IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.6906 of 2025

Dasharathi Khuntia **.....** ***Petitioner***

Represented By Adv. –
Mr. B.S. Tripathy,
Senior Counsel
along with Mr. Atul
Tripathy

-versus-

State Of Odisha and others **.....** ***Opposite Parties***

Represented By Adv. –

Mr. Samresh Jena, ASC

CORAM:
THE HON'BLE MR. JUSTICE ADITYA KUMAR MOHAPATRA

ORDER
26.03.2025

Order No.

02. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).

2. Heard learned Senior Counsel for the Petitioner as well as learned counsel appearing for the State-Opposite Parties. Perused the writ petition as well as the documents annexed thereto.

3. The present writ petition has been filed by the Petitioner with a prayer to quash the impugned letter No.39412 dated 30.12.2024 of the Opposite Party No.2 under Annexure-5 by holding the same to be bad, illegal and contrary to the law and he has also prayed for a direction to the Opposite Parties to consider the case of the Petitioner for promotion to the next

higher rank of Section Officer, taking into consideration the seniority position as well as the recommendation of the DPC which had already taken place in the meantime and to grant all consequential service and monetary benefits consequent upon such promotion to the post of Section Officer.

4. Mr. B.S. Tripathy, learned Senior Counsel appearing for the Petitioner, at the outset, contended that the Petitioner initially entered into the Government service as a Junior Clerk in the office of the Collector, Dhenkanal, Opposite Party No.3, on 05.02.2003. While working as such, the Petitioner was given promotion to the post of Senior Clerk on 28.02.2011. While this was the position, on 08.03.2019, the G.A.&P.G. Department, Government of Odisha promulgated Odisha Ministerial Services (Method of Recruitment and Conditions of Service of Junior Assistants, Senior Assistants and Section Officers in the District Offices and offices Sub-ordinate thereto) Rules, 2019 (i.e. the "2019 Rules") under Annexure-1 to the writ petition. He further contended that pursuant to the aforesaid rules of the year 2019, a DPC meeting was convened to consider the cases of eligible officers for promotion to the post of Section Officer. Pursuant to which, case of the Petitioner was considered by the DPC. However, despite the recommendation of the DPC, nobody has been given promotion by the Opposite Parties including the present Petitioner.

5. Learned Senior Counsel appearing for the Petitioner further contended that while the Petitioner was eagerly waiting

for his promotion to the post of Section Officer on the basis of DPC recommendation and pursuant to the rules under Annexure-1, the Opposite Party No.2 published a resolution prescribing uniform pay structuring model for all district ministerial cadre officers existing under different departments of the Government of Odisha under Annexure-2 to the writ petition. Referring to the aforesaid resolution of the Government dated 15.03.2024 under Annexure-2, learned Senior Counsel appearing for the Petitioner submitted that the Government has suggested a change in the cadre and a new post has been created in between the posts of 'Senior Assistant' and 'Section Officer', in the shape of 'Assistant Section Officer'. Further, referring to the Resolution under Annexure-2, learned Senior Counsel contended that the Government has also suggested that there is no common cadre and each department will frame separate recruitment rules for each District Ministerial Cadre existing in their department so as to regulate the method of recruitment and conditions of service of persons appointed in District Ministerial Cadre. By referring to the aforesaid resolution under Annexure-2, the learned Senior Counsel appearing for the Petitioner contended that the same is a recommendation in nature. However, pursuant to the Resolution under Annexure-2, no recruitment rule has been framed by each of the department, as a result of which, the case of the Petitioner for promotion to the next higher post of Section Officer, despite the DPC having been convened and taken place on the schedule date and time, remains in a state of limbo. He further contended

that in the meantime similarly situated persons working in different departments of the Government have been given promotion under the old rules. In such view of the matter, learned Senior Counsel appearing for the Petitioner further contended that the Opposite Parties should have framed the rules by following the resolution of the Government under Annexure-2 to the writ petition. Furthermore, in the event no such rules were framed, then the Opposite Parties should have taken into consideration the recommendation of the DPC and should have given promotion to the officers whose names were recommended by the DPC under the existing rules of the year 2019, as has been done in different departments of the Government in the meantime. Being aggrieved by such inaction of the Opposite Parties in not giving promotion to the Petitioner to the post of Section Officer, the Petitioner has approached this Court by filing the present writ petition.

6. Learned counsel for the State, on the other hand, contended that he does not have any instructions in the matter. He further contended that in view of the Resolution dated 15.03.2024 of the G.A&P.G. Department under Annexure-2, the respective departments are in the process of framing the rules. However, the same has not been finalized yet. The learned counsel for the state submitted that pending finalization of the rules by different departments, pursuant to the G.A.&P.G. Department Resolution dated 15.03.2024, the case of the Petitioner and similarly situated other persons for promotion to next higher rank has not been considered by the Opposite

Parties. In such view of the matter, learned counsel for the State contended that the present writ petition is premature, inasmuch as no rule has been framed by the different departments of the government, as has recommended by the G.A.&P.G. Department in its Resolution dated 15.03.2024. In such view of the matter, the learned counsel for the State contended that the preset writ petition is devoid of merit and, as such, the same should be dismissed at the threshold.

7. Having heard the learned counsels appearing for both the sides and on a careful examination of their submissions, further taking note of the documents annexed to the writ petition, this Court observes that in the year 2019 the G.A.&P.G. Department, vide Notification dated 08.03.2019, framed a set of rules governing the service conditions of the officers, such as the Petitioner, in the District Ministerial Cadre. While the said rule was in force, another decision was taken by the G.A.&P.G. Department which was communicated vide Resolution dated 15.03.2024 (under Annexure-2) whereby a recommendation was made for restructuring of the existing cadre and to create a new post of 'Assistant Section Officer' in between the posts of 'Senior Assistant' and the 'Section Officer'. Further, the aforesaid Resolution also reveals that a decision has been taken to the effect that there will be no common cadre and each of the department shall conduct their own recruitment by framing a separate recruitment rules for their respective departments. Having said that, although the Resolution under Annexure-2 reveals that the same is to come into force w.e.f the date of

issuance of such Resolution on 15.03.2024, however, admittedly no separate rules have been framed to govern the recruitment/promotion of the officers in the ministerial cadre. It also appears that after the 2019 Rules came into force, a DPC meeting was convened as per the G.A.&P.G. Department Resolution dated 10.01.2020 to consider the matter of promotion of District Ministerial Cadre Officers. It also appears that the name of the Petitioner was considered in such DPC along with other candidates. However, the recommendation of the DPC was not acted upon as the Resolution dated 15.03.2024 of the G.A.&P.G. Department under Annexure-2 intervened in the meantime.

8. On a careful scrutiny of the documents annexed to the writ petition, this Court also observes that despite the Resolution dated 15.03.2024 under Annexure-2 having been issued by the G.A. & P.G. Department, Government of Odisha, some of the departments have taken steps to consider and give promotion to the officers, particularly from the post of Senior Assistant to the post of Section Officer. Several orders have been filed, under Annexure-4 Series to the writ petition, indicating that similarly situated persons have been given promotion to the post of Section Officer. In course of the hearing, learned counsel for the Petitioner also filed some of the orders passed by different departments of the Government giving promotion to officers from the post of Senior Assistant to Section Officer despite the Resolution dated 15.03.2024 under Annexure-2 to the writ

petition.

9. On an overall assessment of the ground scenario in the present matter, this Court is of the view that there is no uniformity with regard to the application of the Resolution dated 15.03.2024 under Annexure-2 to the writ petition and that some of the departments have denied promotion to the officers awaiting framing of rules, which have not been framed as of now. At the same time, some of the departments, while acting upon the rules of the year 2019, have already given promotion to their officers. Therefore, this Court, taking into consideration the aforesaid scenario, is of the view that the Petitioner has been discriminated against as he has not given promotion to the post of Section Officer despite the DPC meeting which has taken place in the meantime.

10. In view of the aforesaid analysis of the factual position and further keeping in view the fact that the DPC meeting was convened and some recommendations have been made so far the present Petitioner and similarly situated other persons are concerned, this Court deems it proper to dispose of the writ petition by directing the Opposite Parties to consider the case of the Petitioner for promotion subject to the recommendation of the DPC in terms of the order passed by other departments of the Government of Odisha and in terms of the 2019 Rules under Annexure-1 to the writ petition. The aforesaid direction shall remain valid in the event no new rule has been framed by the different departments. In the event any new rule comes into

force in terms of the Resolution under Annexure-2 to the writ petition, it is needless to mention here that such promotion and recruitment shall be governed by such new rule framed by different departments pursuant to the Resolution under Annexue-2.

11. Accordingly, the writ petition is disposed of by directing the Opposite Parties to carry out the aforesaid exercise within a period of two months from the date of communication of a certified copy of this order.

(A.K. Mohapatra)
Judge

Debasis

Signature Not Verified
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Location: ORISSA HIGH COURT
Date: 02-Apr-2025 15:39:00