



IN THE HIGH COURT OF ORISSA AT CUTTACK

WA No.523 of 2024

State of Odisha & Ors.

Appellants

Represented by Adv.-
Mr. S.K. Jee, AGA

-versus-

Kedarmath Nayak

Respondent

Represented by Adv.-
Mr. S.K. Mishra, Adv.

CORAM:

**JUSTICE KRISHNA SHRIPAD DIXIT
JUSTICE CHITTARANJAN DASH**

**ORDER
26.02.2026**

**Order No.
02.**

State and its officials have filed this Intra-Court Appeal, being aggrieved by a learned Single Judge's order dated 06.10.2023, whereby their RVWPET No.36 of 2016 has been negatived. In the said Review Petition, they had called in question the said learned Single Judge's order dated 27.08.2015, whereby Respondent-employee's WP(C)A No.15538 of 2015 having been favoured, a direction was issued to pay him salary in the admissible pay scale of the post of Headmaster, which he had held on in-charge basis.

2. Learned AGA, drawing our attention to the text of Rule 96 of Orissa Service Code, tells that an officiating employee, by way of in-charge or independent charge, is not entitled to the pay scale admissible to the post which he holds by that way, although he may be entitled to 50% of the presumptive pay or such other



admissible allowances. He also tells us that a six decade service jurisprudence of the country has settled the position that placing an employee in the higher post by way of in-charge, independent charge or additional charge, does not amount to promotion and therefore, pay scale of the post in which employee is placed as such does not avail to such incumbent. In support of this, he relies upon a decision of Karnataka High Court in ***B.N. Dhotrad v. Karnataka Land Army Corporation***, AIR 2006 KAR 3163.

3. Learned counsel representing the Respondent-employee vehemently contends that the Intra-Court Appeal of the kind is not maintainable against review order of a Single Judge, without laying a challenge to the original order, whereby Writ Petition was dismissed. He also tells us that to similarly circumstanced employees already benefit of the kind has been granted in terms of a Coordinate Bench decision dated 24.04.2013 entered in WP(C) No.456 of 2013 between Purna Chandra Chand v. State of Orissa and therefore, whatever be the arguable merits, this Appeal should not be entertained.

4. Having heard learned counsel for the parties and having perused the Appeal papers, we decline indulgence in the matter broadly agreeing with the submission made by the learned counsel appearing for the Respondent, keeping open the question of maintainability of Intra-Court Appeal for being treated in an proper case since assistance of the Bar in this regard is frugal, to say the least. When a set of employees have been granted benefit pursuant to Division Bench judgment, which has been affirmed by the Apex Court in SLP No.1080 of 2022 between State of Odisha v. Purna Chandra Chand vide order dated 04.02.2022, we do not



subscribe to the view now canvased by the learned AGA for setting aside the impugned judgment of learned Single Judge. The State cannot practise discrimination qua employees because of constitutional injunction enacted in Articles 14 & 16 since it is ordained to function as a Model Employer, vide ***Bhupendra Nath Hazarika v. State of Assam***, AIR 2013 SC 234.

With the above observations, this Appeal being devoid of merits is liable to be rejected and accordingly it is. The order of the learned Single Judge shall be given effect to within an outer limit of eight (8) weeks; otherwise the amount payable to the Respondent-employee carries interest at the rate of 1% per mensem for the first month and 2% for the period next following, which may be recovered from the erring officials.

Now, no costs.

(Krishna Shripad Dixit)
Judge

(Chittaranjan Dash)
Judge

Prasant