IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.23402 of 2022

In the matter of an application under Article 226 & 227 of the Constitution of India, 1950.

………………

Gagan Bihari Mohapatra & Others …. ***Petitioners***

-versus-

State of Odisha & Others …. ***Opp. Parties***

For Petitioner : *Mr. B. Routray, Sr. Adv. along with Mr.J. Biswal, Advocate*

For Opp. Parties : *Mr. S. Das, ASC*
Mr.C.A. Rao, Sr. Adv. for O.P.3

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 05.02.2026 and Date of Judgment: 23.02.2026

Biraja Prasanna Satapathy, J.

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

2. The present Writ Petition has been filed *inter alia* challenging office order dtd.09.04.2012 so passed by Opposite Party No.4 under Annexure-4, with regard to extension of the benefit of revised scale of pay in terms of the provisions contained under ORSP Rules, 2008 (in short 'Rules').

3. Learned Senior Counsel appearing for the Petitioners contended that ORSP Rules, 2008 was notified by the Government in the Finance Department vide Notification dtd.24.12.2008 under Annexure-3 and benefit of the said Rule was made effective w.e.f. 01.01.2006.

3.1. It is contended that by the time Notification dtd.24.12.2008 was issued under Annexure-3, save and except Petitioner Nos.5, 9, 10, 12, 17, 18, 19, 22, 23, 29, 30, 31 & 36, other Petitioner were in the pay roll of Orissa Forest Development Corporation Ltd. (in short 'Corporation').

3.2. It is contended that even though benefit of the revised scale under the Rules so notified on 24.12.2018 under Annexure-3, was made effective w.e.f. 01.01.2006, but since no decision was taken by the Corporation in extending the benefit of revision of the scale of pay in favour of its employees, Petitioners who were on the pay roll as on the date of Notification dtd.24.12.2008, save and except Petitioners placed at S.L. Nos. 5, 9, 10, 12, 17, 18, 19, 22, 23, 29, 30, 31 & 36, were deprived to get the benefit of such revised scale of pay and consequential revision of pension and pensionary benefits.

3.3. It is further contended that by the time in the proceeding of the Meeting dtd.02.02.2011 under Annexure-4-Series, decision was taken by the Fitment Committee for fitment of different scale of pay in consonance with ORSP Rules, 2008 and for implementation of the revised pay scale w.e.f. 01.01.2011 in favour of the employees in the pay roll of the Corporation as on 01.01.2011, but w.e.f. 01.01.2006 on notional basis, since all the Petitioners had already attained the age of superannuation, even though in the pay roll as on 01.01.2006, were deprived to get the benefit of revised scale w.e.f. 01.01.2006 and consequential revision of pension and other pensionary benefits.

3.4. Basing on such decision taken in the proceeding of the meeting dtd.02.02.2011 under Annexure-4-Series, when the Corporation decided to extend the benefit in favour of its employees who were in the pay roll of the Corporation as on 01.01.2011 and w.e.f. 01.01.2011 vide order dtd.09.04.2012, the present Petitioners moved this Court by filing W.P.(C) No.17100 of 2012 with the following prayer:-

> *"It is therefore prayed that this Hon'ble Court may graciously be pleased to:-*

i) Admit the writ application;

ii) Call for the records;

iii) Issue a writ of mandamus or any other appropriate writ/writs, direction/directions directing the Opp. Parties to extend the similar benefits of Orissa Revised Scale of Pay Rules 2008 with effect from 1.1.2006 on notional basis as has been done in case of the existing employees of the Corporation and further direct the Opp. Parties to allow the Dearness Allowance at the rate admissible to the Government employees from time to time within a reasonable time to be stipulated by this Hon'ble Court;

iv) And/or pass such other order/orders, direction/directions as this Hon'ble Court may think fit and proper for the ends of justice;

And for this act of kindness the petitioners as in duty bound shall ever pray."

3.5. It is however contended that since in the earlier Writ Petition in W.P.(C) No.17100 of 2012 no challenge was made either to office order dtd.09.04.2012 and the decision taken in the proceeding of the meeting dtd. 02.02.2011, the present Writ Petition was filed *inter alia* challenging order dtd.09.04.2012 as well as the decision taken in the proceeding of the meeting dtd.02.02.2011 under Annexure-4-Series. However, this Court vide order dtd.03.02.2026, permitted the Petitioners to prosecute the present Writ Petition and the Writ Petition in W.P.(C) No.17100 of 2012 was treated as not pressed.

3.6. Learned Senior counsel appearing for the Petitioners contended that since because of the delay in taking a decision to extend the benefit of ORSP Rules, 2008, all the Petitioners attained the age of superannuation, such a decision was taken to extend the benefit in favour of the employees in the pay roll as on 01.01.2011 w.e.f. 01.01.2011, is without any reason and basis, such a decision is not only erroneous and illegal but also not sustainable in the eye of law being arbitrary as well as discriminatory.

3.7. It is also contended that in the proceeding of the Meeting dtd.02.02.2011, though it was decided to extend the benefit of ORSP Rules, 2008 in favour of the existing employees who were in the pay roll of the Corporation as on 01.01.2011, but pay of such employees was revised w.e.f. 01.01.2006 on notional basis. Whereas in Para-2 of the proceeding of the meeting dtd.02.02.2011 under Annexure-4-Series, it was decided to extend the benefit in favour of the existing employees in the pay roll of the Corporation as on 01.01.2011 w.e.f. 01.01.2011, but in Para-7 of the said proceeding, benefit of such revised scale was allowed w.e.f. 01.01.2006 on notional basis. Not only that pay of the existing employees as on 01.01.2011 was also revised on notional basis w.e.f. 01.01.2006, so reflected vide orders issued under Annexure-5-Series.

3.8. Learned Senior Counsel appearing for the Petitioners accordingly contended that since on the face of the decision taken by the Corporation to extend the benefit of ORSP Rules, 2008 to its existing employees as on 01.01.2011 w.e.f. 01.01.2011, such benefit of revised pay was made applicable w.e.f. 01.01.2006 on notional basis, Petitioners who were on the pay roll as on 01.01.2006 are also eligible and entitled to get the benefit of such revision of their pay w.e.f. 01.01.2006 on notional basis and consequential revision of their pension and pensionary benefits.

3.9. In support of the aforesaid submissions, reliance was placed to the decisions of the Hon'ble Apex Court in the case of ***(1) D.S. Nakara vs. Union of India & Ors.,*** *reported in* ***1983 (1) SCC-305, (2) Union of India & Ors. vs. SPS Vains & Ors.,*** reported in ***2008(2) SCC (LS)-838, (3) Harekrushna Mohanty & Ors. vs. State of Orissa*** reported in ***(1986) 61 CLT-75***.

3.10. Hon'ble Apex Court in the case of ***D.S. Nakara*** in Para-28 & 29 of the judgment has held as follows:-

> *"**28.** Pensions to civil employees of the Government and the defence personnel as administered in India appear to be a compensation for service rendered in the past. However, as held in Douge v. Board of Education [302 US 74 : 83 L Ed 57] a pension is closely akin to wages in that it consists of payment provided by an employer, is paid in consideration of past service and serves the purpose of helping the recipient meet the expenses of living. This appears to be the nearest to our approach to pension with the added qualification that it should ordinarily ensure freedom from undeserved want.*
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> ***29.** Summing up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you give your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of*

rights or emoluments to one retired from service. Thus the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered. In one sentence one can say that the most practical raison d'etre for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.

3.11. Hon'ble Apex Court in the case of ***SPS Vains & Ors.*** in Para-29 & 30 of the judgment has held as follows:-

*"**29.** The Constitution Bench (in D.S. Nakara [(1983) 1 SCC 305 : 1983 SCC (L&S) 145]) has discussed in detail the objects of granting pension and we need not, therefore, dilate any further on the said subject, but the decision in the aforesaid case has been consistently referred to in various subsequent judgments of this Court, to which we need not refer. In fact, all the relevant judgments delivered on the subject prior to the decision of the Constitution Bench have been considered and dealt with in detail in the aforesaid case. The directions ultimately given by the Constitution Bench in the said case in order to resolve the dispute which had arisen, is of relevance to resolve the dispute in this case also.*

***30.** However, before we give such directions we must also observe that the submissions advanced on behalf of the Union of India cannot be accepted in view of the decision in D.S. Nakara case [(1983) 1 SCC 305 : 1983 SCC (L&S) 145] . The object sought to be achieved was not to create a class within a class, but to ensure that the benefits of pension were made available to all persons of the same class equally. To hold otherwise would cause violence to the provisions of Article 14 of the Constitution. It could not also have been the intention of the authorities to equate the pension payable to officers of two different ranks by resorting to the step-up principle envisaged in the fundamental rules in a manner where the other officers belonging to the same cadre would be receiving a higher pension.*

3.12. This Court in the case of ***Harekrushna Mohanty*** in Para-4 of the judgment has held as follows:-

> *"**4.** The Supreme Court by its decision reported in D. and others v. Union of India', (supra) observed "......*
>
> *With the expanding horizons of socio-economic justice, the socialist Republic and welfare State which we endeavor to set up and largely influenced by the fact that the old men who retired when emoluments were comparatively low and vagaries of continuously rising prices, the falling value are exposed of the rupee consequent upon inflationary inputs, we are satisfied that by introducing an arbitrary a eligibility criteria: 'being in service and retiring subsequent to the specified date' for being eligible for the liberalized pension scheme and thereby dividing a homogeneous class, the classification being not based on any discernible rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalized pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for liberalized pension scheme of 'being in service on the specified date' and retiring sub-sequent to that date in impugned memoranda, Exhibits P. 1 and P. 2, violates Article 14 and is unconstitutional and is struck down. Both the memoranda shall be enforced and implemented as read down as under: In other words, in Ext. P-1, the words:*
>
> *'that in respect of the Government servants who were in service on the 31st March, 1979 and retiring from service on or after that date and in Exhibit P-2 the words:*
>
> *'the new rates of pension are effective from 1st April, 1979 and will be applicable to all service officers who became/become non-effective on or after that date are unconstitutional and are struck down with this specification that the date mentioned therein will be relevant as being one from which the liberalized pension scheme becomes operative to all pensioners governed by 1972 Rules irrespective of the date of retirement. Omitting the unconstitutional part it is declared that all*

pensioners governed by the 1972 Rules and Army Pension Regulations shall be entitled to pension as computed under the liberalized pension scheme from the specified date, irrespective of the date of retirement. Arrears of pension prior to the specified date as per fresh computation is not admissible......"

No doubt, following the Supreme Court decision, the Government of Orissa has extended the benefit of the scheme to the pensioners who have retired before 31-3-1979, but has imposed the restriction that the same would be available to them only from 1-1-1985 vide Annexure-4. Thus, Annexure-4 has made discrimination between employees who have retired prior to 31-3-1979 and after that date inasmuch as the pensioners retiring after 31-3-1979 would be entitled to the liberalized pension scheme with effect from 1-4-1979, but others would get the same only from 1-1-1985. In view of the Supreme Court decision cited above, this is clearly discriminatory and hence unsustainable.

4. Mr. C.A. Rao, learned Senior counsel appearing for the Opposite Party No.3-Corporation on the other hand made his submissions basing on the stand taken in the counter affidavit so filed.

4.1. It is contended that even though vide notification dtd.24.12.2018 under Annexure-3, benefit of revised scale of pay under ORSP Rules, 2008 was made effective w.e.f. 01.01.2006, but Government in the Department of Public Enterprises vide its Resolution dtd.08.05.2009 under Annexure-B, permitted the State Public Sector undertakings to allow such revision of scale of pay w.e.f. 01.01.2006, subject to fulfillment of the following eligibility criteria as per ORSP Rules, 2008:-

> *"(i) The Public Sector Undertakings must be a profit making one and its balance sheet must show cumulative profit at least for the last consecutive, two years.*
>
> *(ii) The Public Sector Undertaking must not have defaulted in payment of statutory dues of the employees such as provident Fund and ESI etc.*
>
> *(iii) The Public Sector Undertaking must not have defaulted in payment of loan to any financial institution or Government. The Public Sector Undertaking must be up to date in payment of guarantee fee/ royalty / dividend to the State Government, whichever is applicable.*
>
> *(iv) The Public Sector Undertaking must have completed statutory audit up to date.*
>
> *(v) The Public Sector Undertaking has to meet the expenditure for payment of revised scale of pay to the employees from its internal resources and must not depend on Government for any financial support on such expenditure."*

4.2. It is contended that basing on such direction issued by the Government in the Department of Public Enterprises vide its Resolution dtd.08.05.2009 under Annexure-B, the Board of Directors of the Corporation in its proceeding dtd.24.12.2010 under Annexure-C, approved the proposal for implementation of the revised scale of pay as per ORSP Rules, 2008, to be payable w.e.f. 01.01.2011, to the employees of the Corporation who are in the pay roll as on 01.01.2011. The Board of Directors while taking such a decision under Annexure-C, authorized the Managing Director of the Corporation to finalize the fitment of different scale of pay as per ORSP Rules, 2008.

4.3. It is contended that basing on the decision so taken by the Board of Directors in its proceeding dtd.24.12.2010 under Annexure-C, the Managing Director of the Corporation vide office order dtd.31.01.2011, constituted a Committee for finalization of the fitment of different scale of pay in consonance with ORSP Rules, 2008 in favour of the employees of the Corporation who are in the pay roll as on 01.01.2011.

4.4. It is contended that in terms of the decision taken by the Board of Directors under Annexure-C and the order issued by the Managing Director of the

Corporation on 31.01.2011 under Annexure-D, the Fitment Committee in its proceeding dtd.02.02.2011 under Annexure-4-Series, held the employees of the Corporation who were in the pay roll of the Corporation as on 01.01.2011 to get the benefit of ORSP Rules, 2008 w.e.f. 01.01.2011. However, the Fitment Committee allowed such revision of the scale of pay w.e.f. 01.01.2006, in favour of its existing employees on notional basis and actual financial benefits was given only w.e.f. 01.01.2011.

4.5. It is accordingly contended that since by the time the Board of Directors in its proceeding dtd.24.12.2010 under Annexure-C took the decision to extend the benefit of the revised scale in favour of the existing employees w.e.f. 01.01.2011, all the Petitioners which is not disputed, had already retired on attaining the age of superannuation, in view of the stipulation contained in Para-2 of the proceeding of the meeting dtd.02.02.2011 under Annexure-4-Series, Petitioners are not eligible and entitled to get the benefit of revised scale of pay w.e.f. 01.01.2006, even on notional basis. Para-2 of the proceeding reads as follows:-

> *"**2. COVERAGE**:*
>
> *The revised pay scale as per the ORSP Rules, 2008 shall apply to all Officers and staff of the Corporation*
>
> *---who are in whole time employment and who are in pay roll of the Corporation as on 01.01.2011.*
>
> *---All employees, workers who had retired/ expired/ voluntarily retired/ terminated/ resigned etc, on or after 01.01.2011.*
>
> *However, this pay revision shall not apply to NMR/Contingent workers and also employees/workers who are engaged through Contractors/Service providers and deputationists".*

4.6. It is accordingly contended that Petitioners are not eligible to get the benefit as prayed for and the same has been rightly rejected vide the impugned order dtd.09.04.2012 under Annexure-4.

5. To the stand taken in the counter affidavit, learned Senior Counsel appearing for the Petitioners made further submission basing on the stand taken in the rejoinder affidavit. Though it is not disputed that pursuant to the Resolution of the Board of Directors of the Corporation in its proceeding dtd.24.12.2010 under Annexure-C, the Board approved the proposal for implementation of the revised scale as per ORSP Rules, 2008 in favour of the existing employees w.e.f. 01.01.2011 who are in the pay roll as on 01.01.2011, and such a decision was also taken by the Fitment Committee in its proceeding dtd.02.02.2011 under Annexure-4-Series, but all such existing employees who were on the pay roll of the Corporation as on on 01.01.2011, were extended with the benefit of revised scale w.e.f. 01.01.2006 on notional basis and actual financial benefit w.e.f.01.01.2011.

5.1. In support of his aforesaid submission, reliance was placed to office order dtd.30.04.2012 so available under Annexure-5-Series. Taking this Court to order dtd.30.04.2012, learned Senior Counsel appearing for the Petitioners contended that pay of the existing employees as on 01.01.2011, was revised notionally w.e.f. 01.01.2006 i.e. the date ORSP Rules, 2008 was made effective.

5.2. It is accordingly contended that since all the Petitioners were on the pay roll of the Corporation as on 01.01.2006, and all of them retired during the period 2006 to 2010, they became eligible and entitled to get the benefit of revision of their pay scale w.e.f. 01.01.2006 on notional basis and consequential revision of their pension and other pensionary benefits with payment of the differential arrear.

6. Having heard learned Senior counsels appearing for the Parties and considering the submissions made, this Court finds that the Petitioners which is not disputed are employees working under the Corporation and all of them retired during the period from 2007 to 2010. It is not disputed that ORSP Rules, 2008 was made effective w.e.f. 01.01.2006 vide Notification issued on dtd.24.12.2008 under Annexure-3. Pursuant to the Resolution issued by the Government in the Public Enterprises Department on 08.05.2009 under Annexure-B, extension of the benefit of revised scale as per ORSP Rules, 2008, was considered by the

Board of Director of the Corporation in its proceeding dtd.24.12.2010 under Annexure-C.

6.1. In the said proceeding, the Board of Directors approved the proposal for implementation of the revised scale under ORSP Rules, 2008 in favour of its existing employees w.e.f. 01.01.2011 who are on the pay roll as on 01.01.2011. Such decision taken by the Board of Directors in its proceeding under Annexure-C to the counter, was approved by the Fitment Committee in its proceeding dtd.02.02.2011 under Annexure-4-Series. As per Para-2 of the proceeding dtd.02.02.2011, the revised scale was made applicable to the employees of the Corporation w.e.f.1.1.2011, who are in the pay roll on as on 01.01.2011. But as found, on the face of such decision taken to extend the benefit to the existing employees as on 01.01.2011 w.e.f. 01.01.2011, scale of pay of such employees was revised notionally w.e.f 01.01.2006 in terms of Para-7 of the proceeding dtd.02.02.2011 under Annexure-4-Series. Para-7 of the proceeding reads as follows:-

"7. Drawal of pay in the revised pay structure:

Save as otherwise provided an employee shall draw pay in the corresponding pay in pay band with grade pay in revised pay structure applicable to the post to which he is appointed:

Provided that an employee may elect to continue to draw his pay in the existing scale until the date on which he earns his next increment in the existing scale falling due within a period of one year from the date of enforcement of the revised scale of pay or until he vacates his post or ceases to draw the pay in that scale:

Provided further that in case where an employee has been placed in a higher pay scale between 01.01.2006 and the date of notification of the order of revision of scale of pay on account of promotion and up gradation of pay scale, the employee may elect to switch over to the revised pay structure from the date of such promotion and up gradation;

Explanation (1) - The option to retain the existing scale under the provisos to this rule shall be admissible only in respect of one existing scale.

Explanation (2) - The aforesaid option shall not be admissible to any person appointed to a post on or after the 1st day. of January 2006, whether for the first time in Corporation service or by transfer from another post and he shall be allowed pay only in the revised pay structure.

Explanation (3) Where an employee exercises the option under the provisos to this rule to retain the existing scale in respect of a post held by him in an officiating capacity on a regular basis for the purpose of regulation of pay in that scale under any rule or order applicable to that post, his substantive pay shall be substantive pay which he would have drawn had he retained the existing scale in respect of the permanent post on which he holds a lien or would have held a lien had his lien not been suspended or the pay of the officiating post which has acquired the character of substantive pay in accordance with any order for the time being in force, whichever is higher."

6.2. As found from the order available under Annexure-5-Series, on the face of the decision taken by the Board of Directors in its proceeding under Annexure-C and the decision taken by the Fitment

Committee in its proceeding under Annexure-4-Series, while extending the benefit of revised scale w.e.f. 01.01.2011 in favour of its employees who are on the pay roll as on 01.01.2011, pay scale of such employees were revised notionally w.e.f. 01.01.2006.

6.3. Since all the Petitioners, which is not disputed were on the pay roll of the Corporation as on 01.01.2006, it is the view of this Court that Petitioners are also eligible and entitled for revision of their scale of pay w.e.f. 01.01.2006.

6.4. This Court accordingly while holding so with quashing of the impugned order dtd.09.04.2012, so issued by Opposite Party No.4 under Annexure-4, directs the Opposite Party-Corporation to revise the scale of pay of the Petitioners as per ORSP Rules, 2008 w.e.f. 01.01.2006 on notional basis and revise the pension and other pensionary benefits as due and admissible accordingly.

6.5. This Court further directs the Opposite Party-Corporation to release the differential pension and pensionary benefits on such extension of the revised scale of pay w.e.f. 01.01.2006 on notional basis. This Court directs Opposite Party No.3 to complete the entire exercise as directed within a period of four (4) months from the date of receipt of this order.

7. With the aforesaid observations and directions, the Writ Petition stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 23rd February, 2026/ Subrat