

appointed in the post of Marketing Manager in Mahila Vikas Samabaya Nigam (hereinafter referred to as the 'Nigam') on 5.3.1992 in the scale of pay of Rs.2800-4350/-. Pursuant to an advertisement made by the Corporation for the post of Assistant Manager, the petitioner participated in the recruitment test and interview, and on being selected, he was appointed in the post of Assistant Manager vide letter dated 18.08.1992 issued by the Chairman of the Corporation under Annexure-1. The petitioner accordingly submitted his joining report on 01.10.1992. Thereafter, on 14.10.1992, he filed a representation (Annexure-2) claiming protection of his pay. Since no action was taken by the opp. party on the said representation, he submitted another representation dated 27.11.1996 (Annexure-3). Thereafter, the opp. party vide letter dated 06.12.1996 (Annexure-4) made an enquiry with regard to scale of pay and status of the petitioner from the Nigam. The Nigam sent its reply vide letter dated 11.12.1996 (Annexure-5). Thereafter, vide letter dated 25.1.1997 (Annexure-6) the petitioner was intimated that his representation for grant of pay protection had been rejected. The petitioner submitted another representation dated 29.1.1997 (Annexure-7) stating the cases of some similarly circumstanced employees in the Corporation, who had been granted the pay protection. Subsequently, several representations were made including the representation dated 19.12.1998 (Annexure-8). Since these representations did not yield any result, the present writ petition has been filed.

3. Mr.Kailash Chandra Kanungo, learned counsel appearing on behalf of the petitioner vehemently argued that the method of recruitment adopted by opp. party-Corporation transpires that it was in quest of the best talents from the reputed institutes. During the course of interview, the petitioner was given to understand that in the event of his selection the earlier pay drawn by him in the Nigam shall be protected. Pursuant to the petitioner's representation dated 27.11.1996, opposite party made an enquiry from the Nigam about his scale of pay and the Nigam intimated the same to opp. party. Without assigning any valid and cogent reason opposite party rejected the claim of the petitioner for protection of his pay on the ground of delayed claim. The reason of rejection is not tenable since in service matters, pay fixation or pay protection is a continuing cause of action and at no stage it can be presumed as a belated or stale claim. More particularly, when such pay protection has been extended to similarly circumstanced employees, denial of such benefit to the petitioner is violative of Articles 14 and 16 of the Constitution. The Orissa Service Code is applicable to the service conditions of the petitioner and, according to Rule 74 under Chapter-iv of the said Code, a Government servant is entitled to pay protection. In 83rd Board Meeting dated 24.09.1990, a decision was taken to the effect that in the absence of any rule of OSIC in relation to a particular matter including seizure of machinery, rules of the Government of Orissa will be followed. Moreover, the Corporation is an

instrumentality of the State over which the Government has pervasive control. Therefore, the order dated 25.1.1997 is arbitrary, discriminatory and tainted with illegality.

4. On the contrary, Mr. Manoj Kumar Mohanty, learned counsel appearing on behalf of opposite party no.1 strenuously contended that the claim of the petitioner to extend him the benefit of pay protection is not at all sustainable in the eye of law as no such protection has been prescribed under the Service Rules of the Corporation. Petitioner after having accepted the terms and conditions enumerated in the appointment letter had joined the Corporation, and he is bound to be governed by such terms and conditions. Selection to the post of Assistant Manager was made strictly on the basis of merit. No assurance was given in the appointment order for extending the pay protection benefit to the petitioner. The petitioner in his application dated 28.8.1992 filed for extension of time to join the post had clearly mentioned that he was ready to abide by the terms and conditions enumerated in the appointment letter unconditionally. The Nigam in which the petitioner had rendered service prior to his joining in the Corporation is a Cooperative Society. The Corporation is a State Government Undertaking registered under the Companies Act, 1956. The service of the petitioner under the Corporation has been taken as a fresh service through due process of selection and, therefore, there is no scope to consider the case of the petitioner for protection of his pay

on the date he joined the Corporation. Rule 74 of the Orissa Service Code is not at all applicable to the case of the petitioner. The service of the petitioner is governed by the Orissa Small Scale Industries Corporation Employees Service Rules, 1978. In the said Rules of the Corporation, nothing has been provided for protection of pay of an employee, who joins the Corporation after resigning from service of any other establishment. In the above circumstances the writ petition is liable to be dismissed.

5. It is not in dispute that in pursuance of a recruitment test and interview conducted by opposite party no.1, the petitioner was appointed vide Annexure-1 in the post of Assistant Manager in the Corporation. It appears from Annexure-F to the Counter that the petitioner had joined the said post on 1.10.1992. On 9th October, 1992 (Annexure-G), the petitioner was intimated that his joining report against the post of Assistant Manager (General) would not be accepted unless he submitted his relieve order from his earlier employer by 22.10.1992, failing which the letter of appointment would be treated as withdrawn. It appears from Annexure-H that the petitioner was relieved of his duties from the Nigam with effect from 13.10.1992 A.N. Annexure-2 to the writ petition reveals that the petitioner had submitted the said relieve order with a request for protection of his pay. The said Annexure-2 further reveals that the petitioner was working in the previous organisation in the basic pay of Rs.2,800/- and requested

the opp. party to allow him to join the Corporation from 14th October, 1992 with pay protection as agreed to at the time of interview. The petitioner again made an exhaustive representation dated 27.11.1996 vide Annexure-3 for protection of his pay. Under Annexure-4, the opposite party sought information from the Nigam (the previous employer of the petitioner) regarding his scale of pay, rate of D.A., H.R.A. etc. The Nigam in its letter dated 11.12.1996 vide Annexure-5 intimated the opposite party that the scale of pay of the petitioner was Rs.2800-100-3600-EB-125-4350/- along with the details of other allowances. Thereafter, the petitioner was intimated by letter dated 25.01.1997 vide Annexure-6 that his representation for grant of pay protection, after careful consideration by the C.M.D., had been rejected on the ground that it was not possible to accept such request for protection of pay at a belated stage. The ground assigned by the C.M.D. in the impugned order (Annexure-6) does not appear to be correct since the petitioner had submitted his joining report on 1.10.1992 and the same was not accepted for non-submission of relieve order, which was submitted on 14.10.1992 with a request of pay protection as evident from Annexure-2. From these facts, it cannot be said that the claim of the petitioner for protection of pay was made at a belated stage. Therefore, the sole ground on which petitioner's representation for protection of pay was rejected fails.

6. The other contention raised by the opposite party for not extending the benefit of protection of pay to the petitioner is that there is no provision under the Rules of the Corporation for giving pay protection to its employees. But the impugned order, by which the petitioner's claim for pay protection was rejected, does not speak of any such ground. On the other hand, Annexures-9, 10 and the notes for discussion in the Staff Selection Committee held on 13.01.1983 reveal that in cases of one Debasish Das, Asst. Manager (Project), Pradeep Kumar Mishra, Asst. Manager (Finance) and N.C. Mohanty, Asst. Manager (Audit), the claim for pay protection had been considered. In case of Debasish Das, Office order dated 27.06.1983 reveals that pay protection has been granted in his favour. The submission of the petitioner that in 83rd Board Meeting dated 24.09.1990, a decision was taken to the effect that in absence of the Rules of the Corporation in particular matter including seizure of machinery, Rules of the Government of Orissa will be followed and that Rule 74 of the Orissa Service Code indicates that a Government servant is entitled to pay protection has not been controverted by the opp. party. Further, though in the counter there is denial to the assertion of the petitioner that pay protection had been granted to the persons similarly placed, the specific instances highlighted by the petitioner in the rejoinder have not been rebutted by the opp. party placing any material before us.

Moreover, had the opp. party intended not to protect the pay of the petitioner either on the alleged ground of delay in making representation or on the ground of absence of any provision under the Corporation Rules, it would not have enquired about the scale of pay of the petitioner from the Nigam, the previous employer of the petitioner. Mr. Mohanty, learned counsel for the opp. party could not be able to clarify this aspect to the Court.

7. In view of the above, we have no hesitation to hold that the petitioner is entitled to get the benefit of protection of pay. We, accordingly, quash the impugned order dated 25.01.1997 under Annexure-6 and direct the opposite party to calculate the entitlement of the petitioner on account of protection of pay on his joining the Corporation and pay the differential salary to the petitioner within a period of two months from the date of receipt of this judgment.

8. The writ petition is allowed.
No costs.

A.S.Naidu,J. I agree.

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B.N.Mahapatra,J.

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A.S.Naidu,J.