

## ORISSA HIGH COURT: CUTTACK

**W.P.(C) NO.14225 OF 2010**

(In the matter of an application under Articles 226 and 227 of the Constitution of India)

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Aswin Kumar Das

..... *Petitioner*

-Vs-

The Executive Engineer,  
Balasore Electrical Division and another

..... *Opp. Parties*

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For Petitioner : M/s.Gautam Mukherji, Partha Mukherji,  
Anam Charan Panda and Supriya Patra

For Opp. Parties : M/s Rajjeet Roy, S.K.Singh, N.Hota  
and A.Pradhan

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**P R E S E N T :**

***THE HONOURABLE KUMARI JUSTICE S.PANDA***

Date of Hearing : 21.1.2013 : Date of Judgment : 30.1.2013

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**S.Panda, J.** This Writ Petition has been filed by the petitioner challenging the action of the opposite parties-NESCO in not paying the benefit of 3<sup>rd</sup> Assured Career Progression (A.C.P) in the revised scale and corresponding pension to the petitioner as well as the memorandum and decision of the Screening Committee dtd.03.5.2010 under Annexure-7.

2. The brief facts of the case are that the petitioner entered into service as Meter Reader / Clerk-B under the then Orissa State Electricity Board on 26.5.1973 as a regular employee. After completion of continuous service of 15 years, he availed 1<sup>st</sup> Assured Career Progression (A.C.P) w.e.f. 26.5.1988 and on

completion of 25 years of service in the said post he received the 2<sup>nd</sup> A.C.P scale w.e.f. 26.5.1988, when O.S.E.B was converted to GRIDCO and subsequently the same was converted to NESCO. While continuing in NESCO, the petitioner retired from service on 31.8.2008, on attaining the age of superannuation. In the year 2007, the opposite parties promoted the petitioner temporarily to the post of Clerk-A under regular establishment carrying the pay scale of Rs.4090-118(5)-4680-128(5)-5320-138(19)-7942/- with usual D.A along with 14 other employees. As the petitioner was getting higher scale of pay by that time i.e. 24.4.2007, he made several representations to the authorities stating therein that as there was no financial benefit in the promotion admissible under Rule 74(b) of Orissa Service Code, he refused the promotion. While matter stood thus on 24.4.2009, the opposite parties revised the scale of pay of non-executive employees / workers of NESCO w.e.f. 01.4.2005 which covered the case of the petitioner as he retired after 01.4.2005. The petitioner has also made another representation on 05.5.2009 in pursuance of the aforesaid revised scale of pay of non-executive employees requesting the opposite parties to extend the benefits of 3<sup>rd</sup> A.C.P scale under the revised pay structure. As no action was taken by the opposite parties, the petitioner approached this Court in W.P.(C) No.11289 of 2010, which was disposed of on 25.3.2010 directing the opposite parties to consider the case of the petitioner and further the Screening Committee after independently assessing the case of the petitioner shall take a decision as to whether the petitioner is entitled to 3<sup>rd</sup> A.C.P strictly in accordance with merit and in case the petitioner is found to be entitled to receive the 3<sup>rd</sup> A.C.P, the arrear dues be calculated and disbursed in his favour within a period of four months thereafter. In pursuance of the said direction, the opposite parties on the decision of the Screening Committee dtd.03.5.2010 rejected the claim of the petitioner for grant of benefit of 3<sup>rd</sup> A.C.P and subsequent retrial benefits. Being

aggrieved by the said order of the Screening Committee, the petitioner preferred an appeal before the Chief Executive Officer, NESCO on 25.5.2010, which was also disallowed vide order dated 21.6.2010. Hence the present Writ Petition.

3. Learned counsel appearing for the petitioner submitted that the petitioner was promoted to the post of Clerk-A under the regular establishment after he found to be suitable and said promotion is purely temporary without prejudice to the claim of others subject to the condition that the petitioner shall be reverted to his former post as soon as a qualified Accounts passed Clerk-B is available for promotion, if in the meantime the petitioner does not pass the Accounts Examination. He submitted that since the petitioner was getting higher scale of pay by that time, he has not availed the said promotion, continued in the same post and also completed 30 years of service. Therefore, the petitioner is entitled to get 3<sup>rd</sup> A.C.P scale of pay as per Clause-12 of the revised scale of pay of non executive employees / workers of NESCO dtd.24.4.2009, which came into force w.e.f. 01.4.2005 as he had completed 30 years of service by that time and the Screening Committee decision as well as consequent rejection by the opposite parties for granting 3<sup>rd</sup> A.C.P scale to the petitioner is liable to be interfered with.

4. A counter affidavit has been filed by the opposite parties taking a stand that as per Clause-11 of the Office Order dtd.15.3.1983 of Orissa State Electricity Board, Bhubaneswar, promotion to higher posts in the cadre of ministerial service of each circle, all vacancies in the grade of U.D Clerk (Clerk-A) shall be filled up by way of promotion from among the L.D Clerk (Clerk-B) in all the offices under the Circle, who shall have completed at least three years service and passed the Accounts Examination. Proviso to the said Clause also stipulates that if no L.D. Clerk (Clerk-B) is available the senior most L.D. Clerk (Clerk-B) may be promoted to

the post of U.D. Clerk (Clerk-A) on purely temporary basis subject to the condition that he shall be reverted as soon as a qualified Accounts passed L.D Clerk (Clerk-B) is available for promotion, if in the meantime he himself does not pass the Accounts Examination. Learned counsel for opposite parties submitted that in view of the above provision, since the petitioner had not passed the Accounts Examination, which was held in the year 2006 the Screening Committee rightly rejected his case to get 3<sup>rd</sup> A.C.P scale as per Clause-12 of the aforesaid revised scale of pay, which was implemented w.e.f. 01.4.2005 and as such the impugned order may not be interfered with.

5. Considering the rival submissions of the parties and for better appreciation of the respective stand of the parties, it is relevant to quote Clause-12 of the aforesaid revised scale of pay, which was introduced on 24.4.2009 and came into force w.e.f. 01.4.2005 and Clause-11 of the office order dated 15.3.1983 of the Orissa State Electricity Board regarding promotion to higher post in the cadre of ministerial service.

“ASSURED CAREER PROGRESSION (ACP):

12. This will be applicable to all the Non-Executive Employees Workers up to Supervisory-B w.e.f. 01.4.2005 in three stages i.e. 1<sup>st</sup> ACP on completion of 15 years, 2<sup>nd</sup> ACP after 25 years and 3<sup>rd</sup> ACP after 30 years of service, if they continue in one post/grade. The benefit of ACP will be given only after screening of each and every case by the Screening Committee to be constituted by the Controlling Departments and all norms of promotion shall be taken into consideration for allowing ACP in different stages. The financial benefit to the extent of 3 % of the Basic Pay plus Grade Pay will be added on availing ACP in different stages and next increment will accrue one year after. If the Employee / Worker has already availed both 1<sup>st</sup> and 2<sup>nd</sup> stage of Time Bound Advancement (TBA) scale under the existing provisions, he/she will not be again entitled to the ACP in the revised pay. However, the 3<sup>rd</sup> ACP after completion of 30 years of service shall be applicable as stated above.”

“11. Promotion to higher posts in the cadre of ministerial service of each circle shall be as follows:

(a) CADRE OF CLERKS

(i) All vacancies in the grade of U.D. Clerk (Clerk-A) shall be filled up by promotion from among the L.D Clerk (Clerk-B) in all the offices under the Circle who shall be completed at least three years service and passed the Accounts Examination.

Provided that if no L.D. Clerk (Clerk-B) as aforesaid is available, the Senior most L.D Clerk (Clerk-B) may be promoted to the post of U.D Clerk (Clerk-A) on purely temporary basis subject to the condition that he shall be reverted as soon as a qualified Accounts passed L.D Clerk (Clerk-B) is available for promotion, if in the meantime he himself does not pass the Accounts Examination.”

The benefit of ACP will be given only after screening of each and every case by the Screening Committee to be constituted by the Controlling Department and all norms of promotion shall be taken into consideration for allowing ACP in different stages. The 3<sup>rd</sup> ACP will be given after completion of 30 years of service. Therefore, the only stipulation to grant ACP is that all norms of promotion shall be taken into consideration for allowing the ACP in different stages.

On a plain reading of the above provisions, it reveals that L.D Clerk (Clerk-B) may be temporarily promoted to the post of U.D Clerk (Clerk-A) subject to the condition that he has to pass Accounts Examination before a junior in the same cadre available to get promotion having passed the Accounts Examination.

6. The case of the petitioner was considered by the Departmental Promotion Committee for promotion from the post of L.D Clerk (Clerk-B) to U.D Clerk (Clerk-A), which was subject to the condition that as soon as a qualified Accounts Clerk is available for promotion and from the date of promotion till a qualified Accounts passed L.D Clerk (Clerk-B) is available to get promotion, the employee who was temporarily promoted should pass Accounts Examination otherwise the employee who get the temporary promotion is to be reverted to his former post and the employee available after passing

the Accounts Examination in Clerk-B will get the promotion. As revealed from the order dated 06.3.2007 under Annexure-1 by which the petitioner was promoted temporarily to the post of Clerk-A so also Clause-11 of the Office Order dtd.15.3.1983 of Orissa State Electricity Board, Bhubaneswar regarding promotion to the post of U.D Clerk (Clerk-A) which is purely temporary basis subject to the condition that the employee shall be reverted as soon as a qualified Accounts passed L.D Clerk (Clerk-B) is available for promotion, if in the meantime the employee does not pass the Accounts Examination. On a plain reading of above Clause-12 of the Office Order dtd.24.4.2009 with regard to revised scale of pay of the Non-Executive Employees / Workers of NESCO and Clause-11 of the Office Order dated 15.3.1983, it reveals that Clerk-B may be temporarily promoted to Clerk-A, if he was found suitable by the Departmental Promotion Committee and the said temporary promotion is subject to the employee has to pass Accounts Examination before any Clerk-B employee having passed Accounts Examination available for promotion. In the present case, it is not the case of the opposite parties that the petitioner was temporarily promoted to the post of Clerk-A and he has not passed the Accounts Examination and junior Clerk-B was available having passed the Accounts Examination to get promotion rather it is their specific stand that the petitioner has not passed the Accounts Examination, therefore, he was not entitled to get promotion to Clerk-A as examination was held in the year 2006. However, the Departmental Promotion Committee found the petitioner to be suitable to get promotion in the year 2007 even though by that time the petitioner had neither appeared the examination held in 2006 nor passed the Accounts Examination. But he was temporarily promoted from Clerk-B to Clerk-A subject to the aforesaid condition that the Clerk-B employee available to get promotion and in the meantime if he perhaps has not passed the Accounts Examination then he will be reverted. It is not the case of the opposite parties that by the time the petitioner retired from service another Clerk-B was available having passed the

Accounts Examination to be promoted to the said post of Clerk-A so that he had not received the benefit of 3<sup>rd</sup> A.C.P as stipulated under Clause-12 of the Office Order dtd.24.4.2009 with regard to revised scale of pay of the Non-Executive Employees / Workers of NESCO, which was came into force from 01.4.2005. As per Clause-12 it is clear that if the employee has already availed first and second stage of Time Bound Advancement scale under the existing provisions, he will not be again entitled to the A.C.P in the revised pay. However, the 3<sup>rd</sup> A.C.P after completion of 30 years of service shall be applicable to him as he was continuing in the same post and the Departmental Promotion Committee found him suitable to give promotion. Therefore, the decision of the Screening Committee rejecting the claim of the petitioner to get 3<sup>rd</sup> A.C.P was not sustainable in view of Clause-11 of the Office Order dtd.15.3.1983 of the Orissa State Electricity Board, Bhubaneswar which was adopted by NESCO also.

7. In view of the above reasons, this Court while quashing the decision of the Screening Committee dtd.03.5.2010 under Annexure-7 as well as the order dtd.21.6.2010 under Annexure-9 passed by the Executive Engineer (Electrical), Balasore Electrical Division, Balasore, rejecting the claim of the petitioner to grant 3<sup>rd</sup> A.C.P directs the opposite parties to disburse all benefits of 3<sup>rd</sup> A.C.P and subsequent pensionary benefits w.e.f. 01.4.2005 in favour of the petitioner within a period of six weeks from the date of production of certified copy of this judgment.

The Writ Petition is accordingly disposed of.

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**S.Panda, J**