THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.731 of 2021

State of Odisha & others Appellants

-Versus-

Dr. Kamalini Bepari Respondent

For the Appellants: Mr. J. Katikia, Addl. Government Advocate

For the Respondent: Mr. S.R. Pati, Advocate

For the Intervenor: Mr. S.K. Das, Advocate

CORAM:

THE HONOURABLE SHRI JUSTICE S. TALAPATRA THE HONOURABLE MISS JUSTICE SAVITRI RATHO

JUDGMENT 28th March, 2023

<u>S. Talapatra</u>, <u>J.</u> By means of this writ appeal, the appellants, the opposite parties in the writ petition, have challenged the judgment dated 27.04.2021 delivered by a learned Single Judge of this Court in W.P.(C) No.14317 of 2021, Annexure-3 to the memorandum of appeal for being unreasonable and the appellants have further urged this Court to dismiss the writ petition filed by the respondent being devoid of merit.

2. By means of the impugned judgment, the learned Single Judge has observed as follows:

"Considering the rival contentions of the parties, this Court observes, unless there is communicated negative remark in CCR/PAR, promotion of such person should not be held up on the premises of non-receipt of CCR/PAR through online and considering the technical difficulties, the CCR/PAR can also be obtained through offline mode but however as onetime measure and the same be considered for promotion. Taking into account the communication vide Annexure-5 this Court finds, keeping in view the difficulty faced in receiving the CCR/PAR through online, the State Government has taken a decision as onetime measure for receipt of CCR/PAR through offline mode for promotion of Group-B employees and the same can also be extended to other promotion.

For the development through Annexure-2 indicating that there is already communication of the PAR for the Financial Year 2016-17 to 2019-20 in respect of the petitioner hereunder. This Court directs for immediate convening of the DPC to consider the case of promotion of the petitioner, as expeditiously as possible, preferably within a period of four weeks."

3. The respondent, Dr. Kamalini Bepari had challenged the order dated 26.03.2021, Annexure-8 to the writ petition and Annexure-1 in the memorandum of appeal. It has been also urged in the writ petition, being W.P.(C) No.14317 of 2021 for directing the opposite parties, the appellants herein, to consider offline PARs of the petitioner for the years 2015-16, 2016-17 & 2017-18 for consideration of her promotion to the post of Associate Professor in the Department of ENT by convening a review DPC.

The respondent herein, the writ petitioner was appointed as 4. Assistant Surgeon on 30.09.1993 and she was posted in OSAP, 3rd Battalion, Koraput. Thereafter, she was transferred to the VSS Medical College & Hospital, Burla on 30.08.1996 and continued till 30.11.1999 as Leave and Training Reserve Medical Officer. After her completion of P.G. Degree in the year 2003, the petitioner had applied for the post of Lecturer in SCB Medical College & Hospital, Cuttack through Odisha Public Service Commission (OPSC) and she was selected on 27.03.2006. In the course of time, she joined as Lecturer in the SCB Medical College & Hospital, Cuttack on 27.03.2006 in the Department of ENT. The post of Lecturer was re-designated as Assistant Professor and the petitioner had continued as Assistant Professor from 13.05.2009 to 31.03.2011 in SCB Medical College & Hospital, Cuttack. Thereafter, the petitioner was transferred to VSS Medical College & Hospital, Burla and she joined there as Assistant Professor in the Department of ENT on 06.04.2011. The said Medical College came under a separate Statute and in terms of the said Statute, called VSS Institute of Medical Science and Research (VIMSAR) Act, 2014, the writ petitioner was inducted in the VIMSAR Cadre from the Odisha Medical Service (OMS) Cadre. The petitioner is still continuing in the VIMSAR Cadre.

- 5. Section-4(6) of the said Act provides that the essential qualification for the posts of Professor, Associate Professor, Assistant Professor, Senior Resident, Tutors shall be guided and governed by the existing guidelines of Medical Council of India (MCI) or its amendments save as except as provided in the Odisha Medical Education Service (Method & Recruitment and Conditions of Service) Rules, 2013 and as amended from time to time.
- 6. It is not in dispute that petitioner is eligible for promotion for the post of Associate Professor, Department of ENT as per the Medical Council of India Regulations and hence, her case would have been considered, but the DPC which was convened on 15.12.2020 had not considered her promotion on the flimsy ground as asserted by the petitioner, for which the petitioner had approached this Court.
- 7. The opposite party No.2 in the writ petition and the appellant No.2 in this appeal, by his letter No.10707/Gen., Bhubaneswar dated 30.04.2020 had directed all the Departments of the Government, all the Heads of the Departments, RDCs and Collectors that many employees were being deprived from getting their promotion since the offline PARs were not available for promotion from the year 2015-16.
- 8. It has been noticed that in many cases, the employees were not sufficiently aware of filing through the online system. Even their

reporting authorities in many cases, instead of asking them to file online, received the offline CCR/PARs and processed them.

- 9. It has not been disputed by the writ petitioner that the opposite party No.2, by his letter dated 30.04.2020 had directed all the Departments of the Government, particularly all the Heads of the Departments, RDCs and the Collectors for strictly adhering for filing, PARs through the online system. It is not also in dispute that onetime relaxation in the case of Group-B employees was granted from dispensing the filing of PARs online.
- 10. According to the writ petitioner, she had been submitting her PARs through the offline mode ever since she had joined as Assistant Professor in the Department of ENT. It is also not in dispute that by the letter No.34337/SE, dated 26.12.2014, all the Secretaries to the Government, all the Heads of the Department and all the RDCs/and all the Collectors were directed to implement the online filing of PARs of Group-A and Group-B Officers of the State Government from the assessment year 2014-15. It had been clearly stated that "if the appraisee fails to submit the PAR as per the time schedule mentioned above, the PAR will be automatically force-forwarded to the next/higher authority."

- 11. Even after introduction of the online submission of e-PAR (self-appraising part) in HRMS from the year 2015-16, the petitioner had not submitted her PAR for the assessment year 2015-16 through the online system and within the deadline of processing of the e-PAR, as the writ petitioner had faced difficulty in submission of PAR. But the petitioner had submitted her PAR in the year 2015-16 through the offline system, as stated.
- 12. The writ petitioner had submitted her PARs for the assessment years 2016-17 & 2017-18 through the system, HRMS, online within the stipulated date, but due to slow down of the HRMS server, those could not be uploaded.
- 13. It has been stated by the petitioner that except PARs for the assessment years 2016-17 and 2017-18, PARs for the other years viz. 2018-19 and 2019-20 were submitted through online successfully.
- 14. Pursuant to the letter dated 19.11.2020 of the Chief Secretary, Government of Odisha requesting to hold the Departmental Promotion Committee (DPC) timely, Annexure-4 to the writ petition, the writ petitioner had submitted a representation on 25.11.2020, Annexure-5 to the writ petition, before the opposite party No.5. The Director, VSS Institute of Medical Science and Research (VIMSAR), Burla for consideration of her promotion to the post of Associate Professor in

view of her seniority and PARs. She had also mentioned that there had been technical snag in uploading PARs in the system and as a result, she was compelled to submit PARs for the years 2016-17 & 2017-18 through offline mode. The said representation dated 25.11.2020 did not evoke any response, for which the writ petitioner submitted a further representation on 27.11.2020 before the opposite party No.4, the Director of Medical Education & Training, Government of Odisha, Bhubaneswar.

- 15. In the meantime, on 15.11.2020, a meeting of the Departmental Promotion Committee (DPC) was held. It has been asserted by the respondent that, "but the petitioner came to learn that her case for promotion may not be considered in the same DPC in absence of PARs for the years 2015-16, 2016-17 & 2017-18." It has been acknowledged by the appellants that those PARs were submitted by the writ petitioner offline for the above referred assessment years. The petitioners had submitted another representation on 21.12.2020, Annexure-7 to the writ petition for acceptance of her PARs.
- 16. The writ petitioner had also asserted that even though the DPC was held on 15.12.2020, but its recommendation had not been placed before the Executive Body and hence, no decision had been taken for promotion to the post of Associate Professor, Department of ENT.

Earlier to this writ petition, the petitioner had approached this Court for the same cause by filing another writ petition being W.P.(C) No.38179 of 2020 before this Court for a direction to declare the recommendation of the Departmental Promotion Committee (DPC), meeting of which was held on 15.12.2020, for promotion to the post of Associate Professor in the Department of ENT as null and void. Further direction on the opposite parties had been sought for considering the case of the petitioner for promotion to the post of Associate Professor, Department of ENT by convening a review DPC and taking on PARs, which were submitted offline into consideration.

17. While disposing of the said writ petition, by the order dated 27.01.2022, this Court had observed as follows:

"Considering the contentions raised by learned counsel for the parties and after going through the records, the Government of Odisha, General Administration & Public Grievance Department has issued a letter No.10707/Gen., Bhubaneswar dated 30.04.2020 in Annexure-1 with regard to consideration of CCR/PAR for promotion. The relevant portion of the letter is quoted below:

"Considering the above aspects, and in order to ensure promotion to the otherwise eligible and deserving employees and as an onetime measure of relaxation, Government have been pleased to order to consider promotion of employees if the CCR/PARs are available, either in online form or offline form, upto 2018-19. However, all other conditions required for promotion will be strictly followed. This onetime relaxation measure will be applicable upto and including Group-B employees of the State Government. Online

submission of PAR will be mandatory for 2019-20 and onwards."

On perusal of the aforementioned letter, it appears that there is a direction that to ensure promotion to the otherwise eligible and deserving employees, onetime measure of relaxation has been given by the Government to the employees, who have submitted their CCR/PARs either through online or offline form up to 2018-19 and all other conditions required for promotion will be strictly followed and the onetime relaxation measure will be applicable up to and including Group-B employees of the State Government and online submission of PAR will be mandatory for 2019-20 and onwards. It appears from the records that the petitioner has submitted her CCR/PARs for the year 2015-16, 2016-17 & 2017-18 through offline/manual basis and now she is ready to submit the same through offline/manual basis, that should be accepted in terms of the letter dated 30.04.2020 under Annexure-1. But the mandatory provision for the year 2019-20, the petitioner has no grievance at all.

In that view of the matter, this Court disposes of the writ petition directing the opposite party No.2 to consider the representation of the petitioner filed under Annexure-6 dated 21.12.2020 taking into account the letter dated 30.04.2020 under Annexure-1 by accepting her PARs for the years 2015-16, 2016-17 & 2017-18 filed through offline/manual basis so as to consider her promotion to the post of Associate Professor as expeditiously as possible, preferably within a period of three months from the date of production/communication of this order."

[Emphasis added]

18. In view of the order dated 27.01.2020, the opposite party No.2, the Special Secretary to the Government of Odisha, G.A. & P.G. Department, Government of Odisha, Lok Seva Bhawan, Bhubaneswar, District-Khurda by his letter dated 26.03.2021 had rejected the

representation of the petitioner on the solitary ground that on verification of PARs for the years 2015-16, 2016-17 & 2017-18, it was found that all the offline PARs were submitted by the appraisee (the writ petitioner) at a time without mentioning the date of submission to the reporting authority. The reporting authority had also recorded his remarks in all those PARs without mentioning the date in respect of his reporting periods. It has been observed that both the reviewing and the accepting authorities had retired before the PARs reached to them, for which they could not record their remarks in PARs of the writ petitioner. According to the appellants, the petitioner had not submitted her PARs in due time as prescribed. Since the writ petitioner belongs to the category of Group-A Officers, there had been no scope to accept the claim of the petitioner as raised in her representation dated 21.12.2020, Annexure-8 to the writ petition.

19. In Dr. Bijay Kumar Lamay vs. State of Odisha & others [the order dated 22.02.2021 delivered in W.P.(C) No.35134 of 2020] it had been observed, inter alia as follows:

"this Court observes, unless there is communicated negative remark in CCR/PAR, promotion of such person should not be held up on the premises of non-receipt of CCR/PAR through online and considering the technical difficulties the CCR/PAR can also be obtained through offline mode but however as onetime measure and the same be considered for promotion. Taking into account the communication vide Annexure-5 this Court finds, keeping in view of the difficulty faced in receiving the CCR/PAR through online, the State Government has taken a decision as onetime measure for receipt of the CCR/PAR through offline mode for promotion of Group-B employees and the same can also be extended to other promotion.

For the development through Annexure-2 indicating that there is already communication of the PAR for the Financial Years 2016-17 to 2019-20 in respect of the petitioner hereunder. This Court directs for immediate convening of the DPC to consider the case of promotion of the petitioner, as expeditiously as possible, preferably within a period of four weeks."

[Emphasis added]

Pursuant to the said order dated 27.01.2021 delivered in W.P.(C) No.38179 of 2020, the Additional Chief Secretary to the Government of Odisha in the General Administration and Public Grievance (SE) Department had passed the order dated 26.03.2021 in respect of her [the writ petitioner's] representation. In the said order, it has been observed as follows:

"Whereas, the offline PARs of Dr. Kamalini Bepari, Assistant Professor, ENT, VIMSAR, Burla for the years 2014-15, 2015-16, 2016-17 & 2017-18 were received in this Department on 15.12.2020 from Health & Family Welfare Department vide their letter No.28593/H dated 09.12.2020;

Whereas, the PAR of Dr. Kamalini Bepari for the year 2014-15 in shape of hard copy has already been reviewed which was received earlier prior to this letter in this Department. On verification of the PARs for the years 2015-16, 2016-17 & 2017-18 received in letter No.28593/H dated 09.12.2020, it is found that all the offline PARs are submitted

by the appraisee at a time without mentioning date of submission to the Reporting Authority. The Reporting Authority has also recorded his remarks in all these PARs without mentioning date in respect of his Reporting periods. Further, both the respective Reviewing and Accepting Authorities have already retired at the time of receipt of PARs at their end respectively for which they could not record their remarks in the PARs of the petitioner;

Whereas, the submission of online PARs was introduced from the year 2014-15 onwards as per the letter no.34337/SE dated 26.12.2014 and it was made mandatory to submit through online mode from the year 2015-16 onwards vide Circular No.47/SE dated 14.01.2016 of GA & PG (SE) Department;

Whereas, the appraisee should submit his/her PAR to his/her Reporting Authority within 30th April of each financial year as prescribed in the PAR Guidelines issued vide Memo No.1199/PRO dated 26.04.2006;

Whereas, the Hon'ble High Court have directed to consider her representation at Anneuxre-6 taking into the Letter No.10707 dated 30.04.2020 of G.A. & P.G. Department which is applicable for acceptance of offline PARs upto and including Group-B Officers;

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Whereas, the petitioner Dr. Kamalini Bepari has not submitted her PARs in due time as per prescribed time schedule and belonging to Group-A Officers, there is no scope to accept her claims as mentioned in her representation dated 21.12.2020 at Annexure-6;

Therefore, the undersigned, after careful consideration, is convinced that the grounds taken by the petitioner in her representation as at Annexure-6 in the writ petition are devoid of any merit and deserves no consideration and hence rejected."

[Emphasis added]

- 21. The said order dated 26.03.2021 has again been challenged by the writ petitioner. The learned Single Judge by the order dated 27.04.2021, Annexure-3 to the writ appeal, has observed, *inter alia* that in view of the difficulty faced in uploading the CCR/PARs through online, the State Government has taken a decision to provide onetime relaxation in receiving the CCR/PARs through offline mode *for promotion of Group-B employees*. The said relaxation can be extended to the other group including group 'A'. As PARs for the Financial Years 2016-17, 2017-18, 2018-19 & 2019-20 had been communicated, the learned Single Judge has directed for immediate convening of the DPC in order to consider the case of the petitioner.
- 22. Mr. J. Katikia, learned Addl. Government Advocate appearing for the petitioners has stated that the learned Single Judge has committed serious error by borrowing the onetime measure of relaxation as provided to the Group-B employees for the cases of Group-A employees. Moreover, it has been contended that he has not properly read the impugned order dated 26.09.2021, else he would have appreciated that the representation, as filed by the writ petitioner was properly considered by the competent authority. PARs for the years 2015-16, 2016-17 & 2017-18 were received under a covering letter dated 09.12.2020 at a time without mentioning the date of submission to

the reporting authority anywhere. In the meantime, both the reviewing & the accepting authorities had retired from their services and hence, they were not in a position to review or accept PARs for the above years.

- 23. Mr. S.R. Pati, learned counsel has, in order to repel the submission of Mr. Katikia, learned Addl. Government Advocate appearing for the appellants has contended that PARs are not wholly written by the Officer concerned. The substantial part of PARs is written by the reporting Officer and he is the person who forwards or force-forwards PARs to the reviewing authority and the reviewing authority forwards PARs to the accepting authority. Therefore, for any delay, the petitioner cannot be entirely made responsible.
- PARs of the writ petitioner (the respondent in this appeal) were not filed online which she ought to have filed online. It is an admitted position that those PARs were filed physically. The receipt of the said PARs even has been acknowledged by the order dated 26.03.2021. It has not been denied by the appellants (the opposite parties in the writ petition) that all those PARs for the years 2015-16, 2016-17 & 2017-18 were received. In the said order, it has been clearly stated that the reporting authority had recorded his remarks in all these PARs, without

mentioning the date in respect of his Reporting periods. According to the Additional Chief Secretary to the Government, it has been reflected in the said order dated 26.03.2021 that the offline PARs were submitted by the appraisee at a time without mentioning the date of submission to the reporting authority. It is also observed that the reviewing and the accepting authorities had retired from their services at the time of receipt of PARs for which they could not record their remarks in PARs.

- 25. It has also been asserted in the said order dated 26.03.2021 that submission of PARs online was introduced from the year 2014-15 by the letter No.34337/SE dated 26.12.2014. Online submission of PARs was made mandatory from the year 2015-16 onwards. In terms of another Circular No.47/SE dated 14.01.2016 issue by the G.A. & P.G. (SE) Department, the appraisee (the writ petitioner) was supposed to submit her PAR to her reporting authority within 30th April of each year as per the PAR guidelines vide Memorandum No.1199/PRO dated 26.04.2006.
- 26. The opposite parties had further contended before the learned Single Judge that it is apparent from the order dated 26.03.2021 that the reporting Officer had not recorded the reporting period in PARs of the respondent and none of those PARs was processed to the Reviewing or the Accepting Authorities within the stipulated time.

- 27. According to Mr. S.K. Das, learned counsel appearing for the intervenor that in view of the above stand, the filing of PARs through online or offline will make no difference. The intervenors have also raised jurisprudential objection for not impleading them as the respondents in the writ petition notwithstanding the fact that one of the intervenors had filed separate writ petition being W.P.(C) No.730 of 2021 titled as *Dr. Sujata Panda vs. the State of Odisha* where the writ petitioner was arrayed as the opposite party No.6. That case was filed much before the writ petition being W.P.(C) No.14317 of 2021 was filed by the respondent herein. As such, according to the counsel for the intervenors, it is apparent that the respondent (the writ petitioner) has practiced fraud on the Court.
- 28. Having appreciated the submissions of the learned counsel for the parties, we do not find any infirmity in the observation of the learned Single Judge that when a category of the Officers (Group-B Officers) has been granted onetime relaxation in accepting offline PARs, why the same principle will apply in the case of the petitioner. Nobody would suffer detriment, if PARs, filed offline is considered for promotion to the post of Associate Professor.

- 29. We are alive that the writ petitioner is holding a position of higher responsibility. But in the course of digital transformation, a liberal approach is to be adopted so as to ensure that none suffers undue prejudice. Hence, the approach of the Government should be inclusive and liberal. As corollary, the direction of waiving the requirement of filing PARs online for the above period is not interfered by us.
- 30. But we are constrained to observe with humility that learned Single Judge has committed a serious error by not reading the order dated 26.03.2021 whereby it has been held that the petitioner Dr. Kamalini Bepari had not submitted her PARs within the prescribed time schedule and as she belonged to the category of Group-A Officers, there was no scope to accept her claims as advanced in her representation dated 21.12.2020, Annexure- 6 to the writ petition.
- 31. We have examined the Circular dated 30.04.2020 issued by the Special Secretary to the Government in the General Administration & Public Grievances Department, Government of Odisha. It has laid down that considering that the Reporting Authorities in many cases, instead of asking the appraisees to file online, received CCR/PAR and also reported for the period of assessment and the Reviewing Authorities and the Accepting Authorities entered remarks in PARs in certain cases, as referred, those were duly considered by the Selection Committee (DPC)

affording onetime relaxation. Relaxation was subject to all other conditions, as required to be observed strictly. It is no denying fact that by the said Circular dated 30.04.2020 the onetime measure of relaxation had been provided only upto the level of Group-B officers of the State Government. It had been also cautioned that online submission of PARs will be mandatory from 2019-20.

- 32. As we have affirmed the finding of the learned Single Judge that the similar principle be applied in the case of the petitioner, we would like to add further that it could not be ascertained from the averments of the opposite parties (the appellant herein) whether the appraisee (the writ petitioner) filed her self-appraisal report to the Reporting Authority within time or not. Whether filed in time or not, it is the solemn duty of the reporting Officer to forward or force-forward PAR within time. Hence, for any delay, the appraisee alone cannot be penalized.
- **33.** In these circumstances, we would direct the opposite parties to complete the process of finalizing PARs by 31st July, 2023 so far as the petitioner is concerned.
- **34.** For the intermediate period, till the review of the DPC is convened to consider the case of promotion strictly on the basis of her suitability for promotion to the post of Associate Professor, one post of Associate Professor in the Department of ENT shall be kept vacant. On

the basis of the recommendation by the DPC for the remaining

vacancies, the opposite parties (the appellants) may promote the other

candidates including the persons seeking intervention.

35. The review DPC shall consider the suitability of the petitioner

separately and in the event, the petitioner is found suitable for the

promotion to the post of Associate Professor, the petitioner shall be

promoted from the same day, if in the meantime, any promotion to the

said post has been made on the basis of the recommendation of the DPC

which did not consider the case of the writ petitioner. But the writ

petitioner, in that event, shall not be entitled to get any financial benefits

till the date of her formal appointment on promotion.

36. In the above terms, the writ appeal stands disposed of.

37. There shall be no order as to cost.

(S. Talapatra) Judge

Savitri Ratho, J.

I agree

(Savitri Ratho) Judge

Signature Not Verified
Digitally Signed
Signed by: SUBHASIS MOHANTY
Designation: P.A. I/C OF SECRETARY
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 26-Jun-2023 20:41:34