

**IN THE HIGH COURT OF ORISSA AT CUTTACK****RVWPET No. 243 of 2024**

(In the matter of an application under Order 47 Rule 1 read with Section 114 of the Civil Procedure Code, 1908)

Odisha Hydro Power Corporation Petitioner(s)
Ltd., Bhubaneswar & Ors.

-versus-

Golak Chandra Swain & Ors. Opposite Party (s)

Advocates appeared in this case through Hybrid Arrangement Mode:

For Petitioner(s) : Mr. Durga Prasad Nanda, Sr. Adv.
Along with associates

For Opposite Party(s) : Ms. Gayatri Patra, ASC
Mr. Kunal Ku. Swain, Adv.
Mr. S.C.D. Dash, Adv.

CORAM:

DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING:-09.02.2026

DATE OF JUDGMENT: -27.02.2026

Dr. S.K. Panigrahi, J.

1. The present Review Petition has been filed seeking review of the order dated 08.05.2024 passed by this Court in W.P.(C) No.22869 of 2016, which was subsequently modified by order dated 16.08.2024.

I. FACTUAL MATRIX OF THE CASE:

2. The Petitioner (herein Opposite Party No.1) was an employee of Odisha Hydro Power Corporation Ltd. and retired on 31.08.2003 on attaining the age of superannuation while working as Fitter Mechanic, Grade-II.



3. He was initially appointed as Fitter Mechanic, Grade-III on 01.03.1982 under the work charged establishment in the scale of pay of Rs.240-315/- per month. Subsequently, he was allowed to draw the scale of pay of Rs.300-410/- per month vide memo dated 30.08.1982 in accordance with the Finance Department order dated 15.04.1976.
4. On 26.02.1986, he was promoted to the post of Fitter-cum-Mechanic, Grade-II in the scale of pay of Rs.370-630/- per month.
5. The Irrigation and Power Department, vide letter dated 06.01.1987, revised the scale of pay of employees with effect from 01.01.1985. The scale of pay of Fitter Mechanic, Grade-III was revised from Rs.300/- to Rs.840/- per month and that of Fitter Mechanic, Grade-II from Rs.370/- to Rs.935/- per month. Thereafter, by Resolution dated 27.07.1991, the scale of pay of Fitter Mechanic, Grade-II was revised from Rs.935/- to Rs.1350/- per month with effect from 01.05.1989. Subsequently, by notification dated 18.01.1992, the scale of pay of Fitter Mechanic, Grade-II was revised to Rs.975-1660/- with effect from 01.05.1989.
6. At the relevant time, the employees of Energy and Irrigation Departments were under the common Irrigation and Power Department. In the year 1990, the two Departments were separated. The Petitioner, being under the Energy Department, continued in the pay scale of Rs.840-1240/- while employees in the Irrigation Department were in the higher scale of Rs.935-1530/- per month with effect from 01.01.1985.
7. The Petitioner submitted representations seeking grant of the higher scale of pay. He approached the Odisha Administrative Tribunal,



Cuttack Bench, in O.A. No.58(C) of 1995, which was disposed of on 07.03.1996 granting liberty to file a fresh representation.

8. Thereafter, he filed O.J.C. No.562 of 1997 before this Court seeking direction for grant of revised scale of pay. During pendency of the said Writ Petition, Opposite Party No.5 recommended his case vide letter dated 30.03.2002 to the Director (HRD), Orissa Hydro Power Corporation Ltd., Bhubaneswar, to consider grant of scale of pay of Rs.4400-7905/- with effect from 01.04.1997 as a special case.
9. O.J.C. No.562 of 1997 was disposed of on 07.08.2015 with a direction to the Director (HRD) to consider the case of the Petitioner pursuant to the recommendation dated 30.03.2002 within three months.
10. In compliance thereof, Opposite Party No.5 passed the impugned order dated 23.11.2015 rejecting the claim of the Petitioner on the ground that the rationalized scale of pay of Rs.3600-6550/- extended to him was justified.
11. The Petitioner thereafter filed the present Writ Petition challenging the order dated 23.11.2015.
12. Upon consideration of the materials on record, including the earlier order dated 07.08.2015 and the recommendation dated 30.03.2002, this Court, by judgment dated 08.05.2024, quashed the impugned order dated 23.11.2015 and directed the Opposite Parties to grant the scale of pay of Rs.4400-7905/- with effect from 01.04.1997 in favour of the Petitioner within the stipulated period.
13. Thereafter, the Review Petition has been filed seeking review of the aforesaid judgment and order.



II. SUBMISSIONS ON BEHALF OF THE PETITIONERS:

14. Learned counsel for the Petitioners earnestly made the following submissions in support of his contentions:
- (a) The Petitioners submitted that the impugned judgment suffers from errors apparent on the face of the record, non-consideration of material facts, and misapplication of settled principles of service jurisprudence, thereby warranting interference by this Court in exercise of its review jurisdiction.
 - (b) The Petitioners submitted that it is settled law that a judgment is liable to be reviewed where there is an error apparent on the face of the record, where material facts or documents have not been considered, and where the judgment proceeds on an incorrect assumption of fact or law. The Petitioners contended that the present case squarely falls within the aforesaid parameters inasmuch as the impugned order proceeds on an erroneous presumption that a mere recommendation confers a vested legal right.
 - (c) The Petitioners submitted that the entire basis of the impugned judgment is the recommendation dated 30.03.2002 made by the Senior General Manager (Electrical), RHEP. The Petitioners contended that the said recommendation was purely advisory in nature, that it was never approved by the competent authority or by the management of OHPC, and that no order of pay fixation was ever issued by the Corporation pursuant thereto. The Petitioners further submitted that it is a settled principle of law that a recommendation does not create any enforceable or indefeasible right unless the same is accepted and acted



upon by the competent authority. The Petitioners asserted that the very same authority, upon due verification of the service records of the present Opposite Party No.1, rejected the claim vide order dated 23.11.2015 in compliance with the earlier direction of this Hon'ble Court passed in O.J.C. No.562 of 1997.

- (d) The Petitioners submitted that the impugned judgment proceeds on an erroneous comparison between the present Opposite Party and Sri Gokul Chandra Sarangi, which is legally unsustainable. The Petitioners contended that the Petitioner belonged to the Fitter cadre, whereas Sri Sarangi belonged to the Operator (Mechanical) cadre, and that both cadres had separate recruitment rules, distinct promotional avenues, and different pay scales. The Petitioners further asserted that seniority lists were always maintained separately for the said cadres. The Petitioners submitted that at the time of absorption of the present Opposite Party in OHPC with effect from 01.04.1997, the scale of pay of the Opposite Party was Rs.975-1660/-, whereas the scale of pay of Sri Sarangi was Rs.1350-2200/-. The Petitioners contended that in the absence of identity of cadre, duties and hierarchy, the doctrine of equal pay for equal work is wholly inapplicable to the facts of the present case.
- (e) The Petitioners submitted that after absorption into OHPC, the pay scales were rationalised pursuant to settlements arrived at with recognised Unions, after inviting objections and suggestions. The Petitioners contended that the present Opposite Party was granted the rationalised designation of Fitter-B in NE-5 Grade with the scale of pay



of Rs.3600-6550/. The Petitioners further submitted that the said rationalised scale was more beneficial in terms of starting pay, increments, span and terminal benefits than the pre-rationalised scale applicable to the Opposite Party. The Petitioners asserted that the rationalisation scheme was never challenged before any Court, has attained finality, and is uniformly applicable to all similarly situated employees.

- (f) The Petitioners submitted that the impugned judgment failed to consider that the Petitioner was a work charged employee of the Power Wing and that his service conditions were governed by circulars issued by the Chief Engineer (Electricity). The Petitioners contended that the circulars applicable to the Irrigation Wing were never extended to the employees of the Power Wing. The Petitioners asserted that reliance on parity with the employees of the Irrigation Department is therefore factually and legally erroneous.
- (g) The Petitioners submitted that the Petitioner challenged the rejection order dated 23.11.2015 by filing the Writ Petition only on 22.12.2016, after an unexplained delay of one year.
- (h) The Petitioners contended that the impugned judgment failed to consider the settled principle that stale claims relating to pay fixation ought not to be entertained, particularly after retirement.
- (i) The Petitioners submitted that the impugned direction to grant a higher pay scale on the basis of an unaccepted recommendation undermines the statutory settlement process, destabilises cadre rationalisation, and opens the floodgates for similar claims by other



employees. The Petitioners contended that such consequences were neither pleaded nor examined while allowing the Writ Petition.

- (j) The Petitioners submitted that the judgment dated 08.05.2024 is liable to be reviewed on the grounds of error apparent on the face of the record, misreading of the recommendation dated 30.03.2002, erroneous comparison between non identical cadres, non-consideration of the rationalisation and settlement process, and failure to consider the delay and laches on the part of the Petitioner.
- (k) The Petitioners submitted that in view of the aforesaid submissions, this Court may be pleased to review, recall or modify the judgment dated 08.05.2024 passed in W.P.(C) No.22869 of 2016, uphold the rejection order dated 23.11.2015 passed by the competent authority, and pass such further order or orders as may be deemed fit and proper in the interest of justice.

III. SUBMISSIONS OF THE OPPOSITE PARTIES:

15. Learned counsel for the Opposite Parties earnestly made the following submissions in support of his contentions:

- (a) It was submitted that although this Court disposed of W.P.(C) No.22869 of 2016 vide order dated 08.05.2024 after hearing the parties, the present Review Petition has been filed on 23.09.2024 after lapse of 78 days. The cause shown in the petition for condonation of delay is not sufficient to condone the delay. The only ground taken is that upon receipt of the certified copy it was noticed that the cause title was wrongly mentioned as "Golak Chandra Swain Vs. Laxmi Biswal", for



which I.A. No.7923 of 2024 was filed and the cause title was modified on 16.08.2024.

- (b) It was submitted that the ordering portion of the judgment dated 08.05.2024 was never modified and only the cause title was corrected. Therefore, the Review Petitioners could have filed the Review Petition within time and cannot take the plea of modification of cause title, which is merely formal in nature, to justify the delay.
- (c) It was further submitted that the grounds mentioned in the limitation application are not sufficient to condone the delay. The law is well settled by the Supreme Court in *Post Master General and others v. Living Media India Ltd. and another*¹, that unless proper and cogent reasons are indicated, delay cannot be condoned merely on the ground of inter-official communications. Government departments are under a special obligation to act with diligence and commitment, and condonation of delay is an exception, not an anticipated benefit.
- (d) It was also submitted that the Supreme Court in *Shivamma (Dead) by LRs v. Karnataka Housing Board and others*² has held that administrative lethargy and laxity can never stand as sufficient ground for condonation of delay and that constitutional courts should not legitimize callous attitude of State authorities.
- (e) In view of the aforesaid settled position of law, it was submitted that sufficient cause has not been shown for condonation of delay and the application for condonation of delay is liable to be rejected.

¹ (2012) 3 SCC 563.

² 2025 INSC 1104.



- (f) It was submitted that the Review Petition is liable to be dismissed not only on the ground of delay but also on merit, inasmuch as in the guise of review no new facts can be introduced for re-arguing the case, and it is well settled that review can be entertained only in the case of discovery of new and important matter or evidence, mistake or error apparent on the face of the record, or for any other sufficient reason as contemplated under Order 47 Rule 1 of the Code of Civil Procedure, 1908, none of which conditions are satisfied in the present case.
- (g) It was further submitted that the Senior General Manager (Electrical), Rengali Hydro Electric Project, Rengali vide letter dated 30.03.2002 recommended the case of the opposite party No.1 to the Director (HRD), Odisha Hydro Power Corporation Ltd., Bhubaneswar to treat the same as a special case and to grant him the scale of pay of Rs.4400-7905/- with effect from 01.04.1997. Subsequently, the same authority rejected the claim vide order dated 23.11.2015.
- (h) It was submitted that this Court, taking note of the recommendation dated 30.03.2002 and the rejection order dated 23.11.2015, vide judgment dated 08.05.2024 quashed the rejection order and directed grant of the scale of pay of Rs.4400-7905/- with effect from 01.04.1997. There is no error apparent on the face of the record in the said judgment.
- (i) It was further submitted that the plea taken in the Review Petition that implementation of the order would open floodgates is not correct, as the case of the opposite party No.1 was treated as a special case in the



recommendation dated 30.03.2002 and therefore the same does not automatically extend to others.

- (j) It was also submitted that the plea that Sri Gokul Chandra Sarangi stands on a different footing is not correct. The employees of Energy and Irrigation Departments were under one Department i.e. Irrigation and Power Department prior to separation in 1990. After separation, the opposite party No.1 continued in the lower scale whereas similarly situated employees were granted higher scale, which led to the original litigation.
- (k) It was submitted that this Court, after considering the pleadings of the parties, passed a comprehensive judgment and in the guise of review the matter cannot be reheard.
- (l) In view of the above, it was submitted that the Review Petition is devoid of merit and liable to be dismissed on the ground of delay as well as on merit.

IV. COURT'S REASONING AND ANALYSIS:

- 16. Heard the learned counsel for the parties and perused the material placed on record.
- 17. Before examining the rival contentions, it is necessary to delineate the scope of review jurisdiction. The power of review is not a power to re-examine the correctness of a decision on merits, but a limited jurisdiction intended to correct a patent error apparent on the face of the record or to consider material which, despite due diligence, was not within the knowledge of the applicant at the time of the original hearing. An error that becomes apparent only upon re-appreciation of



the material on record or reconsideration of issues already adjudicated cannot be regarded as an error apparent within the meaning of review jurisdiction.

18. The Supreme Court has consistently held that review cannot be treated as an appeal in disguise. In *Lily Thomas v. Union of India*³, it was observed in this regard:

"56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise."

19. Similarly, in *Inderchand Jain v. Motilal*⁴, the Supreme Court elucidated the scope of review jurisdiction as follows:

"33. The High Court had rightly noticed the review jurisdiction of the court, which is as under:

"The law on the subject—exercise of power of review, as propounded by the Apex Court and various other High Courts may be summarised as hereunder:

(i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

(ii) Power of review may be exercised when some mistake or error apparent on the fact of record is found. But error on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

³ (2000) 6 SCC 224.

⁴ (2009) 14 SCC 663.



(iii) *Power of review may not be exercised on the ground that the decision was erroneous on merits.*

(iv) *Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate.*

(v) *An application for review may be necessitated by way of invoking the doctrine actus curiae neminem gravabit."*

20. It therefore follows that where the alleged error becomes apparent only upon re-appreciation of the material on record or reconsideration of issues already adjudicated, such error cannot be treated as one apparent on the face of the record.
21. The foundation of the present Review Petition is the assertion that this Court, while allowing the Writ Petition, proceeded on the premise that the recommendation dated 30.03.2002 conferred a vested legal right upon the writ petitioner.
22. A plain reading of the judgment dated 08.05.2024, however, does not indicate that the decision rested on such a proposition in isolation. The reasoning was founded upon the cumulative effect of the recommendation dated 30.03.2002, the earlier judicial direction dated 07.08.2015 requiring consideration of the petitioner's case in that backdrop, and the subsequent rejection order dated 23.11.2015 passed pursuant thereto.
23. The relief was granted upon an examination of the manner in which the authority dealt with the matter after the earlier judicial direction.



The focus of the judgment was on whether the decision-making process, culminating in the rejection order dated 23.11.2015, reflected due compliance with that direction in the backdrop of the prior recommendation. The judgment cannot therefore be read as laying down that a recommendation, in itself, creates an enforceable right.

24. The submission that a recommendation is merely advisory and non-binding undoubtedly raises an arguable question. However, whether the recommendation carried binding force, and whether the rejection order reflected due application of mind, are matters which require evaluation of the factual matrix and reasoning adopted. Such questions do not disclose a patent error apparent on the face of the record.
25. The contention relating to distinction of cadres and the effect of subsequent rationalisation of pay scales pertains to issues that were available for consideration when the Writ Petition was heard and decided. Re-examination of those aspects would necessarily involve a fresh appraisal of the merits, which falls outside the limited scope of review jurisdiction.
26. The plea regarding delay in filing the Writ Petition similarly requires examination of surrounding circumstances. The absence of elaborate discussion on that aspect does not, by itself, render the judgment subject to review, unless the delay was so fundamental as to affect maintainability on its face.
27. The Review Petition, when examined in substance, seeks a reconsideration of the conclusions arrived at in the writ judgment by inviting this Court to revisit the effect of the recommendation and the



rejection order passed thereafter. Entertaining such a request would necessarily entail re-evaluation of the issues already adjudicated, which falls outside the limited scope of review jurisdiction.

28. The Review Petition is, accordingly, **dismissed**.
29. Interim order, if any, passed earlier stands vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 27th February, 2026/