



Rs.5200-20200/-, Grade Pay of Rs.1800/-, with effect from 01.01.2006.

3. In order to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues, after careful consideration, the Government has decided to introduce the ACP Scheme as a 'Safety Net' measure, for giving the benefit of two financial up-gradation after completion of 12/24 years of regular service to the employees, who have not got any promotion within 12/24 years of service. The ACP scheme was replaced by Revised Assured Career Progression (RACP) Scheme by the Government vide Finance Department Resolution No.3560/F dated 06.02.2013. As per the order dated 10.08.2010 passed by the Government of Odisha, Horticulture Department. The Petitioner was brought to the cadre post of Grafter in the scale of pay of Rs.5200- 20200/- with Grade Pay of Rs.1900/- vide order dated 08.09.2011. Thereafter, the Petitioner was re-designated as Horticulture Extension Worker (HEW). However, on the merger of two posts with effect from 23.03.2012 in the pay of Rs.5200-20200/- with Grade Pay of Rs.2000/-, the next promotional post of HEW is the post of Horticulture Overseer in the scale of pay of Rs.9300-34800/- with Grade Pay of Rs.4200/-.

4. The Government of Orissa has issued a clarification order on 20.01.2014 regarding the Revised Assured Career Progression Scheme (RACPS) for the State Government employees wherein it was clarified that if an employee completes 30 years service before 01.01.2013 without any promotion, his/her pay shall be fixed stage-wise in the pay band and grade pay of 1<sup>st</sup> promotional post, then 2<sup>nd</sup> promotional post and finally 3<sup>rd</sup> promotional post on 01.01.2013 without being directly fixed in 3<sup>rd</sup> promotional post. As per the RACP scheme, considering the date of joining of the Petitioner, without any promotion throughout, the Petitioner was entitled to three financial up-gradation during thirty years of service i.e. 1<sup>st</sup> financial up-gradation in December, 1991, 2<sup>nd</sup> financial up-gradation in December, 2001 and the 3<sup>rd</sup> financial up-gradation with effect from the cut-off date, i.e. 6/2013 in the pay scale of Rs.5200-20200/- with Grade Pay Rs.4200/-. In this matter, the Director of Horticulture, Odisha, Bhubaneswar by giving detailed particulars of the Petitioner, he sought clarification from the Government vide letter dated 29.01.2015.
5. While the matter stood thus, the Opposite Parties allowed 3<sup>rd</sup> RACP to Grade Pay Rs.2000/- to the Petitioner vide order dated 20.8.2014. The Petitioner also submitted a representation to the Director of Horticulture, Odisha,

Bhubaneswar on 27.09.2016 seeking grant of 3<sup>rd</sup> RACP to Grade Pay Rs.4200/-. The Opposite Parties issued the order dated 30.07.2015 clarifying fixation of pay of the Petitioner on grant of RACP benefit. The Director of Horticulture, Odisha, Bhubaneswar vide letter dated 31.8.2016 directed extension of 3<sup>rd</sup> financial up-gradation under RACP to Grade Pay Rs.4200/. Accordingly, 3<sup>rd</sup> financial up-gradation under MACP to Grade Pay of Rs.4200/- was granted to the Petitioner vide order dated 01.09.2016. On 04.07.2017, the Government also issued further clarification on grant of financial up-gradation under RACP in which it was clarified that the financial up-gradation under RACP was also applicable to the employees holding the ex-cadre/isolated post.

6. Ms. Ksheerabdhi Tanaya Samantaray, another employee filed an application against the petitioner before NHRC accusing him of mentally harassing her mother Smt. Manaswini Mohapatra, Jr. Clerk of Director Horticulture, who is one of the Opposite Parties who questioned the grant of 3<sup>rd</sup> financial up-gradation under RACP to Rs.4200/- to the Petitioner vide letter dated 27.07.2017. Thereafter, without any opportunity of being heard and without considering the case of the Petitioner in its proper prospective, the Director of Horticulture, Odisha, Bhubaneswar issued letter dated 10.08.2017 for withdrawal of the benefit under RACP of Grade Pay of Rs.4200/- to the

Petitioner and recovery of the excess payment. The entire exercise of considering some unsupported documents and baseless petitions filed by somebody and without the opportunity of hearing of being heard denying the benefits to the Petitioner is totally illegal.

## **II. SUBMISSIONS ADVANCED ON BEHALF OF THE PETITIONER:**

7. Learned counsel for the Petitioner submitted that the immediate superior authority of the Petitioner, based on the aforesaid letter dated 27.07.2017 of the Director of Horticulture, Odisha, Bhubaneswar, deprived the Petitioner of the benefit of financial up-gradation under RACP to Rs.4200/- and issued recovery of the payment made to the Petitioner from the salary of August, 2017 of the Petitioner.
8. It was further submitted that there was absolutely no irregularity in the matter of granting the 3<sup>rd</sup> financial up-gradation under the RACP to Rs.4200/-. The Petitioner was entitled to the same as per the Rules governing the RACP, which was rightly granted him. However, for no reason and without proper application of mind or the said payment was not due to any sort of misrepresentation by the applicant or the Petitioner. Therefore, withdrawal and consequential recovery is not sustainable in law.

9. He further submitted that the Opposite Parties reached the conclusion without giving him any opportunity of being heard although the same is the right of the Petitioner. Hence, the action of the Opposite Parties is against the spirit of audi alteram partem. Hence, the same is not sustainable in law and as such is liable to be set aside.
10. It was contended that similar benefits have been granted to many of the similarly situated employees. However, it is difficult to fathom as to why a step motherly attitude has been meted out to the Petitioner. Thus, the unilateral decision to withdraw the benefit of 3<sup>rd</sup> financial up-gradation under RACP to Rs.4200/- granted to the Petitioner cannot be withdrawn abruptly. Therefore, the Petitioner is constrained to approach this Court.
11. It is further submitted that on 01.01.2023 the Petitioner was entitled to financial up-gradation under RACP scheme is not at all in dispute. It is also not in dispute that the Petitioner was appointed as Herbarium Attendant on 07.12.1981. It is also not in dispute that on 01.03.2008, the post of Herbarium Attendant was abolished and, thus, the Petitioner was encadred in the post of Grafter on 04.05.2009 in the pay scale of Rs.5200-20200+GP Rs.1900/-. Later, the posts of Grafter and Field Technician were abolished and re-designated as Rs.5200-20200+GR Rs.2000/- with effect from 23.03.2012. Thus, the

encadrement of the Petitioner as Grafter became lost its sanctity and originality. It is further submitted that the RACPS contemplates mere placement on promotional basis in the Grade Pay and pay scale of the higher post and shall not amount to actual functional promotion of the employee concerned. The next promotion from the post of HEW is to the post of Horticulture Overseer in the pay scale of Rs.9300-34,800+GP Rs.4200/- which was on the approval of the competent authority was granted to the Petitioner by way of 3<sup>rd</sup> RACP with effect from 01.01.2013. However, without due application of mind and without giving any opportunity of being heard, the same was withdrawn unilaterally on the basis of a complaint made by an outsider.

12. In view of the above, the stand taken by the Opposite Parties for the sake of opposition and denial of just claim being contrary to Rule and law are hereby denied in toto. The scheme says financial up-gradation to tide over the financial hardship of an employee faced in absence of any promotion. When the Petitioner was in GP of Rs.2000/- obviously on financial up-gradation he is to be placed next G.P. of Rs.4200/- which was rightly allowed but the act of the Opposite Parties in unilaterally withdrawing smacks illegality.

### III. SUBMISSIONS ON BEHALF OF THE OPP. PARTIES:

13. On the other hand, learned counsel for the Opposite Parties/ State submitted as under:

- a. The Petitioner was initially appointed as Herbarium Attendant (Group-D) on 07.12.1981 in the State Botanical Garden, Nandankanan, Baranga. The scale of pay of Herbarium Attendant as per ORSP Rules, 1998 was Rs.2650-65-3300-70-4000/- and its corresponding pay scale as per ORSP Rules, 2008 is Rs.4440-7440 with GP Rs.1650/-. The Petitioner has availed Time Bound Advancement Scale of pay (1<sup>st</sup> up- gradation on 07.12.1996) in the Scale of Rs.2750-70-3800-75-4400/- after completion of 15 years of service and corresponding pay scale as per ORSP 2008 is of Rs.5200-20200 with GP Rs.1800/-. The Petitioner stated that the scale of pay of Herbarium Attendant as per ORSP Rules, 2008 was Rs.5200-20200+ GP Rs.1800/- which is not correct at all.
- b. The Government of Odisha in Finance Department introduced the Assured Career Progression (ACP) Scheme in Orissa Revised Scale of Pay Rules, 2008 vide Notification No.55244/F dated 24.12.2005 (Annexure-1) for giving three financial benefits i.e. 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> on completion of 15 years, 25 years and 30 years of service in their original post or grade

respectively. Such benefit of ACP will be given only after screening each and every case by a Screening Committee to be constituted by the Department. Taking into account the uncertain promotional avenues and carrier stagnation of the State Government Employees, the aforesaid ACP Scheme was replaced by Revised Assured Career Progression Scheme (RACP) vide Finance Department Resolution No.3560/F dated 06.02.2013. Under the scheme, 3<sup>rd</sup> financial up-gradation counted from the direct entry grade on completion of 10, 20 and 30 years of service in a single career in absence of promotion.

- c. While State Botanical Garden, Nandankanan was under erstwhile Agriculture Department, it was transferred to the administrative control of Forest and Environment Department vide Order No.26200/Ag dated 01.08.2006. Though the administrative control of State Botanical Garden was transferred to the control of Zoological Park, Nandankanan under Forest and Environment Department, the staffs working in the State Botanical Garden were drawing salary from the Directorate of Horticulture, which is the Cadre Controlling Authority. Subsequently, a decision in the joint meeting of the then Agriculture and Forest Department, 55 numbers of different post of Agriculture Department in the State Botanical Garden were abolished with effect from

01.03.2008 vide Order No.20170 dated 30.06.2008. The employees working there were reverted to Agriculture Department for redeployment under the Directorate of Horticulture, Odisha. Pursuant to above decision, 29 employees working under State Botanical Garden were reverted back to the Directorate of Horticulture vide Order No.12493 dated 18.04.2009 by the Agriculture Department. Out of above 29 redeployed employees, 26 employees were adjusted under different subordinate offices of the Director of Horticulture vide Order No.1346/Hort. Dated 04.05.2009. The Petitioner is one out of 26 employees reverted back to the Directorate of Horticulture and adjusted against the post of Grafter (Scale of pay Rs.5200-2020 + GP Rs.1900). At that time, the scale of pay of the Petitioner was Rs.5200-20200/- GP Rs.1800/-, The Director of Horticulture has sent a proposal for engagement of the petitioner vide Letter No.3/1152 dated 29.03.2020. The Additional Secretary to Government, Agriculture Department vide Letter No.10476 dated 06.05.2010 sought for some clarification regarding the present scale of pay drawn by the Petitioner. The Administrative Officer, Office of the Director of Horticulture, Odisha, Bhubaneswar vide Letter No.3/2029 dated 04.06.2010 has furnished the clarification as desired vide letter under Annexure-D/5. The Government in Agriculture Department

have communicated their orders vide Letter No.18126/Ag. dated 10.08.2010 (Annexure-3) adjusting the Petitioner Ex-Herbarium Attendant against the post of Grafter. On receipt of Government Order vide Annexure-3, the Petitioner was encadred against the post of Grafter by the Director of Horticulture vide Order No.3/3904 dated 05.10.2010.

- d. Thereafter, the post of Grafter and Field Technician were merged and re-designated as Horticulture Extension Worker (in short HEW) with effect from 23.03.2012 in the scale of pay of Rs.5200-20200 with Grade Pay of Rs.2000/-. As a result, the Petitioner was adjusted against the post of Grafter with Grade pay of Rs.1900/- which has been re-designated as HEW with GP of Rs.2,000/-.
- e. The Agriculture Department, Government of Orissa has issued Order No.12011/Ag. dated 30.07.2015 clarifying fixation of pay of the Petitioner on grant of RACP benefit as per Finance Department Resolution No.3560/F dated 06.02.2013 and the approved statement was communicated to the Asst. Director of Horticulture, Ekamrakanan vide Memo No.3/12372 dated 14.08.2015. The Asst. Director of Horticulture, Ekamrakanan was again intimated to allow 3<sup>rd</sup> RACP up-gradation with effect from 01.01.2013 by adding one increment of 3% on pay + Grade Pay as on 01.01.2013 vide Letter No.3/6388 dated 19.05.2016. The Assistant Director of

Horticulture, Ekamrakanan has submitted a statement of calculation regarding sanction of Grade Pay and increment vide Letter No.713 dated 10.06.2016 which was approved by the Director vide Letter No.3/7994 dated 28.06.2016. The same was again referred to the Director, Horticulture vide Letter No.904, dated 12.08.2016. The case was also referred to the Screening Committee constituted for deciding entitlement of RACP and after approval of the committee, 3" RACP was allowed to the Petitioner and communicated in Letter No 3/11162 dated 31.08.2016.

- f. The Agriculture and Farmers' Empowerment Department vide Letter No.5441/DA & FE dated 29.03.2017 has called for the concerned file in which RACP has been sanctioned in favour of the Petitioner. The Joint Secretary to Government Agriculture Department vide Letter No.11983 dated 27.07.2017 has asked to withdraw the benefits under RACP of Grade Pay of Rs.4200/- already sanctioned in the favour of the Petitioner. On the basis of this order, the Director, Horticulture has issued Letter No.3/9909 dated 10.08.2017 to the Writ Petitioner for recovery of excess amount paid to the Petitioner.
- g. The claim to avail the Grade Pay of Rs.4200/- merits no consideration. The Petitioner has no right to draw an excess amount from the Government Exchequer. Decision as

required has been taken and, hence, the allegation made by the Petitioner is baseless and not tenable in law.

#### **IV. CONCLUSION AND ORDER:**

14. It is not dispute that the Government in Agriculture Department have issued Order No.12011/Ag., dated 30.07.2015 clarifying fixation of pay of the Petitioner on grant of RACP benefit as per Finance Department Resolution No.3560/F dated 06.02.2013 and the approved statement was communicated to the Asst. Director of Horticulture, Ekamrakanan vide Memo No.3/12372 dated 14.08.2015. The Asst. Director of Horticulture, Ekamrakanan was again intimated to allow 3<sup>rd</sup> RACP up-gradation with effect from 01.01.2013 by adding one increment of 3% on pay + Grade Pay as on 01.01.2013 vide Letter No.3/6388 dated 19.05.2016.
15. The Assistant Director of Horticulture, Ekamrakanan has submitted a statement of calculation regarding sanction of Grade Pay and increment vide Letter No.713 dated 10.06.2016 which was approved by the Director vide Letter No.3/7994 dated 28.06.2016. The same was again referred to the Director, Horticulture vide Letter No.904, dated 12.08.2016. The case was also referred to the Screening Committee constituted for deciding entitlement of RACP and after approval of the

- committee, 3" RACP was allowed to the Petitioner and communicated in Letter No 3/11162 dated 31.08.2016.
16. The Agriculture and Farmers' Empowerment Department vide Letter No.5441/DA & FE dated 29.03.2017 has called for the concerned file in which RACP has been sanctioned in favour of the Petitioner. Therefore, it is not disputed that the State Government had sanctioned the upgradation of the post of the petitioner.
17. However, the Joint Secretary to Government Agriculture Department vide Letter No.11983 dated 27.07.2017 has asked to withdraw the benefits under RACP of Grade Pay of Rs.4200/- already sanctioned in favour of the Petitioner. On the basis of this order, the Director, Horticulture has issued Letter No.3/9909 dated 10.08.2017 to the Writ Petition for recovery of excess amount paid to the Petitioner. It is pertinent to mention here that the learned counsel for the petitioner has rightfully contended that this action has been taken against the petitioner without providing him the chance of hearing.
18. The settled legal proposition is that principles of natural justice are inbuilt in the statutory rules and requires observance unless the same stand excluded by the rules itself. The adjudicating authority must be impartial and without any interest or bias of any type; where the Adjudication Authority

is exercising judicial or quasi-judicial power, the order must be made by that authority and that power cannot be delegated or sub-delegated to any other offices by the adjudicating authority must give full opportunity to the affected person to produce all the relevant evidence in support of his case.

19. The High Court's jurisdiction in such cases has been clearly outlined in the case of *State Of Andhra Pradesh vs S. Sree Rama Rao*<sup>1</sup>, where the Supreme Court while explaining the issue of violation of principle of natural justice in departmental proceedings held that:

*"The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or ;where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds."*

20. Supreme Court while dealing with a similar issue in the case of *Mathura Prasad vs Union Of India & Ors.*<sup>2</sup> iterated that while

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<sup>1</sup> 1963 AIR 1723.

<sup>2</sup> 2007 (1) ALL MR 491.

conducting departmental proceedings, the disciplinary authority must act in accordance to the rules laid down. In the lines of the Supreme Court:

*“the disciplinary authority was a statutory authority. He was, therefore, bound to act within the four corners of the statute. Procedures relating to conduct of a disciplinary proceeding have been laid down by the Rules. He was bound to follow the same scrupulously.”*

*“When an employee, by reason of an alleged act of misconduct, is sought to be deprived of his livelihood, the procedures laid down under sub-Rules are required to be strictly followed.”*

21. Therefore, this Court is of the opinion that the petitioner was absolved of his right to be heard. Additionally, it is pertinent to mention here that this right should also be provided to the petitioner when he is being demoted after being legally promoted by the appropriate authority. In this regard, reliance is placed on the decision of Punjab and Haryana High Court in *Devender Kumar Bansal v. Haryana School Education Board*<sup>3</sup>, wherein it was held that:

*“Merely by saying that petitioner had managed to get order with regard to his promotion does not shield the respondents from explaining as to why allegedly wrong promotion was granted to the petitioner. The officers and other authorities of respondents were not expected to be so much ignorant, naïve and novice so as to pass order*

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<sup>3</sup> CWP-6037-2020(O&M) (Punjab and Haryana High Court)

*granting promotion to the petitioner without due application of mind, unmindful of the requirement of the basic publication and without considering the pros and cons of their action. If that order was to be reversed, then at least an opportunity of being heard should have been provided to the petitioner. Acting in the manner in which the respondents have done cannot be justified by any stretch of imagination. The petitioner has been brought down from the promoted post to his earlier post clearly causing prejudice to him and the case is not covered by any of the eventuality enumerated in judgment LIC of India v. Hansraj<sup>4</sup>."*

22. In light of the aforesaid discussion and the cases cited hereinabove, this Court hereby rejects the Letter No.4ENG(H3)/48/2014 3/9909 dated 10.08.2017 issued by the Opposite Party No.3/ Director, Horticulture, Odisha, Bhubaneswar regarding withdrawal of RACP against the Petitioner. The Opposite Party No.3 is hereby directed to provide the Petitioner with a fair chance of hearing and file a report in accordance with law.

23. Accordingly, this Writ Petition is disposed of. No order as to costs.

**( Dr. S.K. Panigrahi )**  
**Judge**

Orissa High Court, Cuttack,  
Dated the 3<sup>rd</sup> July, 2023/B. Jhankar

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<sup>4</sup> 2005(9) SCALE 538