2014 is contrary to the Resolution dated 26.06.2013, the order of recovery vide Letter dated 12.09.2014 issued by the CDMO, Kalahandi pursuant to Clarification Letter dated 17.05.2014 is non-est in the eye of law. Further the issue of recovery of excess amount paid by the employer even on wrong fixation of pay has already been decided by the Hon'ble Apex Court in the case of State of Punjab and others Vrs. Rafiq Masih (White Washer) and others, reported in (2015) 2 Supreme Court Cases (L&S) 33 and (2015) 4 Supreme Court Cases 334, wherein it has been held that where payments have mistakenly been made by the employers to the employees, excess of their entitlement, recoveries by the



employer would be impermissible in law in respect of employees belonging to Class-III and Class-IV service. Hence, the Order of recovery vide Letter dated 12.09.2014 is liable to be quashed.”

Against said Order of the learned Odisha Administrative Tribunal, challenge being made, a Division Bench of this Court in *State of Odisha Vrs. Ashokarani Mishra, W.P.(C) No.21772 of 2019 & batch*, vide Order dated 24.06.2021 held as follows:

“12. Once the Anomaly Committee recommended removal of anomalies and recommended the revision of the pay scale of regular Staff Nurses, clearly the revised pay scale would become applicable from the date of the regularization itself. The recommendation of the Anomaly Committee was not to the effect that the revised pay scale should be made available prospectively as and when it was notified by the Petitioner Government. That being the position, when the notification dated 26th June, 2013 was issued, the rider inserted by the Petitioner that it would become payable on completion of 3 years in the regular pay scale, was unwarranted. That did not reflect the true intention of the Anomaly Committee.

13. A parallel could be drawn with any other pay scale revision. For e.g., the National Pay Commission’s recommendations. There too, the discrepancies are sought to be removed by referring the matters to the Anomaly Committee, and whenever such Anomaly Committee clarifies



the issue and recommends refixing the pay scale, that is given effect to from the date when the recommendation of the Pay Commission became effective. In other words, the operation of the revised pay scale would not be postponed to different dates, unless expressly stated in the notification for reasons to be given.

- 14. In the present case there was no occasion to postpone the applicability of the revised pay scales to a later date. The original Government Resolution issued on 26th June, 2013 was not intended to make the revised pay scales applicable only from the date of such Resolution.*
- 15. Further, since the Opposite Parties are in Group-C posts, the decision in the case of Rafiq Masih (supra) would apply and no recovery of any alleged excess payment can be made.*
- 16. Therefore, no grounds have been made out for interference with the impugned order of the OAT. The writ petitions are dismissed, but in the circumstances with no orders as to costs.”*

12.9. In the case of State of Odisha Vrs. Sujata Rani Sahu, 2022 SCC OnLine Ori 950 a Division Bench of this Court qua holder of isolated or ex-Cadre post made the following observations:

- “20. Therefore, taking into consideration the above aspects, if opposite party No.1 was granted with a particular Scale of Pay with Grade Pay and was allowed to get such benefits, as there was no*



*promotional avenue and RACP is the only source to get higher scale of pay, **due to stagnation of promotional avenue, being holder of an isolated post, the benefit admissible to her cannot be denied.***

21. Therefore, the Tribunal, having considered the case of the opposite party No. 1 in proper perspective, passed the impugned common order/judgment dated 17.07.2017 observing in paragraphs 6 and 7 to the following effect:

‘6. Considering the pleadings and the contention raised by learned counsel for the applicant and learned standing counsel, it is not disputed that the post of the applicant as ‘sociologist’ is an ex-cadre/isolated post. The fixation of pay as per the resolution dt. 6.2.2013 is governed under para 10 and 18 of the said resolution. For better appreciation, the relevant paras are quoted as follows: ***

7. **From para-10, it is clear that an employee who is a holder of ex-cadre/isolated post having no promotional avenue, will get the next higher grade pay as per the 1st schedule of ORSP Rules, 2008 and in case the new Grade Pay correspondence to a different Pay Band, an employee will get the Pay Band corresponding to the revised Grade Pay. In the Clarification dated 20.01.2014, this position has been clarified.** Learned counsel for the applicant referred to the case of one Bidyut Kumar



Sahoo, Geologist under the Directorate of Ground Water Survey and Investigation, Orissa who has been given the benefit of the scale of the corresponding pay Band-3 of the Grade pay of Rs.6,600/-. The State respondents have not disputed the order passed in favour of Bidut Kumar Sahoo which is consisted to the stipulated made in para-10 of RACP Scheme, 2013. The State respondents have rightly sanctioned the Grade Pay of Rs.6,600/- as per the Order dated 11.09.2014 vide Annexure-5. Basin on the observation of the finance Department, the said order was withdrawn. The observation of the Finance Department is not consistent with the ORSP Rules, 2008 and the RACPS Rules, 2013 and law is well settled that an office order cannot supersede the statutory rules. Accordingly, the grant of Grade pay of Rs.6,600/- vide Annexure-6 is to be restored and the applicant will be entitled to corresponding scale in pay Band-3 of Rs.15,600-39,100/-.'

22. *The reasons as assigned by the Tribunal while granting relief to opposite party No.1 appear to be clear, cogent and convincing. In view of such position, this Court does not find any error in the impugned judgment and Order dated 17.07.2017 passed by the tribunal in O.A. Nos. 416 of 2015 & 3039 of 2015 so as to warrant interference of this Court, which is accordingly upheld."*



12.10. Cumulative effect of judgments clearly indicates that in all situations of hardship, which would govern the employees on the issue of recovery, if payments have mistakenly been made by the employer, in excess of their entitlement, then there shall be no recovery by the authority.

Conclusion:

13. As is apparent from the Notice bearing No.179—E(ii)/42/2022/OAT, dated 16.02.2023 issued by the Odisha Administrative Tribunal as enclosed to the counter affidavit of the opposite parties as Annexure-P/2 series reveals:

“Take notice that in pursuance of Orders of Hon’ble High Court of Orissa, dated 13.01.2023 passed in W.P.(C) No. 12359/2022, the Government in G.A. & P.G. Department have been pleased to constitute a Screening Committee vide their Order No.3841/Gen.. dated 14.02.2023 for consideration of your grievance as per the Orders of Hon’ble High Court of Orissa, dated 13.01.2023.

Hence, you are instructed to submit your grievance before the Screening Committee within three days to take a decision in the matter.”

13.1.As already noticed herein above, in pursuance thereof, the petitioner has submitted his reply dated



20.02.2023 in which the grievance has been spelt out with the following opening and ending words:

*“the moot issue involved in the cases as to whether there was any illegality or irregularity in the earlier Order dated 06.03.2014 of the Odisha Administrative Tribunal, Bhubaneswar passed by the Registrar allowing the benefits of **2nd RACP in the appropriate Scale and Grade Pay.** ****

*I hope and trust your honour will pass a judicious order by allowing me to draw the benefits of Revised Assured Career Progression as per the earlier order of the Odisha Administrative Tribunal **in the 2nd Revised Assured Career Progression and also direct the Nodal Officer to re-fix my pay under 3rd Revised Assured Career Progression as per my entitlement in the Grade Pay of Rs.4,600/-.**”*

13.2. Reading of said reply does not reveal that the petitioner is aggrieved by Modified Assured Career Progression Scheme as laid down under the Odisha Revised Scales of Pay Rules, 2017⁹.

⁹ Rules 13 to 16 of the Odisha Revised Scales of Pay Rules, 2017, which came into force with effect from 01.01.2016 by virtue of Rule 1(2) of said Rules, read thus:

“13. *Modified Assured Career Progression Scheme (MACPS).—*
Modified Assured Career Progression Scheme shall come into effect from the 1st day of January, 2016 with the implementation of these rules to address the stagnation of Government employee. The Scheme is as is as follows:

(i) *There shall be three financial up-gradations under the MACPS, counted from the direct entry grade on completion of 10, 20 and 30 years of service respectively. An employee before getting MACP if avails first promotion, he shall not be considered for 1st MACP. Similarly after availing 1st MACP, if he gets 1st Promotion, this shall be covered as 1st financial upgradation under the scheme. The Second financial*



- upgradation under MACP shall be 10 years after the 1st promotion or 20 years whichever is earlier. Second promotion prior to that, shall cover the 2nd MACP. The third financial upgradation will be further 10 years from 2nd promotion or 2nd MACP whichever is earlier. The 3rd MACP stands covered if the 3rd promotion availed prior to the above;
- (ii) The MACPS envisages merely placement in the immediate next higher Level in the Pay Matrix. Thus, the Level at the time of financial upgradation under the MACPS can, in certain cases where regular promotion is not between two successive grades, be different than what is available at the time of regular promotion. In such cases, the higher Level attached to the next promotion post in the hierarchy of the concerned cadre will only be at the time of regular promotion;
- (iii) The financial up-gradations under the MACPS would be admissible up-to the Level-14 in the Pay Matrix;
- (iv) There shall be a Screening Committee to decide the eligibility of the persons for up-gradation under MACPS. The Screening Committee shall follow a time schedule and meet twice in a financial year, preferably in the first week of January and first week of July every year for advance processing of the cases maturing in that half year. Accordingly, cases maturing during the first-half, i.e. April to September of a particular financial year shall be taken up for consideration by the Committee in the first week of January. Similarly, the Screening Committee meeting in the first week of July shall process the cases that would be maturing during the second-half, i.e. October to March of the same financial year. Authority empowered to constitute Screening Committee for RACPS shall also constitute Screening Committee for MACPS;
- (v) Benefit of pay fixation available at the time of regular promotion shall also be allowed at the time of financial up-gradation under the scheme. There shall, however, be no further fixation of pay at the time of regular promotion. Fixation benefits availed under Time Bound Advancement (TBA) Scale under ORSP Rules, 1998, Assured Career Progression (ACP) and Revised Assured Career Progression Scheme (RACPS) under ORSP Rules, 2008 would be adjusted while considering financial up-gradation under MACPS;
- (vi) Promotions earned in the post carrying same Level in the promotional hierarchy as per recruitment rules shall be counted for the purpose of MACPS. In cases, where the promotional post carries the same Level in their recruitment rules, then the employee in financial up-gradation under MACP Scheme shall move to the next immediate higher Cell instead of next higher Level;
- (vii) If a financial up-gradation under the MACPS is deferred and not allowed after 10 years in a Level, due to the reason of the employees being unfit or due to pendency of departmental proceedings, or judicial proceedings this would have consequential effect on the subsequent financial up-gradation which would also get deferred to the extent of delay in grant of first financial up-gradation. The approach would be same for similar eventualities arising at 20 or 30 years as the case may be;
- (viii) In the matter of disciplinary or judicial proceedings, grant of benefit under the MACPS shall be subject to rules governing normal promotion. Such cases shall, therefore, be regulated under the provisions of the OCS (CCA) Rules, 1962 and the laws under which the judicial proceedings are instituted, as the case may be;



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- (ix) On grant of financial up-gradation under the scheme, there shall be no change in the designation, classification or higher status. However, financial and certain other benefits which are linked to the pay drawn by an employee such as HBA, allotment of Government accommodation shall be permitted;
- (x) The MACPS contemplates merely placement on personal basis in the immediate higher Level/grant of financial benefits only and shall not amount to actual functional promotion of the employees concerned. Therefore, no reservation orders shall apply to the MACPS. However, the rules of reservation in promotion shall be ensured at the time of regular promotion. For this reason, it shall not be mandatory to associate members of SC/ST in the Screening Committee meant to consider cases for grant of financial upgradation under the Scheme;
- (xi) Financial up-gradation under the MACPS shall be purely personal to the employee and shall have no relevance to his position of seniority in the grade. As such, there shall be no stepping up of pay/ antedation of increment between senior and junior after regulation of pay under MACPS;
- (xii) Pay drawn in the Level allowed under the MACPS shall be taken as the basis for determining the terminal benefits in respect of the retiring employee;
- (xiii) If a regular promotion in due course is refused by the employee before becoming entitled to a financial up-gradation, then there shall be no financial up-gradation under MACPS as the employee has not been stagnated due to lack of promotional opportunity. If, however, financial up-gradation has been allowed due to stagnation and the employee refuses the subsequent promotion, it shall not be a ground to withdraw the financial up-gradation. He shall, however, not be eligible to be considered for further financial upgradation till he agrees to be considered for promotion again and the next financial upgradation shall also be deferred to the extent of period of debarment due to such refusal. Similarly, refusal of MACP is automatically construed as refusal of promotion in the same manner;
- (xiv) Employees on deputation need not revert to the parent Department for availing the benefit of financial up-gradation under MACPS if he is drawing pay admissible to his parent post;
- (xv) Placement of an employee in the appropriate Level under MACPS shall depend upon the number of promotions and up-gradations under RACPS already availed. As such, the applicable Level for fixation of pay under these rules shall be the Level of the post the employee holds or his entitlement under MACPS whichever is higher;
- (xvi) Up-gradation of post in a cadre shall not be considered as an up-gradation under the MACPS;
- (xvii) There shall be no further financial up-gradation under MACPS, if an employee has already availed three financial up-gradations under RACPS/Promotion.
- (xviii) If there is no fixation of pay on promotion account of availing benefits under MACPS, the usual date of increment shall be retained;
- (xix) All promotions within or across the cadre supported by Rules shall be considered as up-gradations under MACPS. An employee joining a post as an outsider will be counted afresh in that post for MACP benefits;
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- (xx) Financial up-gradation in favour of an employee under MACPS shall not be considered if he is found unsuitable for promotion or does not fulfil the conditions for promotion;

Note.—The Revised Assured Career Progression Scheme (RACPS) shall cease to operate on w.e.f. 01.01.2016. The operation period of RACPS for an employee is from 1.1.2013 to 31.12.2015 or till the date he ceases to draw pay ORSP Rule, 2008.

Illustrations.—

- (a) If a Government servant (Jr. Clerk) in Level-4 gets his next regular promotion (Sr. Clerk) in Level-7 on completion of 8 years of service and then continues in the same Level for further 10 years without any promotion then he would be eligible for 2nd financial up-gradation under the MACPS in the next higher Level i.e. Level-8 after completion of 18 years (8+10). After getting 2nd financial up-gradation under MACPS, if he continues in the same Level for further 10 years without any promotion then he would be eligible for 3rd financial up-gradation under this scheme in the next higher Level i.e. Level-9 after completion of 28 years (8+10+10).
- (b) If a Government servant (Jr. Clerk) in Level-4 gets his 1st promotion (Sr. Clerk) in Level-7 on completion of 8 years of service and then gets 2nd promotion (Head Clerk) in Level-9 on completion of 7 years from the date of last promotion i.e. after completion of 15 (8+7) years of service from the date of entry as Jr. Clerk and continues in the same Level for further 10 years without any promotion then he would be eligible for 3rd financial up-gradation under the MACPS in the next higher Level i.e. Level-10 after completion of 25 years (8+7+10).
- (c) If a Government servant (Jr. Clerk) in Level-4 gets his 1st promotion (Sr. Clerk) in Level-7 on completion of 8 years of service and then gets 2nd financial up-gradation under the MACPS in Level-8 on completion of 18 (8+10) years of service and thereafter, is promoted to Head Clerk i.e. 2nd promotion in hierarchy in Level-9 on completion of 21 years of service which is after 3 years of getting 2nd financial up-gradation under the MACPS then no pay shall be fixed on such promotion except fitting of the pay in the appropriate Cell of the Level-9. If there is no such Cell exact to the amount, then the pay shall be fitted in the next above Cell. In this eventuality, the next date of increment shall be after 12 months from the date of last increment sanctioned although the employee moves to a higher Level. But, if no promotion is given after Head Clerk then the 3rd financial up-gradation under the MACPS shall be admissible in Level-10 after 10 years from the grant of 2nd financial up-gradation under this scheme i.e. after completion of 28 (8+10+10) years of service from the date of entry into the post of Jr. Clerk instead of 10 years from the date of promotion to Head Clerk.
14. Excess payment to be recovered.—
Where in the course of fixation of pay under these rules, any amount drawn or received as pay by any Government servant under any rule is found to be in excess of the amount payable to him under these rules, the excess amount so drawn or received shall be recoverable from such Government servant or from his recoverable pensionary benefits for which he shall submit an undertaking as specified in the Fifth Schedule.
15. Overriding effect of these rules.—



13.3. The narration of facts, particularly from Annexure-B forming part of the recommendation of the Screening Committee in the Meeting held on 28.02.2023 reveals that the petitioner having joined as Junior Grade Typist on 04.10.1990 was promoted to the post of Senior Grade Typist on 01.02.2019 and has already availed the financial benefit under the RACP Scheme (obviously, under the ORSP Rules, 2008 as he completed 20 years of service on 03.10.2010). Since the Odisha Revised Scales of Pay Rules, 2017 along with Modified Assured Career Progression Scheme (Rule 13 thereof) has come into force with effect from 01.01.2016, there cannot be any dispute that the fixation of Scales of Pay and Grade Pay would accrue by virtue of the ORSP Rules, 2008, so far as 2nd RACP is concerned.

The provisions of the Orissa Service Code, the Orissa Revised Scales of Pay (for Non-Gazetted Officers) Rules, 1974, the Orissa Revised Scales of Pay (for Gazetted Officers) Rules, 1974, the Orissa Revised Scales of Pay Rules, 1981, the Orissa Revised Scales of Pay Rules, 1985, the Orissa Revised Scales of Pay Rules, 1989, the Orissa Revised Scales of Pay Rules, 1998 and the Orissa Revised Scale of Pay Rules, 2008, shall not, save as otherwise provided in these rules, apply to cases where pay is regulated under these rules, to the extent they are inconsistent with these rules.

16. *Power to relax.—*

Where the Finance Department is satisfied that the operation of all or any of the provisions of these rules cause/causes undue hardship in any particular case, they may, in the public interest, by order, dispense with or relax the requirements of all or any such provisions to such extent and subject to such conditions as may be deemed necessary for dealing with the case in a just and equitable manner.”



13.4. From the above it is unambiguous that the present case is confined to claim and entitlement of the petitioner as regards the 2nd RACP under the ORSP Rules, 2008.

14. Present case is a case where against the unilateral decision of the opposite parties to revise the Pay Scale by reducing the Grade Pay of promotional post on the specious plea of Senior Grade Typist is not a feeder grade for the promotional post of Senior Assistant has been interfered with by this Court by Judgment dated 13.01.2023 in W.P.(C) No.12359 of 2022. However, scope being given to the Nodal Officer to apply his conscientious mind by placing material before the Screening Committee, it is found that no reason has been assigned by discussing points raised by the petitioner, thereby there has been flagrant violation of principles of natural justice manifest on the record.

14.1. The discussions made in the foregoing paragraphs, reasons ascribed thereto supported by the settled principles enunciated by the Hon'ble Supreme Court of India and explained in different cases by this Court as well as other High Courts lead to irresistible conclusion that the opposite parties have misdirected themselves in appropriately considering the grievance



of the petitioner with regard to claim of RACPS under the ORSP Rules, 2008, while passing the impugned order. Therefore, there is no infirmity in the order dated 06.03.2014 under Annexure-4 allowing the benefit of RACP and fixation thereof.

14.2. The opposite parties should have considered the plight of the petitioner, who was an employee belonging to Group-C category and taking note of the fact that the petitioner has since been retired from service on 31.05.2023, there shall be no recovery of alleged excess payment of salary as per Letter dated 21.08.2023 (Annexure-8) in view of principles propounded in the decisions as referred to above. Furthermore, from the Annexure-B appended to Office Order dated 30.05.2023 it transpires that the recovery is sought to be made by revising/modifying Pay of the petitioner by computation since 01.01.2013 till 01.10.2022 (for around 10 years). It would cause hardship if the terms of Letter dated 21.08.2023 is given effect to. The case of *Rafiq Masih, (2015) 4 SCC 334* has been followed in *Thomas Daniel Vrs. State of Kerala, 2022 SCC Online SC 536* wherein it has been held,



“Coming to the facts of the present case, it is not contended before us that on account of the misrepresentation or fraud played by the appellant, the excess amounts have been paid. The appellant has retired on 31.03.1999. In fact, the case of the respondents is that excess payment was made due to a mistake in interpreting Kerala Service Rules which was subsequently pointed out by the Accountant General.”

14.3. When the present case is examined, it is akin to the above and under the aforesaid premises, the conclusion is, without any doubt in mind, that the Order dated 30.05.2023 of the Nodal Officer (Annexure-7) acceding to the decision of the Screening Committee taken in the Meeting held on 28.02.2023 denying the benefit of RACPS under the ORSP Rules, 2008 cannot be sustained and accordingly warrants interference.

14.4. It is not controverted either in the reply or otherwise that the benefit stated to have been erroneously conferred to the petitioner lasted for long period. Being so, when concededly the mistake was on the part of the opposite parties and the so-called “Undertaking” was involuntary in nature. In view the ratio laid down in *Rafiq Masih (supra)* and *Thomas Daniel (supra)* read along with other cases referred to in the foregoing paragraphs, the Letter dated 21.08.2023 issued by the



Officer-on-Special Duty, Odisha Administrative Tribunal *vide* Annexure-8 seeking to recover an amount of Rs.3,75,255/- alleged to have been drawn and disbursed in favour of the petitioner during the “service period” can be said to be on jejune grounds, which deserves indulgence.

15. In the result, on the discussions made above, for the reasons ascribed hitherto and in the light of the legal position with ratio of the decisions referred to above, this Court sets aside the Order dated 30.05.2023 of the Nodal Officer (Annexure-7) and quashes the Letter dated 21.08.2023 issued by the Officer-on-Special Duty, Odisha Administrative Tribunal (Annexure-8).

15.1.As a sequel to the above, the opposite parties shall refix the claim of the petitioner as at Annexure-4 and extend all such consequential benefits including the retirement benefits in consonance with the observations made above.

15.2.Needless to observe that recovery, if any, made from the petitioner shall be refunded forthwith.

15.3.It is hoped that the above exercise shall be completed within a period of three months from date.



16. With the aforesaid observation and direction, the writ petition stands disposed of, but in the circumstances there shall be no order as to costs.

**(MURAHARI SRI RAMAN)
JUDGE**

*High Court of Orissa, Cuttack
The 2nd January, 2025//MRS/Laxmikant/Suchitra*

Signature Not Verified
Digitally Signed
Signed by: SUCHITRA BEHERA
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 02-Jan-2025 18:30:05

